

## Introduction to Law

### What is 'Law'?

To answer the question, the following definitions are discussed:-

#### Austin's definition of law

**John Austin** is a renowned British jurist of 19th Century. He published extensively on the philosophy of law. He was Professor of Jurisprudence in the University of London (now University College London) 1826-33. His book: "**The Province of Jurisprudence**" determined was very popular. He gives the following definition of law:

"Law is the command of the sovereign"

*Command (Order)*

*Sovereign (Ruler)*

Thus it may be stated that law is the order of the ruler.

#### Simple definition of law

"Law is the right of one, obligation of the other, maintained by law enforcing authority"

*Right (Sheltered and recognized interest)*

*Obligation (Duty)*

*Maintained (Managed)*

*Enforcing authority (Implementing power)*

Thus it may be stated that law is the sheltered and recognized interest of one, duty of the other managed and controlled by law implementing power.

#### Additional information

Kinds of sovereign:

- De-jure sovereign (Constitutional ruler)
- De-facto sovereign (Unconstitutional ruler)

**Aristotle defines constitution** as, "A constitution denotes not only an arrangement of office, but, a manner of life.

#### Aristotle's definition of law

"Law is the experience, developed by reason and reason, tested by experience".

*Experience (=Knowledge)*

*Reason (= Rationale)*

*Tested (=Checked)*

Thus it may be stated that law is the knowledge, developed by rationale and rationale, checked by knowledge.

*Relevant Quotation: "Experience is a very hard teacher she gives the test first, the lesson afterwards".*

### Classical definition of law

Law is the 'dispassionate reason' and its content is the same as that of morality.

*Dispassionate (=Unemotional)*

*Reason (= Rationale)*

*Content (=Substance)*

### Why laws are made?

Laws are made to regulate human actions.

### Advantage of law

The supreme advantage of law is peace and harmony. Law governs both the ruler and the ruled.

### What is justice?

Justice means every man given his legal right.

Relevant quote on relationship of law and justice: "Justice is an ideal like truth just as a sculptor tries to achieve beauty with his mallet and chisel, so law is the tool of a judge in the pursuit of justice."

*Ideal (Model)*

*Beauty (Splendor or Prettiness)*

*Mallet (Hammer)*

*Chisel (Shape)*

*Tool (Instrument)*

*Pursuit (Search)*

Thus justice is a model like truth just as a sculptor tries to achieve prettiness with his hammer and a shape so law is the instrument of a judge in the search of justice.

### What are the kinds of justice?

Justice is of two kinds:

- Natural justice
- Legal justice
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**Natural justice** deals with the enforcement of rights and punishments of wrongs according to moral standards as appeal to the mind of human being. It stands independent of recognition by state.

**Legal justice** denotes justice according to what the law declares to be just (=right). Legal justice may be divided in to the following kinds:

- a. Private justice
  - b. Public justice
- a. **Private or personal justice** is what the person whose right is violated wants from the counter party.

- b. **Public or community justice** is what a plaintiff demands and receives from the community through court if his counter parties have denied him personal justice. Private Justice is the object for which the public justice exists.

(a) Civil justice

(b) Criminal justice

**The two kinds of public justice can be well understood by understanding their points of difference:**

Sr.	Points of Difference	Civil Justice	Criminal Justice
1	<u>Nature of Wrong</u> <i>Wrong (breach of one's legal duty)</i> <i>Nature (Character)</i>	Civil justice is <u>dispensed</u> for <u>private wrongs</u> . <i>Private wrong (breach of right of individual)</i> <i>Dispense (to give out)</i>	Criminal justice is <u>dispensed</u> for <u>public wrongs</u> . <i>Public wrong (breach of right of community)</i> <i>Dispense (to give out)</i>
2	Purpose	The purpose of civil justice is to <u>compensate</u> the aggrieved party. <i>Compensate (Reimburse)</i>	The purpose of criminal justice is to punish the offenders <i>Offenders (Wrong doers)</i> <i>Punish (=Penalize)</i>
3	Procedure	For civil justice civil procedure is adopted.	For criminal justice criminal procedure is adopted.
4	Nature of Court	Civil justice is administered by Civil Courts.	Criminal justice is administered by Criminal Courts.
5	Degree of Harmfulness	Civil wrongs are relatively less harmful for the society.	Criminal wrongs are relatively more harmful for the society.
6	Style of Titling	Civil cases are titled as 'Bashier versus 'Nazier'	Criminal cases are titled as 'State' versus 'Bashier'
7	Relevant Procedural Code	The relevant procedural Code is ' <b>The Civil Procedure Code, 1908.</b> '	The relevant procedural code is ' <b>The Criminal Procedure Code, 1898.</b> '
8	Prosecution	In civil justice, government does not prosecute the case.	In criminal justice, government prosecutes the case.
9	Measuring the liability	In civil cases in determining the liability, the following factors are irrelevant: (1) Motive (2) Intention (3) Magnitude of the offense (4) Character of the offender.	Criminal liability is measured by keeping the following in view: (1) Motive (2) Intention (3) Magnitude of the offense (4) Character of the offender.

**Who makes laws?**

Laws are made by super human wisdom. In modern political state they are made by Parliament.

**What is Parliament?**

The Supreme legislative body of a country is called 'Parliament'. The parliament of Pakistan consists of **National Assembly, Senate and President.**

**Concept of supreme law (A Latin Physiology about law)**

“Salus est poupli suprema lex” (Latin Maxim)

*Salus (Welfare)*

*est (is)*

*Populi (People)*

*Suprema (Supreme)*

*Lex (Law)*

Thus it means welfare of people is the supreme law.

**What law is considered effective law?**

Law that has the following characteristics is known as effective law:

- Issued by the un-commanded commander—the sovereign;
- The commands are backed by threats of sanctions; and
- The sovereign is habitually obeyed.

**Some important quotations relating law:**

“United States is the greatest law making factory the world has ever known”.

“Laws are imperative in nature”.

“Law helps the vigilante not the indolent; it means law comes to the assistance of the vigilant, not of sleepy”.

“Violence is inimical to law”.

*Inimical (Against)*

“It means law does not like violence but peace”.

“People follow truth; truth makes public opinion; public opinion makes law”.

**Advantages of law**

- (1) Uniformity and certainty
- (2) Equality & impartiality
- (3) Protection from errors

**Uniformity and certainty:** The first of the advantages is that the law imparts uniformity and certainty to the administration of justice

*Uniformity (Evenness; sameness)*

*Certainty (Sureness)*

This advantage enable the people to know what the law is what would be the decision of the court.

**Equality and impartiality:** The law is made for no particular person or for no individual case and so admits no respect of person which is incompatible with justice. None can escape from the clutches of law.

**Protection from errors:** The law serves to protect the administration of justice from the errors of individual judgment. The establishment of the law is the substitution of the opinion and conscience of the society at large for those of the individual to whom judicial functions are entrusted. Aristotle observes: “*To seek to be wiser than the laws is the very thing forbidden by good law itself*”.

**Disadvantages of law**

The law is without doubt a remedy for greater evils, yet it brings with it the evils of its own”. The evils are discussed as under:

- (1) Rigidity
- (2) Conservatism
- (3) Formalism
- (4) Needless complexities

**Rigidity:** The first disadvantage of law is its rigidity. Because of its rigidity it applies without any allowance for special circumstances and without turning to the right hand or to the left. In other words rigidity is the failure of law to conform itself to the requirements of special circumstances.

**Conservatism:** Conservatism is laws failure to conform itself to those changes in circumstances and in men’s views of truth and justice. Progressive societies are in advance of law. The existing body of rules may be found in-applicable to such changed circumstances.

**Formalism:** Another vice of the law is the formalism. By this is meant the tendency to attribute more importance to technical requirements than to substantive rights and wrongs. In modern time registration and attestation are examples of formalities.

**Needless complexities:** The fourth defect of law is undue and needless complexity. The law becomes more and more complex due to the excessive development of legal system and it becomes too difficult to understand the law.

**Formula of solving scenario based question:**

The scenario based questions are solved by applying the following formula:

**FOI+QRL+ALFI+D**

*FOI = Framing of Issue*

*QRL = Quoting relevant law*

*ALFI= Application of the law on the framed issue*

*D = Decision*

The most technical thing involved in the formula is as to how issues are framed; the following material will make you understand this process:

Framing of issues:

- (1) Issue arises when a material proposition of fact or law is affirmed by the one party and denied by the others.

- (2) Material propositions are those propositions of law or facts which a claimant must allege in order to show a right to sue or a defendant must allege in order to constitute his defense.

*Allege (assert; claim; contend)*

*Law (rule as laid down by Parliament or by a precedent)*

*Facts (whatever is perceived by our five senses are facts)*

- (3) Issues are of the following two kinds:

- (a) Issue of law
- (b) Issue of fact

**Issue of law:** An issue of which answer is already prescribed in some rule of law.

**Issue of fact:** Before dealing with 'issue of fact', it is important to first understand the term 'fact'--- 'fact' includes the following:

(a) Anything, state of things or relation of things capable of being perceived by senses; and

(b) Any mental condition of which any person is conscious.

Issue of fact means an issue other than the issue of law.

**Hint:** While attempting the scenario based question students are required to carefully read the proposition and thereafter ascertain what material proposition of fact or law the parties are at variance and shall thereupon proceed to frame and record the issues on which the right answer of the question appears to be dependent.

*Proposition (Situation; scheme)*

*Ascertain (Determine)*

*Variance (Difference; conflict)*

*Proceed (Go ahead; advance; progress)*

## Kinds of Law

There are following kinds of law:

- Common law
- Equity
- Statute law
- Substantive law
- Procedural law
- Private law
- Public law
- Criminal law
- Civil law

### 1. Common law

The term ‘common law’ is derived from the ‘French law word’ ‘common ley’ which means:

“The body of law derived from judicial decisions, rather than from statutes or constitutions”.

*Statute (A law passed by a legislative body)*

*Constitution (The fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties).*

**Black stone says:** ‘Common law is the municipal law of England or the rule of civil conduct prescribed to the inhabitants of the kingdom.

*Municipal (= civic; community)*

*Inhabitants (= residents)*

About common law it is also said that: “Common law is the experience expressed in law”.

### 2. Equity Law

Equity is not part of the law, but a moral virtue, which qualifies moderates and reforms the rigor, hardness and edge of the Common law.

*Moral (=ethical)*

*Virtue (=good quality)*

*Qualify (=succeeds)*

*Moderate (=modest)*

*Reform (=restructure)*

*Hardness (=stiffness)*

*Edge (=stitching)*

Thus it may be stated that Equity is not part of the law, but an ethical good quality, which succeeds, moderates and restructure the rigor, stiffness and stitching of the law. Equity does not destroy the law nor create it

but assist it. Equity is distinguishable from the Common law not because it relates to a different subject matter but merely because it appears at a later stage of legal development.

**Underbill says:** ‘Equity was originally the result of common sense against the pedantry of law and trammels of the feudal system; it became a highly artificial and refined body of legal principles and it is at the present day an amendment and modification of the Common law.’

*Pedantry (= literalism; lack of imagination)*

*Trammels (=limits; restrictions)*

**According to Henry Maine,** it is a “Fresh body of rules by the side of the original law”.

**Aristotle says:** “It is equity to pardon human failings and to look to the law giver and not to the law; to the spirit and not the letter; to the intention and not to the action; to the whole and not to the part; to the character of the actor in the long run and not in the present moment; to remember good rather than evil, and good that one has received rather than good that one has done; to bear being injured; to wish to settle a matter by words rather than by deeds; lastly to prefer arbitration to judgment for the arbitrator sees what is equitable, but the judge only the law and for this an arbitrator was first appointed, in order that the equity might flourish”.

*Pardon (= forgive)*

*Deeds (= activities)*

*Arbitration (= mediation; settlement)*

*Judgment (= announced decision of court)*

*Equitable (= consistent with principles of justice and right)*

### 3. Statute law

A law passed by the parliament of England.

English parliament = House of Commons + House of Lords+ Crown

### 4. Substantive law

The part of the law that creates, defines, and regulates the rights, duties and powers of parties.

### 5. Procedural law

Procedural law or adjective law comprises the rules by which a court hears and determines what happens in civil lawsuit, criminal or administrative proceedings.

### 6. Private law

Private law is the body of law dealing with private persons and their property and relationships.

### 7. Public law

Public law is that part of law which governs relationships between individuals and the Government. Constitutional law, Criminal law, and Administrative law

*Constitutional law (The body of law deriving from constitution)*

*Criminal law (The body of law defining offenses against the community at large)*



**8. Criminal law**

The body of law defining offenses against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted offenders. In a criminal case the state is the prosecutor because it is the community as a whole which suffers as a result of the law being broken. Persons guilty of crime may be punished by fines payable to the state, imprisonment, or a community based punishment.

*Suspect (= accused)*

*Investigate (= inspect)*

*Charged (= to be accused of an offense)*

*Tried (= to be examined judicially)*

*Prosecutor (= a legal officer who represents a state in judicial proceedings)*

*Guilty (= blameworthy)*

Generally, the Police take the initial decision to prosecute but this is then reviewed by the Prosecution Service.

In a criminal trial the burden of proof to convict the accused is on the prosecution, which must prove its case beyond reasonable doubt.

*Reasonable doubt (The doubt that prevents one from being firmly convinced of a defendant's guilt----'beyond a reasonable doubt' is the standard used by a jury to determine whether a criminal defendant is guilty)*

*Crime: an act that the law makes punishable.*

**9. Civil law**

Civil law deals with disputes over the rights and obligations of persons dealing with each other's. It is a form of private law. In civil proceedings, the case is proved on the balance of probability. The claimant must convince the court that it is more probable than not that their assertions are true.

*Balance of probabilities (The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force.)*

*Testify (To give evidence as a witness)*

*Fact (Anything that may be perceived by the five senses)*

**Court System of Pakistan**

Court system of Pakistan consists of courts diverse in echelons of legal superiority and jurisdiction. Following are the courts of Pakistan:

- Supreme Court of Pakistan
- Federal Shariat Court of Pakistan
- High Courts of Pakistan (one in each province and also in federal capital)
  - Lahore High Court, Lahore, Punjab
  - Sindh High Court, Karachi, Sindh
  - Peshawar High Court, Peshawar, Khyber Pakhtunkhwa
  - Balochistan High Court, Quetta, Baluchistan

- Islamabad High Court, Islamabad, ICT
- District Courts of Pakistan (one in each district)
- Judicial Magistrate Courts (in every town and city)
- Executive Magistrate Courts (Summary trial court)
- Courts of Civil Judge (judges with power of 1st class and 2nd class cases)
- Family Courts
- Juvenile Courts

### Special Tribunals and Boards

Following are the special tribunals in Pakistan:

- Banking Courts
- Services Tribunals
- Income Tax Tribunals
- Anti-Corruption Courts
- Anti-Narcotics Courts
- Anti-terrorist Courts
- Labor Relations Court
- Board of Revenue
- Special Magistrate courts
- Consumer Courts - drug courts

## Sources of Law in Pakistan

The terms: 'sources' and 'law' respectively means 'a point that something comes from' and 'rule'. Thus the phrase: 'sources of law' means point wherefrom rules come. Legislation & Precedent are two main sources of law.

### Legislation:

The term 'legislation' has its etymology in the Latin words: 'Legis' & 'Latum' respectively means 'law' & 'to make'. Thus the term 'legislation' means 'to make law'.

*Etymology (Origin)*

In Pakistan the legislative sovereignty belongs to Parliament. It means only National Assembly, Senate and the President can pass amend or repeal laws to any extent.

### Procedure of legislation in Pakistan

The constitution of Islamic republic of Pakistan provides legislative procedure in part III chapter 2. The parliament makes laws, grants finance to the Government and administers the policies of the ministries. The most important function of the parliament is to make laws for the state. Articles 70-89 of the Islamic republic constitution of Pakistan empower the parliament to make laws.

**What is Bill?**

A bill is proposal for new law for amending or repealing an old one.

**Kinds of bill**

Following are kinds of bill:

- **Public bill**  
It relates to public at large.
- **Private bill**  
It relates to the interest of private individuals.
- **Money bill**  
It relates to the finance matters.

**Legislative procedure**

The legislative procedure in different kinds of bill is different.

**Legislative procedure of ordinary and non-money bill is as under:****1) Introduction of Bill:**

Bill may be introduced in any of the two houses. If a bill is introduced by govt. minister, it is called govt. bill and if otherwise termed as private bill.

**2) First Reading:**

In the first reading the causes of presentation are explained by the member who introduces the bill.

**3) Reference to committee:**

Bill is examined in detail in committee stage. The committee hears the evidence of expert and any objection of any person interested in such bill.

**4) Second reading:**

Bill is discussed clause by clause and amendments may be made during the second reading.

**5) Third reading:**

After second reading, it is read third time and sent to the other house.

In the other house the same procedure is adopted to pass the bill.

**6) President's assent to bills:**

If the bill is passed in the joint sitting, with or without amendment, by the vote's majority of the total membership of the house then it shall be presented to the president for assent.

**Relevant case law:**

*P.L.D. 2001. Kar. 415*

It was held bill would become law when assent it by the president or the governor as the case may be.

**Legislative procedure in money bill:**

Article 73 of the constitution of Islamic republic of Pakistan states that a money bill shall be originated in the National Assembly and after its being passed by the national assembly, without being transmitted to the senate, be presented to the president who will assent to the bill within thirty day, otherwise the bill shall be deemed to have been assented to and it shall become law.

**a) Features of money bill:**

- a. The imposition, abolition, remission, alteration of any tax.
- b. The borrowing of money or a giving of any guarantee, by the Federal Government or of the amendment of the law relating to the finance obligation of the Govt.
- c. The custody of the federal consolidated fund, the payment of moneys into, or the issues of moneys from the fund.
- d. The imposition of charge upon the federal consolidated fund, or the abolition or alteration of any charge.
- e. The receipt of money on account of the public accounts of the federation the custody of issue of such money.
- f. The audit of the accounts of the federal Govt.
- g. Any matter incidental to any of the matters specified above.

**b) Dispute regarding determination of money bill:** If any question arises whether a bill is a money bill or not, the decision of the speaker of the national assembly shall be final.

**c) Discussion in senate on money Bill:** Now by the amendment in the constitution (Legal Frame Work order 2002) a money bill can be discussed in the senate.

**Distinction between money bill and ordinary bill:**

Points of distinction between money bill and ordinary bill are following:

- **As to Nature:**  
Money bill relates to finance matters. Ordinary bill relates to the interest of private or public persons.
- **As to origin:**  
Money bill can be originated only in national assembly. Ordinary bill can be originated in either house.
- **As to transmission:**  
Money bill is not transmitted to other house. Ordinary bill is transmitted to other house when passed by one house.

**Delegated legislation in Pakistan**

In Pakistan, delegated legislation is legislation that is passed otherwise than an Act of Parliament. An enabling Act or the parent Act confers a power to make delegated legislation on a Government Minister or another person or body. Several thousand pieces of delegated legislation are made each year, compared with only a few dozen Acts of Parliament.

*Otherwise (= or else)*

*Enabling Act or parent Act (= a law that creates new powers especially a statute conferring powers on an executive agency to carry out various delegated tasks.)*

For example section 506 is one of the sections of the Companies Ordinance 1984 that confers delegated powers on the federal government to make relevant rules.

Delegated legislation can be used for a wide variety of purposes, ranging from relatively narrow, technical matters such as fixing the date on which an Act of Parliament will come into force, or setting the level of fees payable for a public service, e.g. the issue of a passport, to filling in the detail of how an Act setting out broad principles will be implemented in practice.

*Relatively (=comparatively)*

*e.g. (=example given)*

### Types of delegated legislation

Delegated legislation may take the following forms:

- 1) Orders made by the president on the advice of the federal cabinet. Orders are generally used where it would be inappropriate for the order to be made by a Minister, for example, where the matter is of constitutional significance such as transferring powers and functions from one Minister to another, or bringing into force emergency powers to be exercised by Ministers.

*Order (= a command; direction; instruction)*

*Inappropriate (= wrong)*

*Constitutional (= relating to constitution)*

*Significance (= worth; importance; impact)*

Orders are usually made by Ministers. An Order is an exercise of executive powers, for example, to create or dissolve a public body. Commencement Orders are used to set the date on which an Act, or part of an Act, comes into force.

*Dissolve (= break up)*

- 2) Regulations are also usually made by Ministers. Regulations are the means by which substantive and detailed law is made, for example setting out in detail how an Act is to be implemented. Regulations made under the Income Tax Ordinance 2001 are the means by which the Government most often implements tax rules and regulations within Pakistan.

*Regulations (= the act of controlling by rules)*

*Means (= ways)*

*Substantive Law (= the part of the law that creates, defines and regulates the rights duties and powers of parties)*

- 3) Rules set out procedures, for example rules governing court procedures, or the way in which the Patent Office deals with applications. Rules may be made by Ministers or, if specified in the parent Act, a senior judge.

*Procedure (= measures; dealings)*

*Patent office (=office that deals with the registration of copy rights; design and model etc.)*

- (4) Directions are a means by which Ministers give legally binding instructions to a public body about the way it exercises its functions.

- (5) Byelaws are laws of limited application, usually restricted to certain places, made by local authorities or certain other bodies (for example, train operating companies or Lahore development authority byelaws of construction) to control the activities of the people in construction.

### What are the Advantages and disadvantages of delegated legislation?

#### Advantages of delegated legislation:

- 1) It allows laws to be enacted without using up scarce Parliamentary time on technical matters, for example the fine detail of a public sector pension scheme or the precise design of traffic signs, thereby freeing Parliament to discuss matters of broad principle and policy.

*Scarce* (= limited; insufficient; inadequate)

*Technical* (= methodological)

*Thereby* (= thus; in that way)

*Policy* (= strategy)

- 2) It allows laws relating to technical matters to be prepared by those with the relevant expert knowledge.
- 3) Delegated legislation is flexible enough to deal speedily with changing circumstances, for example increasing costs of services, developments in scientific knowledge or minor changes in policy. This also makes it invaluable in emergencies when very swift action is required – delegated legislation made under emergency powers can be drafted, enacted and brought into force in a matter of hours rather than the days, weeks or months that would be required to pass an Act of Parliament.

*Emergency* (= crisis situation)

*Enacted* (= passed by parliament)

#### Dis-advantages of delegated legislation:

- 1) Delegated legislation can also be criticized on the grounds that it is subject to less parliamentary scrutiny than primary legislation and thereby may potentially be used by the Government in ways which Parliament had not intended or appreciated when it conferred the power.

*Scrutiny* (= inspection; examination)

*Intended* (= purported; aimed)

*Confer* (= give; grant; bestow)

- 2) Another disadvantage is in the sheer volume of laws that are passed as delegated legislation. Because of this bulk, there is normally little publicity or knowledge about the changes that are being made. However there are both parliamentary and judicial controls on delegated legislation which are discussed below.

*Sheer* (= pure; utter)

*Volume* (= quantity; amount)

*Controls over delegated legislation*

**Control over Delegated Legislation:**

There are both parliamentary and judicial controls over delegated legislation. Judicial control is exercised through the means of judicial review. Because delegated legislation is made by a person exercising a power conferred by an Act of Parliament for a specified purpose, rather than by Parliament exercising its sovereign law-making powers, it can be struck down by the courts if they conclude that it is ultra vires. This would be the case if the Government attempts to use delegated legislation for a purpose not envisioned by the parent Act, or if the legislation is an unreasonable use of the power conferred by the Act, or if pre-conditions imposed by the Act (for example, consultation with certain organizations) have not been satisfied.

*Judicial review* (= a court's power to review the actions of the other branches of government)

*Ultra vires* (= beyond the power)

*Envisioned* (= predicted; foresaw)

*Unreasonable* (= illogical; irrational)

**Precedent****What is Precedent?**

According to Black's law dictionary, "Precedent is making of law by a court in recognizing and applying new rules while administering justice".

*Recognizing* (Identifying)

*Applying* (Implementing)

*While* (At the same time as)

*Administering* (Dispensing or giving out or managing)

*Justice* (Fairness or righteousness or evenhandedness)

Thus, it may be said that 'precedent is law making by a court in identifying and implementing new rules while dispensing justice'.

**Doctrine of judicial precedent**

Precedents not only have persuasive authority but also must be followed when similar circumstances arise.

*Persuasive* (Convincing; influential)

**Where precedents are reported?** Precedents are contained in Law Reports. *Law reports* (Law news)

**What is the Purpose of precedent?**

A precedent is a 'considered decision' of a court which provides a rule for the determination of an identical or similar question of law. The only theory on which it is possible for one decision to be an authority for another is that the facts are alike, or, if the facts are different, that the principle which governed the first case is applicable to the variant facts.

*Considered decision* (Well thought-out judgment)

**Binding Authority of Judicial Precedent or 'Stare Decisis':**

The binding authority of the precedent is based on the principle of 'stare decisis' which means 'stand by things decided'. Precedents enjoy value in a judicial system, due to the following factors:

*Binding (Compulsory or unavoidable)*

- Justice is administered by an establishment of judges.
- Judges are specialists of law.
- They represent the collective conscience of society.
- A case once decided stands correct unless reversed by the higher court.

*Specialist (Expert)*

*Represent (Symbol of)*

*Collective (Joint or combined)*

*Conscience (Sense of right and wrong)*

*Society (The general public)*

*Unless (If not)*

*Reversed (Overturned)*

A rule formulated through precedent is a model implemented on the subsequent cases. It brings fair-mindedness and impartiality in judicial decisions.

*Impartiality (Neutrality)*

*Subsequent (Following or successive)*

**Advantages of case law as a source of law:**

The law is decided fairly and predictably, so that business men and individuals can regulate their conduct by reference to the law. The risk of mistakes in individual cases is reduced by the use of precedents. Case law can adapt to changing circumstances in society, since it arises directly out of the actions of society. Case law, having been developed in practical situations, is suitable for use in other practical situations.

*Regulate (Adjust)*

*Actions (=Law suits; cases)*

**Kinds of Precedent:**

Following are the kinds of precedent:

- 1) Declaratory Precedent
- 2) Original precedent
- 3) Authoritative precedent
- 4) Persuasive precedent
- 5) Precedent of absolute authority
- 6) Precedent of conditional authority

1) **Declaratory precedent:** Declaratory precedent is merely an application of an already existing rule.

2) **Original Precedent:** Original precedent is the kind of precedent that creates and applies a new legal rule.



- 3) **Authoritative precedent:** Authoritative precedent is an applicable holding of a higher court binding upon the lower courts.
- 4) **Persuasive Precedent:** A precedent that is not binding on a court, but that is entitled to respect and careful consideration. For example, if the case was decided in neighboring jurisdiction, the court might evaluate the earlier court's reasoning without being bound to decide the same way.
- 5) **Precedent of absolute authority:** Precedent of absolute authority is those which are absolutely binding, however, unreasonable it may be. Precedents laid down by superior courts are precedents of absolute authority for the subordinate courts.
- 6) **Precedent of conditional authority:** A precedent which is binding but not absolutely. Thus a decision of a single bench of the High Court is only a conditional authoritative precedent for a judge of the same of another High Court.

### Ratio decidendi?

The ratio for decision of a particular case or the principle of law on which the decision of a particular case is based is known as its ratio 'decidendi'. Salmond defines ratio 'decidendi' as under:

"The concrete decision is binding between the parties to it, but it is the abstract ratio decidendi which alone has the force of law as regards the world at large.

*Quotient (= value; measure; appraise)*

*Concrete (= solid)*

*Abstract (=conceptual)*

### Obiter dicta:

All that is said by the court by the way i.e statements of law which go beyond the requirements of the particular case in hand and lay down a rule which is either irrelevant or unnecessary for the decision of that case are called obiter dicta. To put it in brief, when points not directly connected with a case are discussed in a judgment, these remarks constitute obiter dicta. These, when made by superior courts are however binding on the subordinate courts.

### What are Law reports?

Law reports mean 'law newspaper'. In England there are several major series of law reports bound as annual volumes. In addition case law is also available on electronic data base.

Title of civil case law is reported as: (Carlill v Carbolic Smoke Ball Co.); 'Carlill' is Claimant whereas 'Carbolic smoke Ball Co'. is defendant.

### The law case is reported in law report as under:

**"Best v Samuel Fox & Co. Ltd 1952 2 All ER 394"**

*Best (Claimant)*

*Samuel Fox & Co. (Defendant)*

*1952 (Year of report)*

*2 (Volume 2)*

*All (All)**ER (England Law Reports)*

Thus it means the report is published at page 394 of Volume 2 of All England Reports for 1952.

**Contents of a law report:**

Following are the contents of law reports:

- 1) Names of the parties
- 2) Court
- 3) Name (s) of the Judge (s)
- 4) Date of hearing
- 5) Law Points
- 6) Cases cited
- 7) Litigation history
- 8) Facts
- 9) Counsels names
- 10) Verbatim (word for word) text of the judgment
- 11) Court order etc.

**Difference between legislation and precedent or relative advantage of precedent:**

Points of difference	Legislation	Precedent
<b>Origin</b>	Legislation find its source in the law making will of the state	Precedent is derived from the 'ratio decidendi'.
<b>Meaning</b>	Legislation means enactment of a rule of law intended to apply to cases which have not necessarily yet arisen.	A precedent is the making of law by the recognition and application of new rules by the courts themselves in the administration of justice.
<b>Object</b>	The object of statute law is to lay down a certain guide for the future conduct.	The object of judiciary law on the other hand is the decision of a particular case.
<b>Form of expression</b>	Statute law is always expressed in general and abstract terms. It is free from limitations of particular facts.	Judiciary laws always suffer from the complexity and limitation of its particular facts and cannot be expressed in general and clear terms.
<b>Rules of interpretation</b>	It is easy to interpret where the language of the statute is clear. It is to be given its ordinary meaning.	The enunciation of a rule of law embodies in judicial decision is not so easy. It is ascertained by a process of induction which is as follows.

## Interpretation of Statutory Law

Etymology of the Term **'Interpretation'** is:

The term 'interpretation' is derived from Latin word 'Interpres-pretis', which means 'to explain the meaning of words'

*Etymology (=origin)*

*Derive (=originate or grow)*

*Term (=word or expression)*

Meaning of the Phrase **'Interpretation of Law'**:

The terms 'interpretation' and 'law' respectively means 'understanding' and 'rule'. Thus the phrase 'interpretation of law' means 'understanding of rule'.

*Phrase (=expression)*

Meaning of the Term 'Interpretation' According to **Black's Law Dictionary Edition 8th**:

The process of determining what something especially the law or legal document means.

*Process (=method)*

*Determine (=decide)*

*Especially (=particularly or mainly)*

**John Salmond & Concept of 'Interpretation of Law':**

According to John Salmond, the concept 'interpretation of law' means 'the process by which court seeks to decide the meanings of law. According to him there are two kinds of interpretation:

- (1) Grammatical Interpretation &
- (2) Logical Interpretation

*Concept (=idea)*

*Seek (=search for)*

**(1) Grammatical Interpretation:**

The term 'grammatical' refers to the 'rules of language that govern the structure of a sentence'. In grammatical interpretation of law, language rules are applied to understand the meaning of law.

*Grammar (=language rules)*

*Govern (=manage)*

*Structure (= arrangement)*

**What are the factors? Which affects the Grammatical Interpretation of Law?**

Following factors affect the process of true grammatical interpretation:

- (a) Ambiguous language.
- (b) Inconsistency &
- (c) Incompleteness

- a) **Ambiguous Language:** The term ‘ambiguous’ means ‘doubtful’ or ‘unclear’. Sometimes, a sentence or part of a sentence produces two or more different meanings causing vagueness or elusiveness in understanding the law; under such situation, it is the duty of the court to logically determine the real meaning of the sentence by establishing the more natural, consonant and obvious meaning of the sentence.

*Natural (=normal)*

*Consonant (=suitable)*

*Obvious (=clear)*

- b) **Inconsistency in the Construction of Law:** The term ‘inconsistency’ means ‘contradiction’ or ‘discrepancy’. Where different parts of law are in contradiction with one another in such a manner that they destroy and nullify the spirit of law, it becomes the duty of court to logically discover the true intention of the legislature and make the parts of law consistent with one another.

*Construction (=structure)*

*Contradiction (=disagreement or discrepancy))*

*Destroy (=pull down)*

*Nullify (=cancel out)*

*Spirit (=will or force)*

*Legislature (=parliament or law making body)*

*Consistent (=dependable)*

- c) **Incompleteness of Law:** The term ‘incompleteness’ means ‘lacking something’ or ‘having some flaw’. Sometimes there exists a kind of flaw in the law that whole meaning of law cannot be understood. Under such circumstance, the defect is cured by doing logical interpretation.

*Circumstance (=condition or fact or situation)*

**Rules of Grammatical Interpretation:**

Following are the rules of grammatical interpretation:

- a) The words are understood according to their definitions prescribed in the relevant enactment.

*Definition (=description of a thing by its properties)*

- b) If required, legal meanings of the words may be consulted from authentic legal dictionaries like Black’s Law dictionary, Osborn Law dictionary etc.

*Authentic (=valid; genuine)*

*etc. (=and others)*

- c) If required, meaning of word may be judged by the company it keeps;  
*Company (=context)*

- d) Words are understood in the sense that they possess since the time of enactment of law.  
*Since (=from the time when)*

- e) The rule: ‘mentioning of one person is the exclusion of other’ is applied in a situation where the subject matter of law consists of two subjects and there exists a provision that makes reference to only one of the two subjects; the provision is construed without making the reference to the other subject. For example: where the statute has two subject matters: ‘building’ and ‘land’. The enactment contains along with other provisions the law regarding land. Here the provision is construed without including the term ‘building’ even though in normal circumstances the term land includes the term ‘building’.

*Subject matter (=area under discussion)*

*Construe (=interpret)*

- f) ‘Expressum facit cessare tacitum’ is a rule of interpretation of law which states: ‘express words die down chance of implied interpretation of law’.

*Die down (=close or finish)*

*Implied (=indirect or oblique)*

- g) ‘Ejusdem generis’ is a Latin rule of interpretation which means ‘of the same kind or class’. The rule states: ‘when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed’.

Example: In the phrase horses, cattle, sheep, pigs, goats, or any other farm animal, the general language used is ‘any other farm animal’, despite its seeming breadth, would probably be held to include only four-legged, hooved mammals typically found on farms, and thus would exclude chickens.

*Follow (=go after)*

*Specifics (=data)*

*General (=common or all purpose)*

*Phrase (=expression)*

*Listed (=scheduled or programmed)*

*Despite (=regardless)*

*Seeming (=apparent)*

*Breadth (=size or wideness)*

*Probably (=almost certainly)*

*Thus (=therefore)*

**(2) Logical Interpretation:**

The term 'logical' means 'rational' or 'based on reason'. Where grammatical interpretation is impossible, logical interpretation takes its course and the true intention of the legislature is discovered by referring the surrounding facts. Professor Allen grey says, 'logical interpretation calls for the comparison of the statutes with each other and with the whole system of law and with the consideration and circumstances in which the statute was passed.

**Rules of Logical Interpretation:**

Following are the rules of logical interpretation:

- a) **The first rule is named as 'golden rule'.** Where court finds clerical mistake in the statute, to rectify the errors it introduces saving clause therein for the following purposes:
- a. To effectuate the intention of the legislature
  - b. To avoid absurd, unjust or immoral interpretations
  - c. To uphold the principles of law

*Rectify (=correct)*

*Therein (=in the statute or law)*

*Intention (=objective; plan)*

- b) **The second rule is 'mischief rule'.** It states where a statute has been clearly enacted to suppress mischief of one sort, the interpretation must not be sought to suppress mischief of different sort fall outside the intention of the legislature.

*Statute (=law)*

*Enacted (=passed)*

*Suppress (=restrain)*

*Mischief (=Misbehavior)*

*Sort (=kind or variety)*

*Sought (=required or wanted)*

*Intention (=target)*

**Relevant Case Law:**

In **Cokery v Carpenter 1950**. It was held that a bicycle was a 'carriage' for the purpose of the licensing Act 1872 where a defendant was charged with cycling whilst intoxicated. The purpose of the Act was to prevent people who are in a state of intoxication from operating any form of transport on public roads.

- c) **The third rule is termed as 'last antecedent rule'.** This rule states that relative words or phrases are to be applied to the words or phrases immediately preceding, and as not extending to or including other words, phrases or clauses more remote unless such extension or inclusion is clearly required by the intent and meaning of the context, or disclosed by an examination of the entire Act.

*Antecedent (=forerunner or ancestor)*

*Preceding (=previous or earlier)*

*Clause (=part)*  
*Remote (=distant or far off)*  
*Unless (=if not)*  
*Extension (=addition or expansion)*  
*Inclusion (=addition)*  
*Intent (=aim or purpose)*  
*Context (=surrounding circumstances)*

- d) **The fourth rule is named as ‘four corner rule’.** The rule states that intention of the legislature must be gathered from the statute as a whole and not from the isolated part thereof.

*Gathered (=collected)*  
*Whole (=total or entire)*  
*Isolated (=lonely or inaccessible)*  
*Thereof (= related to statute)*

### **Conclusion:**

Interpretation of enactments is necessary as they are not flawless.

### **What are the Presumptions applied in interpretation of statute?**

Presumption is a legal inference that something exists. It is understood, except the statute contains express words to the contrary, that the following presumptions of statutory interpretation apply:

*Except (=with the exception of; excluding)*  
*Express words (=articulated communication)*  
*Contrary (=opposing)*  
*Presumption (=supposition; deductions)*

- 1) A statute cannot be enforced with retrospective effect.

*Retrospective effect (=extending in scope or effect to matters that have occurred in the past.)*

- 2) A statute does not bind the crown.

*Bind (=to impose duty on a person)*

- 3) A statute cannot impose criminal liability without proof of guilty intention. However certain statutes rebut this presumption and impose strict liability without proof of guilty intention. For example strict liability for dangerous driving under the Road Traffic Act.

*Guilty intention (=intention for committing crime)*  
*Rebut (=disprove; refute)*

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*Strict liability* (= liability that does not depend on actual negligence or intent to harm, but that is based on the breach of an absolute duty to make something safe.

- 4) A statute does not have the effect of repealing the other statutes.

*Repeal* (=cancel; annul)

- 5) The scope of a statute is limited to the territorial boundaries of UK, however, statute involving international contents must be construed in harmony with the International law.

*Scope* (=range; capacity; scale)

*Construe* (=interpret)

*Harmony* (= agreement; synchronization)

*International Law* (= the legal system governing the relationship between nations.)

- 6) A statute does not intend to deprive a person of his liberty; however, if it wants to than clear words must be used to make clear the situation and intention of the legislature. Example of such legislation is legislation for mental health and immigration.

*Liberty* (=freedom from arbitrary or undue external)

- 7) On the plea of nationalization if a statute deprives a person from his property, the government is supposed to compensate him.

*Nationalization* (= to put property of an individual or group of individuals under the control of the government which becomes its owner.

- 8) A statute does not alter the existing common law.

*Alter* (=change)

## **Intrinsic & extrinsic aid in interpretation of statutes**

### **Intrinsic aid:**

The word intrinsic means built-in; inherent; basic. Thus the intrinsic aid is a built-in aid within the statute. The intrinsic aid consists of the following:

- (1) The title of the Act helps in determining the general objective of the enactment.
- (2) The preamble of the Act usually contains information regarding the objective of the enactment.
- (3) Interpretation sections of an act are also helpful in interpreting the statutes.
- (4) Summary notes given in the margin are also helpful in interpreting the statute.

### **Extrinsic aid:**

The term extrinsic aid means coming from outside; not built-in. Thus the extrinsic aid is an aid which is not available within the statute. It consists of the following:



(1) Reports of the Law Commission

(2) Reports of the Royal Commissions

(3) Reports of the Law Reform Committee

(4) Hansard; the UK Journal of UK Parliamentary debates. This follows a decision of the then House of Lords in *Papper v. Hart* 1992 where it was decided that it is acceptable to look at the original speech which first introduced a bill to ascertain its meaning, but only if the statute is ambiguous or obscure or its literal meaning would lead to absurdity.

*Journal* (=periodical; magazine)

*Absurdity* (=illogicality; irrationality; silliness)

## Choice of Business Organization

### Introduction:

Around in our society there are business and non-business organizations. Example of non-business organization: welfare societies, writer guilds, labor unions, charitable associations, clubs, political parties and trust etc. Example of non-business organization: Sole Proprietorship, Partnership firms and Company.

Choosing the type of business entity that's right for one's business is a difficult decision yet one of the most important decisions involved in the start-up phase of a business. The type of entity one chooses has a direct impact on the way one's business will pay taxes, the method one will use to draw profits from the business and the extent of personal liability for debts and obligations of the business. The knowledge about types of business organizations helps deciding which type of business entity is right for one's business.

### What is Sole Proprietorship?

It is said sole proprietorship is one man in business for himself only.

Best feature of sole proprietorship is: "Sole Ownership".

Worst feature of sole proprietorship is: "Unlimited Liability"; all of the personal assets of the proprietor are at risk.

### Partnership

A partnership consists of two or more people (whether individuals or corporations) carrying on a business in common with a view to profit.

In Pakistan the partnership is regulated by the Partnership Act 1932. The Act came in to force on 1st October 1932. It extends to the whole of Pakistan. The object of the law is to codify the rules concerning partnership.

Meaning of the term 'Partnership' according to **Black's Law Dictionary (Edition 8th)**

"A voluntary association of two or more persons, who jointly own and carry a business for profit"

*Voluntary* (= *freely established*)

*Association* (= *Relationship*)

*Jointly* (= *Mutually*)

*Carry on* (= *Manage*)

Thus it may be stated that partnership is a freely established relationship of two or more persons who mutually own and manage a business for profit.

### Definition of Partnership (Section 4 of the Partnership Act 1932)

"Partnership is a relation between the persons who have agreed to share the profits of a business carried on by all or any one of them acting for all."

*Relation* (= *Association*)

*Agreed* (= *Decided*)

*Share* (= *Divide*)

*Profits (=Incomes)*

*Carry on (=Conducted)*

**Explanation:**

Thus it may be stated that partnership is an association between the persons who have decided to divide the incomes of a business conducted by all or any one of them acting for all.

**Salient Features of Partnership:****Voluntary association:**

Partners are not coerced to enter in to partnership. They are free to exercise their free will. Free consent is considered necessary to form a valid relation of partnership.

*Coerced (= Forced)*

**Contribution:**

In Partnership, members contribute their capital, services, skill and experience. Partnership deed explicitly contains provision regarding partner's contribution ratio in business. In the absence of such provision, it is assumed that partners contribute equally.

*Explicitly (=Clearly)*

*Provision (=Term)*

*Ratio (= Percentage)*

**Sharing of Profits:**

Partnership business is formed to earn profit. Profit is distributed according to the agreed profit and loss ratio. In the absence of the ratio the profits and losses are distributed equally among the partners.

**Implied authority of partner:**

The Partnership Act 1932 states, a partner is the agent of the firm for the purpose of the business. A transaction made by one partner is binding on the firm.

**No separate legal entity:**

Partnership firm is not an artificial legal person. It cannot sue or to be sued in his own name. It is identified with its partners. The rights and duties of firm are considered the rights and duties of partners. Partners are the owners of the firm whereas shareholders are not the owner of the company.

**Formation:**

Partnership is formed by executing a partnership deed between the partners. Partnership deed is a kind of contract. It contains different provisions regarding mutual relationship of the partners. It is written on a stamp paper of Rs.500.

**Maximum partners:**

The Act is silent as to the maximum number of partners in a firm but section 14 of The Companies Ordinance 1984 states; a partnership consisting of more than 20 persons is illegal.

**Unlimited liability:**

The term 'liability' means 'state of being accountable'. Where the financial liability of firm has arisen to the level that the business assets are insufficient to pay business liabilities, the personal assets of partners are applied to pay off the liabilities. In other words it may be said that in firm no difference is observed between business assets and the personal assets.

**Transfer of interest:**

In the absence of an agreement to the contrary, a partner cannot transfer his share to third party unless the other partners consent.

Best feature of partnership: **"Huge Capital"**

Worst feature of partnership is: **"Collective ownership with unlimited liability"**

For capital intensive industry sole proprietorship and firm are not suitable business organization.

Logically speaking, there must be an organization which has two best features: huge Capital, sole ownership and limited liability.

**Company:** Company is the best form of organization. Small savings are turned in to huge capital. Now, therefore that after going through the concept of sole proprietorship and firm it is concluded that company is the device to remove the deficiency of the both. For further understanding legal status of company is discussed as under:

**Legal Status of Company**

Buckley Justice in Stanely Case (1906) stated that "The word company has no strictly technical or legal meanings".

**Definition of company as given in section 2 of the ordinance:**

"Company means a company formed and registered under this ordinance or an existing company"

**Another Definition of company:**

"Company is an artificial legal person which can sue or to be sued."

*Artificial (=non-natural)*

*Legal (=officially permitted)*

*Person (=a character in which certain rights and duties are attributed)*

*Sue (=take legal action)*

Thus a company is a non-natural officially permitted character which can sue or to be sued.

**Additional information:**

Etymology of the term: 'person': The term 'person' is derived from the Latin word 'persona' meaning 'a character in which certain rights and duties are attributed by law'.

*Etymology (=origin)*

*Character (=personality)*

*Certain (=definite)*

*Attributed (=credited)*

Thus, in other words, it may be said that 'person' is a personality in which definite rights and duties are credited by law.

**Kinds of person:**

Following are the kinds of person:

- a) Natural person
- b) Artificial legal person

**Natural person:** 'Natural person' is a living human being recognized as 'person' by a state. A human being not capable of rights and duties is not a 'person'. For example: a person of unsound mind.

**Artificial legal person:** The expression 'artificial legal person' means an artificial lawful character, such as an association or group or club or society or institute or union or party or company created by law, which enjoys certain legal rights and duties of a human being and for legal reasoning is treated as a human being.

*Artificial (=non-natural or fake or imitation)*

*Legal (=lawful or officially permitted)*

*Person (= a character to whom certain rights and duties are attributed)*

**Doctrine of 'fictio juris':** The doctrine of 'fictio juris' provides the theory for the creation of an artificial legal person. The expression 'fictio juris' comprises of two words: 'fictio' & 'Juris' respectively means 'fiction' & 'Law'. Thus the expression 'fictio juris' denotes 'legal fiction' meaning 'something is true even though it may be untrue'.

**Doctrine of Incorporation:** Company is an independent entity from its members. 'Company is an entity in its own right' is a doctrine established by the House of Lords in the following case:

*Entity (=body)*

**Relevant Case Law: Salomon v Salomon & Co. 1897.**

Facts: Salomon, a sole proprietor, was leather shoe and boot manufacturer; he and his seven family members subscribed for the company; upon incorporation he sold his business to the company against the following consideration:

- (1) Shares: 20000
- (2) Secured debentures: 10000
- (3) Cash: 9000

The company business did not prosper; he pledged his unsecured debenture to Mr. Broderip against the loan of 5000 Pounds and paid the same to the company. The company became insolvent; had the secured creditor been paid nothing left for the unsecured creditors. The unsecured creditors filed the suit against the Salomon arguing:

1. The sale transaction was a sham and the Salomom was still the owner of the business and liable for the payments of all outstanding debts.
2. The company was an irregular company as six of the seven subscribers were mere nominees of Salomon.

*Sham (=deception)*

*Mere (=simple)*

The first argument prevailed in the High Court; the second was rejected. The Court of Appeals upheld the second argument and rejected the first. The House of Lords rejected the second and held that Salomon and his company were two separate persons.

*Prevailed (= succeeded)*

**Another Relevant Case Law: Lee v Lee Air Farming Ltd. 1960**

The company was engaged in aerial crop spraying. Mr. Lee was not only its majority shareholder but also was its sole working pilot and director. He died in aircraft crash while doing aerial spray on the crops. It was held that he and the company was independent entities even though he was the majority shareholder and the sole working director of the company.

*Aerial (=in flight)*

**Legal effects or outcomes of doctrine of incorporation**

The 'doctrine of incorporation' supposes existence of a veil of incorporation between the company and its members. The following are its effects:

*Doctrine (=principle; theory)*

*Veil (=curtain; cover)*

**Limited liability:**

At common law members of a corporation are not responsible for the debts of a company. They are liable to the extent of the value of their unpaid share.

Unpaid (=not paid)

**Perpetual succession:**

As a company is an entity in its own right, it has a perpetual succession. Member's death or transfer of share does not affect the existence of a company. As an abstract legal person a company cannot die but its existence can be brought to an end through winding up.

Perpetual (=uninterrupted; everlasting)

Abstract (=conceptual)

**Right to sue or to be sued:**

Business property and all other matters are executed in the name of a company. Company has a right to file suit in his own name against any person.

**Ownership of property:**

A company itself owns its property.

**Relevant Case Law: Macura v Northern Life Assurance 1925**

Macura, the owner of the forest, formed a company; owned all the shares; sold the forest to the company; he continued maintaining the insurance policy of the forest in his own name; later, the forest was destroyed by fire and he claimed the insurance money. It was held that since the forest belonged to the company, therefore, Macura in his personal capacity could not maintain the forest insured in his name as company and Macura are two independent persons.

## Lifting or piercing the veil of incorporation

The principle that a company is a person separate from its members and agents sometimes creates unwanted outcomes. The company law recognizes number of events when the veil of incorporation is pierced as to identify that the company and its members or agents are one and the same entity. On lifting the veil usual result is that some person is made liable to share liability for company's debts or acts. Under the following situations, the veil of incorporation is pierced:

*Pierce* (=puncture; slice open)

**Fraudulent and wrongful trading:**

When in winding up proceedings, it is found that the company was carrying on business with the intent to commit fraud with the creditors. The veil of incorporation is pierced to identify the persons working under the veil of incorporation

Intent (=intention; objective)

**Disqualified directors:**

The veil of incorporation is pierced as to prove that the disqualified directors participated in the management of the company.

**Abuse of company name:**

A veil of incorporation is pierced where it is doubted that the directors of insolvent company are working under a newly incorporated company with the same or identical name.

Insolvent (=bankrupt)

Cloak or Sham Company

Cloak (=shroud; cover)

**Relevant Case Law: Gilford Motor Co. Ltd v Home 1933**

The defendant, by virtue of the employment contract, was under an obligation not to solicit claimant's customer after leaving the service. He left the job; formed a company by making his wife and an employee its members and started soliciting the claimant's clients under the cover of the company. The court pierced the veil of incorporation and held that the company was a mere cloak and sham being used as a blanket to avoid the obligation imposed by the employment contract.

*Solicit (=consultancy)*

*Obligation (=duty)*

**Public interest:****Relevant case Law: Re F G Films Ltd 1953**

An American company incorporated in England an English company. The purpose was to give the film a label: 'English made company'. The market value of the English made film was much higher than that of the American. Film staff and finances were all American. The film was produced in India. The company neither owned any premises in England nor hired staff from England. The court pierced the veil of incorporation and found that the English company was the agent of the American and was being used just to label the film: 'English made'. It was held that the company was a blanket used to conceal the origin of the film.

**Lifting the veil in group situation:****Relevant case Law: Adams v Cape Industries plc 1990 Ch 433**

The case is the leading UK company law case on 'separate legal personality' and 'limited liability' of shareholders.

The case also addressed long-standing issues under the English conflict of laws as to when a company would be resident in a foreign jurisdiction such that the English courts would recognize the foreign court's jurisdiction over the company.



Facts: The Cape, an English company, was heading the group consisting of many wholly owned subsidiaries; some of them mined asbestos in South Africa and some of them marketed asbestos in USA. Texas Court of America on account of suffering due to asbestos dust awarded damages to many claimants. To determine the liability the court included the Caps as head of the subsidiaries: 'NAAC' & 'CPC'. The Court wanted to implement the judgment on Cape.

The Court of Appeal held that in order for a company to have a presence in the foreign jurisdiction, it must be established that the company had its own fixed place of business or a branch office in the jurisdiction from where it has carried on its own business for more than a minimal time; and the company's business is transacted from that fixed place of business. On the facts the Court of Appeal held that Cape had no fixed place of business in the United States such that recognition should not be given to the U.S. judgment awarded. In other words it was held that the Court of Appeal unanimously rejected:

- (1) That Cape should be part of a single economic unit
- (2) That the subsidiaries were a facade
- (3) Any agency relationship existed on the facts.

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### **Corporate Promoters & Pre-incorporation Contracts**

#### **Who is corporate promoter?**

A corporate promoter (also known as "projector") is a person who solicits people to invest money into a corporation, usually when it is being formed. An investment banker, an underwriter, or a stock promoter may, wholly or in part, perform the role of a promoter. Promoters general owe a duty of utmost good faith, so as to not mislead any potential investors, and disclose all material facts about the company's business.

It is also said that Promoter is a person who does the preliminary work incidental to the formation of company.

**Definition of ‘promoter’:** A promoter is a founder of a company who takes the entrepreneurial initiatives in founding a company.

*Entrepreneurial (=commercial)*

*Initiative (=inventiveness)*

There is no statutory definition of a promoter in company law, and the courts have not given a comprehensive judicial definition.

### **Definition of promoter:**

In the case of *Twycross v Grant* (1877) Cockburn CJ defined a promoter as: “One who undertakes to form a company with reference to a given project and to set it going, and who takes the necessary steps to accomplish that purpose.

*Undertake (=to engage in; to take on one self)*

*Project (=a set of objectives)*

*Set it going (=to put something in a particular position)*

In *Whaley Bridge Calico Printing Co v Green* (1880) Bowen LJ described the term promoter as ‘a term not of law but of business, usefully summing up in a single word a number of business operations, familiar to the commercial world, by which a company is generally brought in to existence.

The consequence of the above statements is that the answer to the question of whether a person is a promoter or not is a question of fact, not of law, and the promoter will be a person who exercises some control over the affairs of the company both before and after the company is formed, until the process of formation is completed.

In each case it is a question of fact whether a person is a promoter or not? It point to be noted that the Companies Ordinance 1984 does not give any definition of the word: ‘promoter’.

### **Types of Promoters**

Promoters may be classified into the following types.

- a) **Professional Promoters:** They are experts who specialize in company promotion. They float the company and hand it over to the shareholders or their representatives. Promotion of a company is their main profession or occupation.
- b) **Occasional Promoters:** There are some promoters who take interest in floating some companies. They are not engaged in promotion work on a regular basis. They take up the promotion of some company and once it is over they go to their original profession. For instance, engineers, lawyers etc. may float some companies.

- c) **Entrepreneur Promoters:** They are both promoters and entrepreneurs. They conceive idea of a new business unit, do the groundwork to establish it and subsequently become a part of the management.
- d) **Financier Promoters:** Some financial institutions, like investment banks or industrial banks, may take up the promotion of a company with a view to finding opportunities for investment.

### Functions of Promoters

The various functions of a promoter may be outlined as follows.

- a. **Discovery of a business idea:** The first stage in company promotion is the conception of a new idea. It is the promoter who conceives the idea of setting up a business. If makes an assessment of the viability of a particular business.
- b. **Detailed investigation:** Promoters undertakes a detailed investigation of the viability, profitability and future prospects of the growth of the proposed activity. To assist them in this venture, they seek the help of specialists such as chartered Accountants, Cost Accountants, Company Secretary, Engineers. Organizations engaged in market research and other specialized agencies. Specialists are in a position to make an objective analysis of their own areas which may help the promoters. Decisions have to be taken regarding the size, location, layout, man power of the business.
- c. **Assembling the factors of production:** If the proposed endeavor gives promise of success and the promoter is willing to undertake the risk of forming the business, steps must be taken to assemble various factors of production viz, land, labor, capital and managerial personnel. Assembly of resources involves making contracts for the purchase of material, land, machinery, etc.
- d. **Entering into preliminary contracts:** The promoter enters into contracts with different parties before the registration of the company. After registration, the company approves these contracts.
- e. Selecting the province in which registered office of the company will be situated.
- f. Selecting the name and type of the company and confirming the availability of name from the registrar.
- g. Getting together the required number of the subscriber to memorandum of association and articles of association.
- h. Determining the financial needs of the company and decide about the modes of financing.
- i. Getting drafted the memorandum and articles of association.
- j. To get done all the incorporation document prepared; filing statutory fees; getting the incorporation certificate from the registrar.
- k. Promoters select auditors, bankers and legal advisers for the company.
- l. Promoters appoint necessary staff to run the operations of the company.
- m. Make arrangements for collection of subscription money.

- n. Allot shares to shareholders.
- o. Promoters decide about the place of office and location of factory and branches etc.
- p. Submit at due time the post incorporation statutory documents with the registrar.
- q. Purchase property for the company.
- r. In case of public listed company prepare statement in lieu of prospectus or prospectus.
- s. Promoters select underwriters and fix their commission etc.

### Enforceability of pre-incorporation contracts:

Formation of a company involves observance of legal formalities. Pre-incorporation contracts are inevitable. A company cannot make contract unless it comes into existence; hence they are made by the promoters on behalf of a proposed company.

*Formalities (Requirements)*

*Inevitable (Unavoidable)*

### Whether a pre-incorporation contract can be enforced against non-incorporated company?

As per common law, a non-existing company does not have a legal status as to acquire contractual rights and shoulder contractual obligations arising from a pre-incorporation agreement.

In English law the case: **Kelner V. Baxter (1866) 2LR 2CP 174** was one of the first case to consider pre-incorporation contracts. The court held that a pre-incorporation contract shall make a person personally liable who acted on behalf of a non-existing entity.

### Whether a company can ratify a pre-incorporation contract?

The case '**Kelner v. Baxter**' confirmed that a company cannot ratify a contract, or a purported contract, entered into on its behalf if the company was not in existence at the time a person purported to enter into a contract on its behalf.

*Ratify (=approve; sanction)*

*Purported (=intended)*

**Kelner v. Baxter** also highlighted the potential for promoters to be liable on contracts they purport to enter into on behalf of an un-incorporated entity.

What was not clear after Kelner v. Baxter was whether promoters were automatically liable in these situations? OR whether the promoter's liability was dependent on the question whether it was intended that the promoter be a party to the contract.

*Potential (=would-be)*

*Automatically (=mechanically; routinely; by design)*

But while considering the case **Newborne v Sensolid (GB) Ltd [1954]** the court took a different approach.

The facts of the case were that a consignment of tinned ham was sold to Sensolid under a contract having the heading: "Leopold Newborne (London) Ltd" and the ending: "Yours faithfully, Leopold Newborne (London) Ltd"; the contract was signed by Leopold Newborne.

*Ham (=animal protein)*

*Tinned (=packed in tins)*

Sensolid refused to take delivery. It was held that neither unincorporated company nor Mr. Newborne personally could sue on the contract.

Lord Goddard said: This contract purports to be a contract by the company; it does not purport to be a contract by Mr. Newborne. He does not purport to be selling his goods but to be selling the company's goods. The only person to have any contract here was the company, and Mr. Newborne's signature merely confirmed the company's signature...In my opinion, unfortunate though it may be, as the company was not in existence when the contract was signed there never was a contract, and Mr. Newborne cannot come forward and say: "Well, it was my contract.

The English Court of Appeal held that the correct approach was a rule of construction approach. The real test was whether the promoter intended, in the circumstances, to be a party to the contract or not. It was held that given the way in which the contract was signed by Leopold Newborne it was intended to be a contract with the company and only the company.

In other words, given the way in which it was signed it indicated that it was not intended that Leopold Newborne be a party to the contract himself. Thus Leopold Newborne could not enforce the contract in his own name.

In *Buffington v. Bardon* 80 Wis 635 (1891) the English court observed that: "the law is that a corporation is liable for its own acts only after it has a legal existence. Until that time no one whether a promoter or not can sustain to the corporation the relation of agent, were this not so, we would have an agent without a principal, which is an absurdity". That the contract should be between the contractor and the company, in which case the company being non-existent, there is no contract at all & no one is liable on it.

*Absurdity (=illogicality)*

### **What is the status of professionals who render their services in the formation of a company?**

A person who merely acts in a professional capacity on behalf of a promoter for example as a solicitor who draws up an agreement or articles of association or an accountant or a valuer who prepares figures or a valuation on behalf of a promoter and who is paid by the person for whom he acts whether or not a company comes in to being as a result, will not be a promoter.

If however he goes further than this as for instance by putting his client in touch with a person who is interested in taking shares in the new company, he regarded as a promoter of a company.

### **From which date a person becomes a promoter?**

A person becomes a promoter of a company from the date he takes part in the formation of a company.

**In a case: *Gluckstein v Barnes*.** The syndicate, who agreed to combine to purchase the property with the intention to selling it in future to a company to be formed by them. The court held they were promoters from the date they set the objective.

On the other hand where a person purchase a property with the intention to buy it for himself and later decides to sell it to it to the company he formed. In this case he will not be promoter from the date he purchased the property but from the date he decided to sell the property to the company.

### **Why the date upon which a person becomes a promoter is of utmost importance?**

The date upon which a person becomes a promoter is of utmost importance because once the relationship has arisen the promoter is fixed in a fiduciary relationship towards the company.

### **What are the duties of a promoter?**

- a. A promoter has a fiduciary duty to disclose any interest whatever that he has in the transaction with a company.
- b. A promoter has a fiduciary duty not to make secret profits.

*Fiduciary duty (=a duty based on the relationship of mutual trust and confidence; it is the highest standard of duty implied by law)*

### **What a company can do when it is found that a promoter has made a secret profit?**

- a. Company can rescind the contract.
- b. Where rescission is not possible, it can recover damages from the promoter.
- c. Company can recover the secrets profits from the promoter.

*Rescission (=cancellation)*

## **Section 352: of the Companies Ordinance 1984:**

### **Power to order public examination of promoters:-**

When an order has been made for winding up a company by the Court, and the official liquidator has made a report to the Court stating that in his opinion a fraud or other actionable irregularity has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that such person, director or other officer shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

## **Section 59 of the Companies Ordinance 1984..... Civil liability of promoters for mis-statements in prospectus.-**

- (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the promoters shall be liable to pay compensation to every person who subscribes for or purchases any share or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement.

### **Restriction on promoters as to allotment:-**

No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised



by the issue of share capital in order to provide for the matters specified in clause 5 of section 1 of Part I of the Second Schedule has been subscribed, and the full amount thereof has been paid to and received in cash by the company. In the event of any contravention of any provisions of this section, every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding ten thousand rupees and in the case of a continuing contravention to a further fine not exceeding two hundred rupees for every day after the first during which the contravention continues.

**Duty of promoter where Limited company may have directors with unlimited liability:–**

Section 111 of the Companies Ordinance 1984 determines the duty of a promoter.

1. In a limited company, the liability of the directors or of any director may, if so provided by the memorandum, be unlimited.
2. In a limited company in which the liability of any director is unlimited, the directors of the company, if any, and the member who proposes a person for election or appointment to the office of director, shall add to that proposal a statement that the liability of the person holding that office will be unlimited and the promoters and officers of the company, or one of them shall, before that person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.
3. If any director or promoter makes default in adding such a statement, or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine which may extend to two thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

**Remuneration of promoters:**

Promoters are neither employee nor agent of company; they do foundation work for the setup of a company. These services are honored by paying remunerations. They are remunerated under the following ways:

- a. Shares are issued to them without receiving any money from them.
- b. Company buys their property from them on reasonable price.
- c. With the approval of the board of directors they are paid fixed money in recognition of their services.

## The Companies Ordinance (XLVII OF 1984)

### Section 2 of the Companies Ordinance 1984-Definitions (Part I)

An Ordinance to consolidate and amend the law relating to companies and certain other association

**Whereas**, it is expedient to consolidate and amend the law relating to the companies and certain other associations for the purpose of: healthy growth of the corporate enterprises, protection of investors and creditors, promotion of investment and development of economy and matters arising out of or connected therewith;

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

#### **PART I – PRELIMINARY**

##### **Short title, extent and commencement.-**

- a. This Ordinance may be called the Companies Ordinance, 1984.
- b. It extends to the whole of Pakistan.
- c. This section shall come into force at once and the remaining provisions of this Ordinance shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint, and different dates may be so appointed for different provisions.

#### **Section 2—Definitions**

1. **Articles----**“**Articles**” means the articles of association of a company as originally framed or as altered in accordance with the provisions of any previous Companies Act, or of this Ordinance, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule;
2. **“associated companies” and “associated undertakings”** -----“associated companies” and “associated undertakings” mean any two or more companies or undertakings, or a company and undertaking, interconnected with each other in the following manner, namely:-
  - a. If a person who is the owner or a partner or director of a company or undertaking, or who, directly or indirectly, holds or controls shares carrying not less than twenty percent of the voting power in such company or undertaking, is also the owner or partner or director of another company or undertaking, or, directly or indirectly, holds or controls shares carrying not less than twenty percent of the voting power in that company or undertaking; or

- b. If the companies or undertakings are under common management or control or one is the subsidiary of another.
- c. If the undertaking is a modarbah managed by the company; and a person who is the owner of or a partner or director in a company or undertaking or who so holds or controls shares carrying not less than ten percent of the voting power in a company or undertaking shall be deemed to be an “associated person” of every such other person and of the person who is the owner of or a partner or director in such other company or undertaking, or who so holds or controls such shares in such other company or undertaking;

**Provided that** shares shall be deemed to be owned, held or controlled by a person if they are owned, held or controlled by that person or by the spouse or minor children of the person:

**Provided further that-**

- a) Directorship of a person or persons by virtue of nomination by the Federal Government or provincial government or a financial institution directly or indirectly owned or controlled by the government shall not be taken in to account for determining the status of a company, undertaking or person as an associated company, associated undertaking or associated person; or
  - b) Shares owned by the National Investment Trust or the Investment Corporation of Pakistan or a financial institution directly or indirectly owned or controlled by the Federal Government or a Provincial Government or shares registered in the name of the central depository, where such shares are beneficially owned by the central depository shall not be taken in to account for determining the status of a company, undertaking or person as an associated company, associated undertaking or associated person; or
3. **“Authority”** means the Corporate Law Authority constituted under section 11;
4. **“body corporate” or “corporation”** includes a company incorporated outside Pakistan, but does not include-
- a. A corporation sole; or
  - b. A co-operative society registered under any law relating to the registration of co-operative societies; or
  - c. Any other body corporate, not being a company as defined in this ordinance, which the Federal Government may, by notification in the official Gazette, specify in this behalf;

## Section 2 of the Companies Ordinance 1984—Definitions (Part II)

5. **“Book and Paper”, “Book or Paper” or “Books of Accounts”** include accounts, deeds, vouchers, registers, writings and documents;
6. **“Central Depository”** means a central depository as defined in clause (cc) of section 2 of the Securities and Exchange Ordinance 1969 (XVII of 1969), and registered with the Commission under section 32 A of that Ordinance;
7. **“Chief Executive”**, in relation to a company means an individual who, subject to the control and directions of the directors, is entrusted with whole, or substantially the whole, of the powers of management of the affairs of the company, and includes a director or any other person occupying the position of a chief executive, by whatever name called, and whether under a contract of service or otherwise;
8. **“Commission”** means the Securities and Exchange Commission of Pakistan established under section 3 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997)
9. **“Company”** means a company formed and registered under this ordinance or an existing company;
10. **“Company Limited By Shares”** means a company having liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;
11. **“Company Limited By Guarantee”** means a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its winding up;
12. **“The Court”** means the court having jurisdiction under this Ordinance;
13. **“Debenture”** includes debenture stock, bonds, term finance certificates and any other securities, other than a share, of a company, whether constituting a charge on the assets of the company or not;
14. **“Director”** includes any person occupying the position of a director, by whatever name called;
15. **“Document”** includes summons, notice, requisition, order, other legal process, voucher and register;
16. **“Existing Company”** means a company formed and registered under any previous Companies Act;
17. **“Financial Institution”** includes,-
  - a. A company or an institution whether established under a special enactment and operating within or outside Pakistan which transacts the business through its branches;
  - b. A modarbah, leasing company, investment bank, venture capital company, financing company, housing finance company, a non-banking finance company; and
  - c. such other institution or companies authorized by law to undertake any similar business, as the Federal Government may, by notification in official Gazette, specify for the purpose;

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18. **“Financial Year”**, in relation to anybody corporate, means the period in respect of which any profit and loss account or the income and expenditure account, as the case may be, of the body corporate, laid before it in general meeting, is made up, whether that period is a year or not;
  19. **“Form”** means a form set out in any of the schedules or prescribed;
  20. **“Holding Company”** means a holding company as defined in section 3;
  21. **“ Listed”** in relation to securities, means securities which have been allowed to be traded on stock exchange;
  22. **“Listed Company”** means a company or a body corporate or other body whose securities are listed;
  23. **“Member”** means, in relation to a company having share capital, a subscriber to the memorandum of the company and every person to whom is allotted, or who becomes the holder of, any share, scrip or other security which gives him a voting right in the company and whose name is entered in the register of members, and, in relation to a company not having a share capital, any person who has agreed to become a member of the company and whose name is so entered;

**Section 2 of the Companies Ordinance 1984—Definitions (Part II)****Ordinance Not to Apply on Certain Corporations****Jurisdiction of the Courts****Constitution of Company Benches****Procedure of the Court****Appeal against Court Orders**

24. **“Memorandum”** means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of the provisions of any previous companies Act or of this Ordinance;
25. **“Modarbah” and “Modarbah Company”** have the same meaning as in the Modarbah Companies and Modarbah (Floatation and Control) Ordinance 1980 (XXXI of 1980)
26. **“Officer”** includes any director, chief executive, managing agent, secretary or other executive of the company, howsoever designated, but saves in sections 205, 220 to 224, 260, 261, 268, 351, 352, 412, 417, 418, 474 and 482, does not include an auditor.
27. **“Participatory Redeemable Capital”** means such redeemable capital as is entitled to participate in the profit and loss of a company;
28. **“Prescribed”** means,—
  - a. as respects the provisions of this Ordinance relating to the winding up of companies and other matters requiring to be determined or decided by the court, prescribed by rules made by the Supreme Court in consultation with the High Courts or, where the Supreme Court advises the Federal Government to do so, by the Federal Government in consultation with the High Courts; and
  - b. as respects the other provisions of this Ordinance, prescribed by rules or regulations made by the Federal Government after previous publication in the official Gazette;
29. **“Previous Companies Act”** includes any Act or Acts relating companies in force before the Indian Companies Act, 1866, the Indian Companies Act 1866 (X of 1866) or the Acts repealed thereby, the Indian Companies Act 1866 (X of 1866), the Indian Companies Act 1882 (VI of 1882), the Indian Companies Act 1913 (VII of 1913), or any law corresponding to any of those Acts and in force in any of the territories now constituting Pakistan before the extension of the Companies Act, 1913 (VII of 1913) to such territories.
30. **“Private Company”** means a company which, by its articles,
  - a. restricts the right to transfer its shares, if any
  - b. limits the number of its members to fifty not including persons who are in the employment of the company; and
  - c. prohibits any invitation to the public to subscribe for the shares, if any, or debenture of the company;

**Provided that**, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member;

31. **“Prospectus”** means any document described or issued as prospectus, and includes any notice, circular, advertisement, or other communication, inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate, or inviting deposits from the public, other than deposit invited by a banking company or a financial institution approved by the Federal Government, whether described as prospectus or otherwise;
32. **“Public Company”** means a company which is not a private company;
33. **“Redeemable Capital”** includes finance obtained on the basis of participation terms certificate (PTC), Musharika certificate, terms finance certificate (TFC), or any other security or obligation not based on interest, other than an ordinary share of a company, representing an instrument or a certificate of specified denomination, called the face value or nominal value, evidencing investment of the holder in the capital of the company on terms and conditions of the agreement for the issue of such instrument or certificate or such other certificate or instrument as the Federal Government may, by notification in the official Gazette, specify for the purpose;
34. **“Registrar”** means a registrar, an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, performing under this Ordinance the duty of registration of companies;
35. **“Schedule Bank”** has the same meaning as in the State Bank of Pakistan Act, 1956 (XXXIII of 1956)

**“Scheduled Bank”** means a bank for the time being included in the list of banks maintained under sub-section (1) of Section 37

(1) The Bank shall maintain at all its offices and branches an up-to date list of banks declared by it to be scheduled banks under clause (a) of subsection (2).

(2) The Bank shall, by notification, in the official Gazette—

(a) Declare any bank to be scheduled bank which is carrying on the business of banking in Pakistan and which—

- i. Is a banking company as defined in section 227F of the Companies Act, 1913, or a co-operative bank, or a corporation or a company incorporated by or established under any law in force in any place in or outside Pakistan;
- ii. Has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees:

**Provided that** in the case of a co-operative bank, an exception may be made by the Bank;

- iii. Satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interest of its depositors; Direct the de-scheduling of any scheduled bank which ceases to fulfill the requirements mentioned in clause (a) or goes into liquidation or otherwise wholly or partly ceases to carry on banking business;

**Provided that** the Bank may, on application of the scheduled bank concerned and subject to such conditions, if any, as it may impose, defer the making of a direction under clause (b) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of fulfilling the requirements mentioned in sub-clauses (ii) and (iii) of clause (a);

Alter the description in the list of scheduled banks whenever any scheduled bank changes its name.

**Explanation:** - In sub-Section (2) the expression “value” means the real or exchangeable and not the nominal value of the capital and reserves and the valuation made by the Bank shall be final.

36. **“Secretary”** means any individual appointed to perform the secretarial, administrative or other duties ordinarily performed by the secretary of a company;
37. **“Security”** means any share, scrip, debenture, participation term certificate, Modarbah certificate, Musharika certificate, term finance certificate, bond, pre organization certificate or such other instrument as the Federal Government may, by notification in the Official Gazette, specify for the purpose;]
38. **“Share”** means share in the share capital of a company;
39. **“Special Resolution”** means a resolution which has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy at a general meeting of which not less than twenty one days’ notice specifying the intention to propose the resolution as a special resolution has been duly given:

**Provided that,** if all the members entitled to attend and vote any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty- one day notice has been given;

40. **“Stock Exchange”** means a stock exchange registered under the Securities and Exchange Ordinance, 1969 (XVII of 1969)
41. **“Subsidiary Company”** or “subsidiary” means a subsidiary company as defined in section 3;
42. **“Table A”** means Table A in the First Schedule.
43. The expression **“Commencement of This Ordinance”** in any provision of this Ordinance means the coming in to force of that provision by virtue of a notification under sub section (3) of section 1.

*Virtue (=because of)*

### Section 3---Meaning of “subsidiary” and “holding company”.

1. For the purposes of this Ordinance, a company or body corporate shall be deemed to be subsidiary of another if-
  - a. that other company or body corporate directly or indirectly controls, beneficially owns or holds more than fifty percent of its voting securities or otherwise has power to elect and appoint more than fifty percent of its directors; or



- b. The first mentioned company or body corporate is a subsidiary of any company or body corporate which is that other's subsidiary.

**Provided that**, where a central depository holds more than fifty percent of the voting securities of a company, such company shall not be deemed to be a subsidiary of the central depository save where such voting securities are held beneficially by the central depository in its own behalf.

2. For the purpose of this Ordinance, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

### **Ordinance not to apply on certain corporations**

#### **Jurisdiction of the courts**

#### **Constitution of company benches**

#### **Procedure of the court**

#### **Appeal against court orders**

### **Section 4: Ordinance not to apply to certain corporations: - Nothing in this Ordinance shall apply to—**

- A trading corporation owned or controlled by a Province and carrying on business only within that Province;
- A co-operative society; or
- A University

### **Section 7: Jurisdiction of the Court.-**

1. The Court having jurisdiction under this Ordinance shall be the High Court having jurisdiction in the place at which the registered office of the company is situate:

**Provided that** the Federal Government may, by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any civil Court to exercise all or any of the jurisdiction by this Ordinance conferred upon the Court, and in that case such Court shall, as regards the jurisdiction so conferred, be the Court in respect of companies having their registered office within the territorial jurisdiction of such Court.

2. For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.
3. Nothing in this section shall invalidate a proceeding by reason of its being taken in a Court other than the High Court or a Court empowered under sub- section (1).

**Section 8: Constitution of Company Benches.-** There shall in each High Court be one or more benches, each to be known as the company Bench, to be constituted by the Chief Justice of the High Court to exercise the jurisdiction vested in the High Court under section 7.

**Section 9: Procedure of the Court.-**

1. Notwithstanding anything contained in any other law, all matters coming before the Court under this Ordinance shall be disposed of, and the judgment pronounced, as expeditiously as possible but not later than ninety days from the date of presentation of the petition or application to the Court and, except in extraordinary circumstances and on grounds to be recorded, the Court shall hear the case from day-to-day.

**Explanation:** In this sub-section, "judgment" means a final judgment recorded in writing.

2. The hearing of the matters referred to in sub-section (1) shall not be adjourned except for sufficient cause to be recorded, or for more than fourteen days at any one time or for more than thirty days in all.
3. In the exercise of its jurisdiction as aforesaid, the Court shall, in all matters before it, follow the summary procedure.

**Section 10: Appeals against Court orders.-**

1. Notwithstanding anything contained in any other law, an appeal against any order, decision or judgment of the Court under this Ordinance shall lie to the Supreme Court where the company ordered to be wound up has a paid-up share capital of not less than one million rupees; and, where the company ordered to be wound up has paid-up capital of less than one million rupees, or has no share capital, such appeal shall lie only if the Supreme Court grants leave to appeal.
2. Save as provided in sub-section (1), an appeal from any order made or decision given by the Court shall lie in the same manner in which and subject to the same conditions under which appeals lie from any order or decision of the Court.
3. An appeal preferred under sub-section (2) shall be finally disposed of by the Court hearing the appeal within ninety days of the submission of the appeal.

**Section 33: Conclusiveness of certificates of incorporation:**

A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Ordinance.

## Incorporation of Company and Matters Incidental thereto

### 14. Obligation to register certain associations, partnerships etc., as companies. -

1. No association partnership or company, consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association, partnership or company, or by the individual members thereof, unless it is registered as a company under this Ordinance.
2. Every person who is a member of any association, partnership of company carrying on business in contravention of the provisions of this section shall be punishable with fine which may extend to five thousand rupees and also be personally liable for all the liabilities incurred in such business.
3. Nothing in this section shall apply to—
  - a. Any society, body or association, other than a partnership, formed or incorporated under any other Pakistan law; or
  - b. A joint family carrying on joint family business; or
  - c. A partnership of two or more joint families where the total number of members of such families, excluding the minor members, does not exceed twenty; or
  - d. A partnership formed to carry on practice as lawyers, accountants or any other profession where practice as a limited liability company is not permitted under the relevant laws or regulations for such practice.

### **Eight Company registration offices in Pakistan:**

For incorporation of company SECP has established its eight Company Registration Offices all over the Pakistan, which are: Islamabad, Karachi, Lahore, Peshawar, Faisalabad, Multan, Sukkur and Quetta.

### **Online facilities for incorporation**

Online facilities for incorporation of companies and filing of returns have been made available. registration of companies and monitoring of their working according to law, functions of CRO's include providing services and guidance and also to ensure that the companies and their directors comply with the statutory requirements as provided under the Companies Ordinance, 1984 (the Ordinance).

### **Record maintained by CRO's is public record**

The record of companies maintained by the CROs is public record and the investors, shareholders, creditors and general public, may inspect the record of any company whenever they need and they may also obtain certified copy of any specific document on payment of nominal amount of fee.

Any three or more persons associated for lawful purpose may, by subscribing their names to the Memorandum of Association and complying with the requirements of the Ordinance form a public company and any one or more persons so associated may, in like manner, form a private company.

If only one member forms a private company, it is called a single member company and if it is formed by more than one member, it is termed as a private company.

### **Prior approval of ministries or departments**

Prior approval of the Ministries/Departments etc. noted against each category of the following companies is required to be obtained before incorporation of companies: -

- a. A banking company ----Ministry of Finance---- State Bank of Pakistan
- b. A non-banking finance company (NBFC) ----- Securities and Exchange Commission of Pakistan
- c. A security service providing company (Interior Division)
- d. A corporate brokerage house--- Stock Exchange (for transfer of member ship card in favor of proposed company)
- e. A money exchange company -----State Bank of Pakistan
- f. n Association not for profit u/s 42 of the Companies Ordinance, 1984 ----License from Securities and Exchange Commission of Pakistan
- g. A trade organization u/s 42 of the Companies Ordinance, 1984 ----License from Ministry of Commerce.

**Following are the requirements for registration of a new company under the Companies Ordinance, 1984:-**

### **Availability of Name (slide-Letter for availability of name)**

The first step with regard to incorporation of a company is to seek the availability of the proposed name for the company from the registrar. For this purpose, an application is to be made and Rs.200/- for online application and Rs. 500/- for offline application is required to be paid for seeking availability certificate for each name.

“The promoters desirous of forming a company should make sure that the name chosen is not otherwise inappropriate, deceptive or designed to exploit or offend the religious susceptibilities of the people and neither is identical nor closely resembling with the name of an existing company”.

### **Sensitive/Prohibited Words:**

#### **Association**

This word may be included in the name of companies to be established on grant of license by the Commission under section 42 of Companies Ordinance 1984 or which are established as a Trade Organization under Trade Organizations Ordinance, 2007.

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**Benevolent/ Foundation**

These words may be included in the name of companies to be established on grant of license by the Commission under section 42 of Companies Ordinance 1984.

**Society**

This word may be included in the name of companies if proper justification is provided.

**Fund**

This word may be allowed in the name of company if the company will function as Non-Banking Financial Company under the license of Specialized Companies Division of the Commission or to public sector company on grant of license by the Commission under section 42 of the Companies Ordinance, 1984.

**Council**

This word may be included in the name of companies to be established on grant of license by the Commission under section 42 of Companies Ordinance 1984. Moreover, this expression is also allowed to Sports Association and Professional Bodies.

**Chamber of Commerce**

This word may be included in the name of entities which are being formed as Trade Bodies under license from Director General Trade Organization, Ministry of Commerce Government of Pakistan.

**Authority/ Register/ Registered/ Co-operative/ Bureau/Division, these words are not allowed.**

**Trust**

This word may be included in the name of REITs to be established on grant of license by the Specialized Companies Division.

**Board**

This word may be included in the name of companies desirous to engage in the business of Paper &/or Board or to public sector companies.

**Bahria/Askari/Fouji/ Fazaiya/Cadet**

This word may be included in the name of companies to be established by the relevant agency.

**Banks/Banking Company**

These words may be included in the name of companies on the basis of permission from State Bank of Pakistan under section 8 of the Banking Companies Ordinance, 1962 and section 5(1) of Microfinance Institutions Ordinance, 2001.

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**Charter/Chartered**

These words may be included in the name of companies having charter from the sovereign authority of the Federation and the Province.

**Exchange**

These words are only allowed in the name of Stock Exchange, Commodity Exchange and Exchange Companies subject to NOC from relevant authority.

**Famous/Distinct Personalities**

These words may be included in the name of companies if proper justification and approval of relevant authority is provided.

**Federation**

This word may be included in the name of Sports Federations licensed under section 42 of Companies Ordinance, 1984 or trade bodies under Trade Organizations Ordinance, 2007. Federal

This word is allowed in the name of company with the approval of the Commission, if the proposed company has a connection or any patronage with Federal Government.

**Group**

This word may be included in the name of companies if use of this word implies several companies under single corporate ownership and applicants have to provide evidence of subsidiary/associate relationship with two or more other Pakistani Companies.

**Holding**

This word may be included in the name of company which establishes that it qualifies to be a holding company as defined in Section 3 of the Companies Ordinance, 1984 i.e. the company has object clause showing its intention to act as holding company after incorporation.

**Institution**

This word may be included in the name of the public sector companies.

**Investment**

This word may be included in the name of Non-Banking Finance Companies, REITs and brokerage houses or any public sector financial institution or investment company.

**Investment Finance, Investment Advisory, Leasing, Asset Management, Housing Finance**

This word may be included in the name of Non-Banking Finance Companies.

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**Name of Company containing country name or nationality other than Pakistan**

These names are not allowed unless sufficient justification is provided.

**Name of Company containing name of two countries** i.e. Pakistan/Pak and any other foreign company

These words may be included in the name of companies where documentary evidence is provided in support of the fact that the company is a Joint Venture of two Governments or companies of two countries.

**New/Modern/The**

These words may be included in the name of companies. However, these expressions will not be acceptable if used to make proposed company as distinctive from already existing companies. Patronage of past or present, Pakistani or Foreign, Head of State/ any connection with Federal or Provincial Government, Department or authority/any connection with corporation set up by or under Federal/Provisional Law/ the patronage of, or any connection with, any Foreign

**Government or any International Organization**

These words may be included in the name of companies with the approval of the Commission provided sufficient justification is furnished.

**State**

This word may be included in the name of companies formed by Government.

**University**

This word may be allowed only in the name of University Management Company for the management of University in terms of guidelines of Higher Education Commission.

Following words are also not allowed to use as company name: **UNO, WORLD BANK, IMF, RED CROSS, and RED CRESCENT.**

**Important Note Regarding Spellings of Proposed Names**

It is pertinent to mention here that the application for availability of name will be considered only if the spelling of proposed name is according to dictionary. Any deviation in dictionary spellings will not be accepted and the name will be rejected.

Whenever a question arises as to whether or not the name of a company is in violation of the foregoing provisions of this section the decision of the Commission shall be final.

**37. Prohibition of certain names.-**

(1) No company shall be registered by a name which in the opinion of the Commission is inappropriate or deceptive or is designed to exploit or offend the religious susceptibilities of the people.

(2) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(3) Except with the prior approval in writing of the Commission, no company shall be registered by a name which contains any words suggesting or calculated to suggest—

- a) The patronage of any, past or present, Pakistani or foreign, Head of State
- b) Any connection with the Federal Government or a Provincial Government or any department or authority of any such Government;
- c) Any connection with any corporation set up by or under any Federal or Provincial law; or
- d) The patronage of, or any connection with, any foreign Government or any international organization.



**Incorporation of Company and Matters Incidental thereto  
And  
Memorandum of Association**

**Letter for Availability of Name of a proposed company**

Date: 20.03.2013

The Deputy Registrar,  
Securities & Exchange Commission of Pakistan  
Egerton Road, Lahore

Subject: Availability of Name

Worthy Sir,

We are interested in incorporating a Private Limited Company in the name: “ABC ENGINEERING (PVT) LTD. Kindly confirm whether this name is available or not?”

The major object of the Company will be “To carry on Civil; Mechanical; Electrical engineering business”.

Yours Faithfully

Abdullah Rehan Shervani

Noor Fatimma Rehan Shervani

**Documents required for registration of a limited company:**

- I. Copy of national identity card or passport, in case of foreigner, of each subscriber and witness to the memorandum and article of association.
- II. Memorandum and articles of association: Four printed copies of Memorandum and Articles of Association in case of offline submission and one copy for online submission, duly signed by each subscriber in the presence of one witness. In order to facilitate the general public, the standardized specimen of Memorandum of Association of various sectors has been provided on the Commission’s Website.

## III. Form - 1

## THE COMPANIES ORDINANCE, 1984

(Section 30(2) and rule 4)

**DECLARATION OF APPLICANT FOR INCORPORATION***Please complete in typescript or in bold block capitals.*

1. Name of the Company	<input style="width: 100%; height: 20px;" type="text"/>										
2. Presented by	<input style="width: 100%; height: 20px;" type="text"/>										
3. Fee Paid (Rs.)	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	Name & Branch of the Bank <input style="width: 100%; height: 20px;" type="text"/>
4. Receipt No.	<input style="width: 100%; height: 20px;" type="text"/>		Date		<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>
	(Bank Challan to be attached in original)										
5. Declarant's Name & Designation	<input style="width: 100%; height: 20px;" type="text"/>										
6. Declarant's Father Name	<input style="width: 100%; height: 20px;" type="text"/>										
7. Profession/ Designation (delete the portion not applicable)	Advocate entitled to appear before a High Court/ Supreme Court/ Chartered Accountant/ Cost & Management Accountant practicing in Pakistan engaged in the formation of this company/ a person named in the articles as Director/ Officer of the proposed company.										
8. Declaration	<p>I do hereby solemnly and sincerely declare that:</p> <p>a) I am the above named declarant;</p> <p>b) all the requirements of the Companies Ordinance, 1984, and the rules made there under in respect of matters precedent to the registration of the said Company and incidental thereto have been complied with and</p> <p>c) I make this solemn declaration conscientiously believing the same to be true.</p>										
9. Signature of Declarant	<input style="width: 100%; height: 20px;" type="text"/>										
10. N.I.C No. of Declarant	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>	<input style="width: 20px; height: 20px;" type="text"/>

11. Signature of Witness

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12. Name and Father's  
Name of the witness


13. N.I.C No. of the witness

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14. Address of the witness

--

Day      Month      Year

15. Date

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THE COMPANIES ORDINANCE, 1984

[Section 142]

**NOTICE OF SITUATION OF REGISTERED OFFICE OR ANY CHANGE THEREIN**

Please complete in typescript or in bold block capitals.

1. CUIIN (Incorporation Number)

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2. Name of the Company

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3. Fee Paid (Rs.)

--	--	--	--

Name & Branch of The  
Bank

--

4. Receipt No.

--

Day      Month      Year

Date

--	--

--	--

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(Bank Challan to be attached in original)

5. The situation of registered office of the  
company was changed from

(state previous address)

--

6. The registered office of the Company is  
now situated at

--

(State full address with identifiable number / name of the premises or building and street, road and locality besides the name of the town and postal area, where applicable).

6.1 Telephone Nos

--

6.2 Fax No, if any

--

6.3 E-mail address

--

Day

Month

Year



THE COMPANIES ORDINANCE, 1984

NOTICE OF NOMINATION OF NOMINEE DIRECTOR BY SINGLE MEMBER OF A SINGLE MEMBER COMPANY

*Please complete in typescript or in bold block capitals.*

1. CUIIN (Incorporation Number):

2. Name of the Company:

3. Fee paid Rs:

4. Name and branch of bank:   
Day      Month      Year

5. Date of payment:

6. Bank Challan No:  (Bank Challan to be attached in original).

7. Name, NIC No., address and relationship of legal heirs:

Name.	NIC No.	Address.	Relationship.

8. Name, NIC No., and address of nominee directors:

Name.	NIC No.	Address.	Status.
			Nominee director.
			Alternate nominee director.

9. Consent of nominee director:

I, hereby, consent to act as nominee director of the company in case of death of the single member.
Signature of nominee director.

10. Consent of alternate nominee director:

I, hereby, consent to act as alternate nominee director of the company in case of non-availability of nominee director.
Signature of alternate nominee director.

11. Signature of single member:

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12. N.I.C No. of signatory:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

13. Date:

Day	Month	Year								
<table border="1" style="display: inline-table; width: 40px; height: 20px;"> <tr><td></td><td></td></tr> </table>			<table border="1" style="display: inline-table; width: 40px; height: 20px;"> <tr><td></td><td></td></tr> </table>			<table border="1" style="display: inline-table; width: 60px; height: 20px;"> <tr><td></td><td></td><td></td><td></td></tr> </table>				

**Additional Requirements for Incorporation of a Company having objects of providing Security Services:**

In case of security object company nine additional sets of each of the documents at 'I' and 'II' above along with the bio-data, four attested photographs of each subscribers and financial position/bank statement of the subscribers (Aggregate wealth should not be less than 1.5 million) is required to be provided.

Ministry of Interior grants NOC for a security object company.

**Documents for incorporation of an association not for profit:**

All the documents meant for incorporation of a limited company along with a license issued by the SECP. In case of a trade body, a license issued by Ministry of Commerce would also be submitted to the registrar concerned. The application for obtaining the requisite license from the Commission should be accompanied by draft memorandum and Articles of Association, list of promoters, bio-data of each promoter, declaration, names of companies in which the promoters of the proposed association hold any office, estimates of annual

income and expenditure and brief statement of work already done or to be done. (Section 42 & Rule 6). Detailed guidance is provided on the link:

[http://www.secp.gov.pk/divisions/Portal\\_RD/registration\\_promoters.asp](http://www.secp.gov.pk/divisions/Portal_RD/registration_promoters.asp)

## Memorandum of Association

### Definition of Memorandum of Association (Section 2 of the Ordinance)

“**Memorandum**” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of the provisions of any previous companies Act or of this Ordinance.

### Explanation of the Clauses of Memorandum of Association:

#### Name Clause

The name clause requires you to state the legal and recognized name of the company. You are allowed to register a company name only if it does not bear any similarities with the name of an existing company. Your company name must end with the word "limited" because the preparation of an MOA is a legal requirement for limited liability companies only.

#### Registered Office Clause

The registered office clause requires you to show the physical location of the registered office of the company. You are required to keep all the company registers in this office in addition to using the office in handling all the outgoing and incoming communication correspondence. You must establish a registered office prior to commencing business activities.

#### Objective Clause

The objective clause requires you to summarize the main objectives for establishing the company with reference to the requirements for shareholding and use of financial resources. You also need to state ancillary objectives; that is, those objectives that are required to facilitate the achievement of the main objectives. The objectives should be free of any provisions or declarations that contravene laws or public good.

#### Liability Clause

The liability clause requires you to state the extent to which shareholders of the company are liable to the debt obligations of the company in the event of the company dissolving. You should show that shareholders are liable only their shareholding and/or to their commitment to contribute to the dissolution costs upon liquidation of a company limited by guarantee.

#### Capital Clause

The capital clause requires you to state the company's authorized share capital, the different categories of shares and the nominal value (the minimum value per share) of the shares. You are also required to list the company's assets under this clause.



**Association Clause**

The association clause confirms that shareholders bound by the MOA are willingly associating and forming a company. You require seven members to sign an MOA for a public company and not less than two people for a MOA of a private company. You must conduct the signing in the presence of witness who must also append his signature.

**Section: 16 Memorandum of company limited by shares.-**

In the case of a company limited by shares:-

1. The memorandum shall state:-
  - a. The name of the company with the word "limited" as the last word of the name in the case of a public limited company, and the parenthesis and words "(Private) Limited" as the last words of the name in the case of a private limited company;
  - b. The Province or the part of Pakistan not forming part of a Province, as the case may be, in which the registered office of the company is to be situated;
  - c. The objects of the company and, except in the case of a trading corporation the territories to which they extend;
  - d. That the liability of the members is limited; and
  - e. The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount;
2. No subscriber of the memorandum shall take less than one share; and
3. Each subscriber of the memorandum shall write opposite to his name the number of shares he takes.

**Section: 17 Memorandum of company limited by guarantee.-**

In the case of a company limited by guarantee,—

1. Whether or not the company has a share capital, the memorandum shall state—
  - a. The name of the company with the parenthesis and words "(Guarantee) Limited" as the last words of its name;
  - b. The province or the part of Pakistan not forming part of a Province, as the case may be in which the registered office of the company is to be situate;
  - c. The objects of the company and except in the case of a trading corporation, the territories to which they extend;
  - d. That the liability of the members is limited; and
  - e. That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs,

charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves such amount as may be required, not exceeding a specified amount; and

2. If the company has a share capital,—
  - a. The memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
  - b. No subscriber of the memorandum shall take less than one share; and
  - c. Each subscriber shall write opposite to his name the number of shares he takes.

**Section: 18 Memorandum of unlimited company.-**

In the case of an unlimited company,—

1. whether or not the company has a share capital, the memorandum shall state—
  - a. The name of the company;
  - b. the Province or the part of Pakistan not forming part of a Province, as the case may be, in which the registered office of the company is to be situate; and
  - c. The objects of the company, and, except in the case of a trading corporation, the territories to which they extend; and
2. If the company has a share capital:-
  - a. No subscriber of the memorandum shall take less than one share; and
  - b. Each subscriber shall write opposite to his name the number of shares he takes.

**Section: 19 The memorandum shall be:-**

- (a) Printed;
- (b) Divided into paragraphs numbered consecutively;
- (c) Signed by each subscriber, who shall add his present name in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, his nationality and his usual residential address and such other particulars as may be prescribed, in the presence of a witness who shall attest the signature and shall likewise add his particulars; and
- (d) Dated.

**Notwithstanding** anything contained in this Ordinance or in any other law for the time being in force or the memorandum and articles, the memorandum and articles of a company shall be deemed to include, and always to have included, the power to enter into any arrangement for obtaining loans, advances or credit, as defined in the Banking Companies Ordinance, 1962 (LVII of 1962), and to issue other securities not based on interest for raising resources from a scheduled bank or a financial institution.

## Alteration of Memorandum

### Section: 19 The memorandum shall be:-

- a) Printed;
- b) Divided into paragraphs numbered consecutively;
- c) Signed by each subscriber, who shall add his present name in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, his nationality and his usual residential address and such other particulars as may be prescribed, in the presence of a witness who shall attest the signature and shall likewise add his particulars; and
- d) Dated.

**Notwithstanding** anything contained in this Ordinance or in any other law for the time being in force or the memorandum and articles, the memorandum and articles of a company shall be deemed to include, and always to have included, the power to enter into any arrangement for obtaining loans, advances or credit, as defined in the Banking Companies Ordinance, 1962 (LVII of 1962), and to issue other securities not based on interest for raising resources from a scheduled bank or a financial institution.

**20. Restriction on alteration of memorandum:-** A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent specified in this Ordinance.

### 21. Alteration of Memorandum.-

1. Subject to the provisions of this Ordinance, a company may, by special resolution alter the provisions of its memorandum so as to change the place of its registered office from one Province to another, or from one city or town in a Province to another, or from a part of Pakistan not forming part of a Province to a Province or from a Province to a part of Pakistan not forming part of a Province, or with respect to the objects of the company, so far as may be required to enable it:-
  - a. To carry on its business more economically or more efficiently; or
  - b. To attain its main purpose by new or improved means; or
  - c. To enlarge or change the local area of its operations; or
  - d. To carry on some business, not being a business specified in its memorandum, which may conveniently or advantageously be combined with the business of the company; or
  - e. To restrict or abandon any of the objects specified in the memorandum; or
  - f. To sell or dispose of the whole or any part of the undertaking of the company; or
  - g. To amalgamate with any other company or body of persons.

2. The alteration shall not take effect until and except in so far as it is confirmed by the Commission on petition.

**Provided that** an alteration so as to change the place of registered office of a company from a place in the Province of the Punjab to the Islamabad Capital Territory or from the latter to a place in the Province of the Punjab, or from one city in a Province to another shall not require confirmation by the Commission.

3. Before confirming the alteration, the Commission must be satisfied:-
  - a. That, sufficient notice has been given to every holder of debentures of the company and to any person or class of persons whose interest will, in the opinion of the Commission, be affected by the alteration; and
  - b. That with respect to every creditor who in the opinion of the Commission is entitled to object, and who signifies his objection in manner directed by the Commission, either his consent to the alteration has been obtained or his debt or claim has been discharged or determined, or has been secured to the satisfaction of the Commission:

**Provided that** the Commission may in the case of any person or class of persons, for special reasons, dispense with the notice required by clause (a).

## 22. Powers of Commission when confirming alteration:-

The Commission may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and make such order as to costs as it thinks proper.

**23. Exercise of discretion by Commission:-** The Commission shall in exercising its discretion under section 21 and 22 have regard to the rights and interests of the members of the company or of any class of them, as well as to the right and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Commission for the purchase of the interests of dissident members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

**Provided that** no part of the capital of the company may be expended in any such purchase.

*“Worst form of justice is pretended justice”*

**Alteration of Memorandum (cont...)**  
**&**  
**Articles of Association**

**Section: 24 Procedure on confirmation of the alteration:-**

(1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered shall within ninety days from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

(2) Where the alteration involves a transfer of the registered office from one Province to another, or from the Islamabad Capital Territory to a province or from a Province to Islamabad Capital Territory, a certified copy of the order confirming such alteration shall be filed by the company with the registrar in each of such provinces or the Islamabad Capital Territory, as the case may be, and each such registrar shall register the same, and shall certify under his hand the registration thereof, and the registrar for the Province or the Territory from which such office is transferred shall send to the registrar for the other Province or Territory all documents relating to the company registered or filed in his office.

(3) The Commission may by order at any time extend the time for the filing of documents with the registrar under this section for such period as it thinks proper.

**Section: 25 Effect of failure to register within ninety days.-**

No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provision of section 24, and if such registration is not effected within ninety days next after the date of the order of the Commission confirming the alteration, or within such further time, as may be allowed by the Commission, in accordance with the provisions of section 24, such alteration and order, if any, and all proceedings connected therewith shall, at the expiration of such period of ninety days or such further time, as the case may be, become null and void:

**Provided that** the Commission may, on sufficient cause shown, revive the order or alteration, as the case may be, on application made within a further period of ninety days.

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**ARTICLES OF ASSOCIATION****Section: 26 Registration of articles:-**

(1) There may, in the case of company limited by shares, and there shall, in the case of a company limited by guarantee or an unlimited company, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and setting out regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

**(Note: Table A of the First Schedule has been uploaded in the content of Lesson # 12)**

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered.

(5) In the case of a company limited by shares and registered after the commencement of this Ordinance, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

(6) The articles of every company shall be explicit and without ambiguity and, without prejudice to the generality of the foregoing, shall list and enumerate the voting and other rights attached to the different classes of shares and other securities, if any, issued or to be issued by it.

**Section: 27 Printing, signature, etc., of articles.- The articles shall be:-**

(a) Printed;

(b) Divided into paragraphs numbered consecutively;

(c) Signed by each subscriber, who shall add his present name in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, his nationality and his usual residential address and such other particulars as may be prescribed, in the presence of a witness who shall attest the signature and shall likewise add his particulars; and

(d) Dated.

**Section: 28 Alteration of articles:-**

Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles, and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution:

**Provided that**, where such alteration affects the substantive rights or liabilities of members or of a class of members, it shall be carried out only if a majority of at least three-fourths of the members or of the class of members affected by such alteration, as the case may be, personally or through proxy vote for such alteration.

## Forms of Memorandum and Articles

### Section: 29 Form of memorandum and articles: The form of:-

- (a) The memorandum of association of a company limited by shares;
- (b) The memorandum and articles of association of a company limited by guarantee and not having a share capital;
- (c) The memorandum and articles of association of a company limited by guarantee and having a share capital;
- (d) The memorandum and articles of association of an unlimited company having a share capital; shall be respectively in accordance with the forms set out in Tables A, B, C, D and E in the First Schedule or as near thereto as circumstances admit.

(Note: Tables B, C, D and E of the First Schedule have been uploaded in the content of Lesson # 12)

## General Provisions With Respect To Registration of Memorandum and Articles

### Section: 30 Registration of memorandum and Article etc.:-

- (1) The memorandum, if any, shall be filed with the registrar in the province or the part of Pakistan not forming part of a province, as the case may be, in which the registered office of the company is stated by the memorandum to be situated.
- (2) A declaration by such person as may be prescribed in this behalf, or by a person named in the articles as a director, or other officer of the company, of compliance with all or any of the requirements of this Ordinance and the rules made there under shall be filed with the registrar; and the registrar may accept such a declaration as sufficient evidence of such compliance.
- (3) If the registrar is satisfied that the company is being formed for lawful purposes, that none of its objects stated in the memorandum is inappropriate or deceptive or insufficiently expressive and that all the requirements of this Ordinance and the rules made there under have been complied with in respect of registration and matters precedent and incidental thereto, he shall retain and register the memorandum and articles, if any.
- (4) If registration of the memorandum is refused, the subscribers of the memorandum or any one of them authorized by them in writing may either supply the deficiency and remove the defect pointed out, or within thirty days of the order of refusal prefer an appeal:-
  - a. Where the order of refusal has been passed by an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, to the registrar; and
  - b. Where the order of refusal has been passed, or up-held in appeal, by the registrar, to the Commission.

- (5) An order of the Commission under sub-section (4) shall be final and shall not be called in question before any Court or other authority.

**Section: 31 Effect of memorandum and articles:-**

- (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs, and legal representatives, to observe and be bound by all the provisions of the memorandum and of the articles, subject to the provisions of this Ordinance.
- (2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

**Section: 32 Effect of registration:-**

(1) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited by shares or guarantee, as the case may be.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum, capable forth-with of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.

*“Hasty justice is the mother of misfortune”.*



## Prohibition with respect to Name of Company

### Section: 37 Prohibition of certain names:-

1. No company shall be registered by a name which in the opinion of the Commission is inappropriate or deceptive or is designed to exploit or offend the religious susceptibilities of the people.
2. A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.
3. Except with the prior approval in writing of the Commission, no company shall be registered by a name which contains any words suggesting or calculated to suggest:
  - a. The patronage of any, past or present, Pakistani or foreign, Head of State;
  - b. Any connection with the Federal Government or a Provincial Government or any department or authority of any such Government;
  - c. Any connection with any corporation set up by or under any Federal or Provincial law;
  - d. The patronage of, or any connection with, any foreign Government or any international organization.
4. Whenever a question arises as to whether or not the name of a company is in violation of the foregoing provisions of this section the decision of the Commission shall be final.

### Section: 38 Rectification of name of a company:-

A company which, through inadvertence or otherwise, is registered by a name in contravention of the provisions of section 37:-

- a. May, with the approval of the registrar, change its name; and
- b. Shall, if the registrar so directs, within thirty days of the receipt of such direction, change its name with the approval of the registrar.

**Provided that** the registrar shall, before issuing a direction for the change of name, afford the company an opportunity to make representation against the proposed direction.

**Provided further that** no direction under clause (b) shall be issued after the expiration of three years from the date of registration of the company or registration by its new name, as the case may be.

**Section: 39 Change of name by a company:-**

A company may, by special resolution and with the approval of the registrar signified in writing, change its name.

**Provided that** no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the parenthesis and word "(Private)" consequent on the conversion in accordance with the provisions of this Ordinance of a public company into a private company or of a private company into a public company.

**Section: 40 Registration of change of name and effect thereof:-**

(1) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and, on the issue of such a certificate, the change of name shall be complete.

(2) Where a company changes its name it shall, for a period of one year from the date of issue of a certificate by the registrar under sub-section (1), continue to mention its former name along with its new name on the outside of every office or place in which its business is carried on and in every document or notice referred to in clauses (a) and (c) of section 143:

(Section: 143 Publication of name by a limited company:- Every limited company:- (a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English or Urdu characters, and also, if the registered office is situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place;)

**Provided that** the addition or deletion, as the case may be, of the parenthesis and word "(Private)" from the name of a company consequent on the conversion in accordance with the provisions of this Ordinance of a public company into a private company or of a private company into a public company shall not be deemed to be a change of name for the purpose of this sub-section.

(3) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against the company by its former name may be continued by or commenced against the company by its new name.

**41. Alteration of names on commencement of Ordinance and change of status of company:-**

(1) As from the date of commencement of this Ordinance, the name of every existing company shall be deemed to include, before the last word "Limited", the parenthesis and word "(Private)" in the case of private company and the parenthesis and word "(Guarantee)" in the case of a company limited by guarantee,

and the memorandum of association, the certificate of incorporation and other books and papers shall be deemed to be altered accordingly from that date.

(2) On conversion of a public company into a private company in accordance with the provisions of this Ordinance, the registrar shall add the parenthesis and word "(Private)" before the word "Limited" in the name of the company in the register and shall also issue a certificate to meet the circumstances of the case.

(3) On conversion of a private company into a public company in accordance with the provisions of this Ordinance, the registrar shall omit the parenthesis and word "(Private)" in the name of company in the register and shall also issue a certificate to meet the circumstances of the case.

(4) If default is made in complying with a direction issued by the registrar under section 38, or with the requirements of sub-section (2) of section 40, or in giving effect to the provisions of sub-section (1) of this section, the company, and every director or officer of the company who is knowingly and willfully in default, shall be liable to a fine not exceeding ten thousand rupees and to a further fine not exceeding two hundred rupees for every day after the first during which the default continues.

## Associations not for Profit

### Section: 42 Power to dispense with "Limited" in the name of charitable and other companies.-

1. Where it is proved to the satisfaction of the Commission that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, religion, sports, social services, charity or any other useful object, and applies or intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Commission may grant a license and direct that the association be registered as a company with limited liability, without the addition of the words "Limited", "(Private) Limited" or "(Guarantee) Limited", as the case may be, to its name, and the association may be registered accordingly.
2. A license under sub-section (1) may be granted on such conditions and subject to such regulations as the Commission thinks fit and those conditions and regulations shall be binding on the association and shall, if the Commission so directs, be inserted in the memorandum and articles, or in one of those documents.

**The procedure for obtaining license, subsequent registration of such Association as company, is provided hereinafter:**

**Step 1: Availability of Name:** The first step is to seek availability of the proposed name for the company. The application for availability of name can be made online through e-services OR offline through physical filing to any one of the Company Registration Offices (CROs) of the Commission.

### **Step 2: Requirement for Licensing of “Association Not for Profit”:**

1. A list of promoters of the association with their occupations and addresses;
2. A declaration by a person of the effect that he has scrutinized the application and the accompanying documents, and that he is satisfied that the same are drawn up in conformity with the provisions of the Ordinance and fulfill the conditions for the grant of license laid therein and the rules; [Format at Annex-III]
3. A statement the names of companies, associations and other institutions in which the promoters of the proposed association holds any office stating the office held (position/designation) in each case; [Format at Annex-II]
4. Audited Books of accounts already existed companies registered as “association not for profit”.
5. An estimate of the future annual income and expenditure of the proposed company, specifying the sources of income and objects of expenditure. The statement should also reflect the aforesaid startup donation of the each subscriber. [Format at Annex-V]
6. A brief statement of work already done (if any) and the work proposed to be done after incorporation as a company specifying salient features of the project(s) e.g., their location, size, duration, etc., to be undertaken in pursuance of object of the company.
7. Power of Attorney (Authority Letter) on Stamp Paper of appropriate value made by all the promoters in favor of a person to present the application before the Commission on their behalf, and to make

other amendments, additions, corrections etc., in the documents and also to collect license. [Format at Annex-VII]

8. Affidavit on Stamp Paper of appropriate value duly attested by an Oath Commissioner made by all the promoters affirming that they are not defaulter of loans, etc. [Format at Annex-IX].
9. Affidavit on Stamp Paper of appropriate value duly attested by an Oath Commissioner affirming correctness of contents of the Application. [Format at Annex-X]

**(Note: Procedure of registration of “Association Not for Profit” and its related Annexes have been uploaded in the content of lesson 14.)**

### Conditions of Licensing

1. No change in the Memorandum and Article of Association shall be made except with the prior approval of the commission.
  2. The subscriber to the Memorandum and Article of Association of the company shall continue to be the member of company unless allowed by the commission on application to quit as member.
  3. The limit of liability of its member shall not be less than a reasonable amount for each member.
  4. Patronage of any government and authority, expressed or implied, shall not be claimed unless such Government and authority has signified its consent thereto in writing.
  5. The company shall not setup or otherwise engage in industrial and commercial activities or in any manner function as a trade organization.
  6. Payment of remuneration for services or otherwise to its member whether holding and office in the company or not shall be prohibited.
  7. A company must write on its manifestation, letter head and sign boards of the company that “A company setup under Section 42 of companies ordinance 1984.
  8. The company shall apply with such condition as may be imposed by the commission from time to time.
  9. The company shall not apply exploit or offend the religious susceptibilities of the people.
  10. The company shall not appeal, solicit, receive or accept funds, grant, contributions, donations or gifts, in cash or in kind, from foreign sources except with the prior permission, clearance or approval from the relevant public authorities as may be required under any relevant statutory regulations and laws.
  11. The company shall not undertake any substantial permanent trading activities and shall conform to relevant statutory regulations and laws.
3. The association shall on registration enjoy all the privileges of a limited company and be subject to all its obligations, except those of using the word or words "Limited", "(Private) Limited" or "(Guarantee) Limited", as the case may be, as part of its name.

**Advantages of Registered association of person**

1. Tax rebate / Tax credit on funding
  2. Enhanced credibility due to become artificial legal person
  3. Objects of Association of person have been defined in the Memorandum and Articles of association
  4. Compact organization structure (Control is monitored by SECP)
4. A license under this section may at any time be revoked by the Commission and upon its revocation the registrar shall enter the word or words "Limited", "(Private) Limited", or "(Guarantee) Limited", as the case may be, at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by preceding sub-sections:

**Provided that**, before a license is so revoked, the Commission shall give notice to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

**Step 3: Registration of Association as a Company Limited by Guarantee:****Documents required for registration**

1. Copy of CNIC of Promoters
2. Copy of passport in case of foreign Promoters
3. Particulars of witness and CNIC copies
4. Copy of license
5. Four printed copies of memorandum and article of association duly signed by each subscriber in the presence of one witness
6. Copies attached of Form 1 (Declaration of Compliance)
7. Copy of original Challan form of fee submitted
8. Give authority letter to any one of the promoters to look into the registration matters
9. If registrar of the company is satisfied with the given documents then registrar will issue the letter of incorporation.

After issuing the letter of incorporation “Association Not for Profit” becomes an artificial legal person.

**Post registration requirements:**

1. The number and names of first directors are determined by the majority of the subscribers of the memorandum in writing and until so determined all the subscribers of the memorandum who are natural persons shall be deemed to be directors of the company. The appointment of the first director is required to be notified to the registrar concerned on **“Form 29”** within 14 days from the date of incorporation.
2. The directors of the every company are required to appoint the first chief executive not later than form the date of incorporation. The appointment of first chief executive is required to be notified to the registrar concerned on **“Form 29”** within 14 days from the date of appointment.
3. A company is required to notify the registrar office of the company on **“Form 21”** within 28 days.
4. First annual general meeting is required to be held within eighteen (18) months from the date of incorporation.

## Kinds of Company

Following are the kinds of company:

- Chartered Company
- Statutory Corporation or company
- Registered Company
- Unregistered Company
- Foreign Company
- Government Company
- Private Company
- Public Company
- Holding Company
- Subsidiary Company

### 1. Chartered Company

#### Definition of chartered company:

A chartered company is an association formed by investors or shareholders for the purpose of trade, exploration and colonization.

#### History

Chartered Companies enabled merchants to band together to undertake ventures requiring more capital than was available to any one merchant or family. Typically, these companies were formed from the sixteenth century onwards by groups of European investors to underwrite and profit from the exploration of **Africa, India, Asia, the Caribbean and North America**, usually under the patronage of one state, which issued the company's charter. But chartered companies go back into the medieval period. Chartered companies enabled states to use private resources for exploration and trade beyond the means of the limited resources of the treasury, which is a liberal form of indirect rule; some companies did themselves employ a form of indirect rule of territories through traditional leaders, such as princely states with whom they made treaties.

Chartered companies were usually formed, incorporated and legitimized under a royal or, in republics, an equivalent government charter. This document set out the terms under which the company could trade; defined its boundaries of influence, and described its rights and responsibilities.

For example, the charter of the **British South Africa Company, given by Queen Victoria**, allowed the company to:

- Trade with African rulers
- Own, manage and grant or distribute land
- Raise its own police force

In return, the British South Africa Company agreed to develop the territory it controlled; to respect existing African laws; to allow free trade within its territory and to respect all religions.



Chartered companies in many cases benefited from the trade monopolies (such as the **English Royal African Company**, which held a monopoly on **African slaving from 1672 to 1698**).

In order to carry out their many tasks, which in many cases included functions - such as security and defense - usually reserved for a sovereign state, some companies achieved relative autonomy. A few chartered companies such as the British Honorable East India Company had military and naval forces of their own and adequate funds to buy the best men and equipment, in effect making them a state within a state.

More chartered companies were formed during the late nineteenth century's "**Scramble for Africa**" with the purpose of seizing, colonizing and administering the last 'virgin' African territories, but these proved generally less profitable than earlier trading companies. In time, most of their colonies were either lost (often to other European powers) or transformed into crown colonies. The last chartered company to administer territory directly in Africa was the Companhia de Moçambique in Portuguese East Africa, which handed over rule of the colonies of Manica and Sofala to the Portuguese republic's colonial government in 1942.

### **Doctrine of Res Nullius or Principle of Res Nullius**

“Ability to control the thing makes the man the owner of that particular product or commodity”.

### **Principle of Terra Nullius**

“Even in the presence of indigenous people and locality more civilized outsiders have right to take control of the land”.

### **Some popular Chartered Companies:**

#### **British crown charters**

1711 South Sea Company	1792 Sierra Leone Company
1752 African Company of Merchants (abolished 1821)	1824 Van Diemen's Land Company
1835 South Australian Company	1839 New Zealand Company
1847 Eastern Archipelago Company	1881 British North Borneo Company
1886 Royal Niger Company	1889 British South Africa Company

#### **English crown charters**

1407 Company of Merchant Adventurers of London	1577 Spanish Companies
1553 Company of Merchant Adventurers to New Lands	1579 Eastland Company
1581 Turkey Company	1588 Morocco Company
1600 East India Company (HEIC)	1604 New River Company
1605 Levant Company	1606 Virginia Company
1609 French Company	1610 London and Bristol Company

1629 Massachusetts Bay Company

1629 Providence Island Company

**French**

1613 Company of One Hundred Associates

1625 Compagnie de Saint-Christophe

1664 Compagnie de l'Occident

1717 Compagnie du Mississippi

**German**

1682 Brandenburg African Company

1752 Emden Company

1882 German West African Company

1884 German New Guinea Company

1884 German East Africa Company

1891 Astrolabe Company

**2. Statutory Corporation or Company:**

A statutory corporation is a corporation created by statute. Their precise nature varies by jurisdiction thus they might be ordinary companies/corporations owned by a government with or without other shareholders, or they might be a body without shareholders which is controlled by national or sub-national government to the (in some cases minimal) extent provided for in the creating legislation.

Bodies described in the English language as "statutory corporations" exist in the following countries in accordance with the associated descriptions (where provided).

**Examples:**

State Bank of Pakistan

National Bank of Pakistan

Pakistan Television

Lahore Transport Company

Metro Bus Company

Institute of Cost &amp; Management Accountants of Pakistan

**3. Registered Company:**

Registered company is a company that is registered under a specific law of a country. In Pakistan the companies are registered under the companies' ordinance 1984. Following are the companies:

Company limited by shares

Company limited by guarantee

Unlimited company

Associations Not for profit

#### 4. Foreign Company:

“Foreign company” means a company incorporated outside Pakistan and has established a place of business in Pakistan.

Examples:

ICI

Nestle

#### 5. Government Company:

A government company is the one whose 51% shares are held by government. For example State Bank of Pakistan.

#### 6. Company Limited by Shares:

“Company limited by shares” means a company having liability of its members limited by the memorandum to the amount, if any, un-paid on the shares respectively held by them;

Liability (= legal financial responsibility)

Limited (=restricted)

Memorandum (=a legal document setting up a corporation or company)

Unpaid (=not paid; due)

Respectively (= in that order)

Thus “company limited by shares” means a company having the legal financial responsibility of its member restricted by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

#### 7. “Company Limited By Guarantee”

Company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its winding up;

Liability (= legal financial responsibility)

Limited (= restricted)

Memorandum (=a legal document setting up a corporation or company)

Respectively (=in that order)

Thereby (=by this means)

Undertake (= agree to)

Winding up (= the process of settling accounts and liquidating assets in anticipation of corporation’s dissolution.)

Thus “company limited by guarantee” means a company having the legal financial responsibility of its member restricted by the memorandum to such amount as the members may respectively agree to contribute to the assets of the company in the event of its winding up.

## 8. Unlimited Company:

Unlimited company is the one that does not limit the liability of its members limited. In other words Liability of members extends to the whole amount of liabilities of a company.

### a. Private Company:

“Private company” means a company which, by its articles, restricts the right to transfer its shares, if any;

- Restricts (= disallows) limits the number of its members to fifty not including persons who are in the employment of the company; and
- Limits (= confines) prohibits any invitation to the public to subscribe for the shares, if any, or debenture of the company;
- Prohibits (= declaring illegal)

**Provided that**, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member;

### b. Public Company:

“Public Company” means a company which is not a private company;

#### Interpretation:

Thus “public company” is the one which does not by its articles; restrict the right to transfer its shares;

- Restrict (= disallow) limit the number of its members to fifty not including persons who are in the employment of the company; and
- Limit (= confine) prohibit any invitation to the public to subscribe for the shares or debenture of the company;
- Prohibit (= declaring illegal)

- i. **Listed Company:** A listed company is the one whose securities are allowed to be traded on a stock exchange.
- ii. **Non-Listed Company:** A non-listed company is the one whose securities are not allowed to be traded on stock exchange.

## 9. Holding & subsidiary company:

**Section 3 of Companies’ Ordinance 1984 defines “subsidiary” and “holding company” as:**

- 1) For the purposes of this Ordinance, a company or body corporate (First mentioned company or body corporate) shall be deemed to be subsidiary of another if-
  - Another (=another company)
  - (a) That other company or body corporate directly or indirectly controls, beneficially owns or holds more than fifty percent of its voting securities or otherwise has power to elect and appoint more than fifty percent of its directors; or
    - That other (=another)
    - Directly (=in a direct manner)
    - Indirectly (=not directly)
    - Control (=have power over)
    - Beneficially own (= owning something by someone because use and title belong to the person even though legal title may belong to someone else especially owning property in trust)

- (b) The first mentioned company or body corporate is a subsidiary of any company or body corporate which is that other's subsidiary.  
That other (=holding)

**Provided that**, where a central depository holds more than fifty percent of the voting securities of a company, such company shall not be deemed to be a subsidiary of the central depository save where such voting securities are held beneficially by the central depository in its own behalf.

- 2) For the purpose of this Ordinance, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

### 10. Existing Company:

Existing Company means a company formed and registered under any previous companies' ordinance or companies' Act.

### Distinction between Unlimited Company and Partnership:

Sr. No.	Point of Difference	Unlimited Company	Partnership firms
1	Relevant Statute	The Companies Ordinance 1984	The Partnership Act 1932
2	Registration	Compulsory	Not Compulsory
3	Entity	It is an artificial legal person created by law	It is not an artificial legal person created by law
4	Maximum number of members	Unlimited	Not more than twenty
5	Core documents	Memorandum & Articles of Association	Partnership deed
6	Member's right to manage the business	No direct right to manage the business	Direct right to manage the business
7	Obligation to conduct statutory audit	Under statutory obligation to conduct its audit	Under no statutory obligation to conduct audit.
8	Filing of statutory annual returns with SECP	Under the obligation to file annual statutory return with SECP	Under no obligation to file annual statutory return with SECP
9	Winding up	It is wound up under the Companies Ordinance 1984	It is dissolved under the provisions of the Partnership Act 1932

**What are the points of difference between firm, Public limited company & Private Limited Company?**

**Difference between Partnership/Firm, Public Limited Company and Private Limited Company:**

Sr. No.	Points of Difference	Partnership Firms	Public Limited Company	Private Limited Company
1	Members	Minimum two members are required to form a partnership. Maximum number of partners is twenty.	Minimum three members are required to incorporate an unlisted public company. Minimum seven members are required to form a listed public company.	Minimum one member is required to incorporate a Single Member Company. Private limited company other than single member company requires minimum two members for its incorporation.
2	Regulating Law	Partnership is regulated under The Partnership Act 1932.	Public companies are regulated by The Companies Ordinance 1984	Private companies are regulated by Companies Ordinance 1984
3	Legal Entity	Partnership is not a separate legal entity different from that of its partners.	Company is a separate legal entity different from that of its shareholders.	Company is a separate legal entity different from its shareholders.
4	Liability	Liability of Partner is unlimited.	Liability of shareholder is limited up to the extent of the value of his shares in the company.	Liability of shareholder is limited to the extent of the value of his shares in the company.
5	Capital	Capital is contributed by the partners.	Public company raises capital by allotting shares to general public.	Private company raises capital through private arrangements
6	Listing on stock exchange	Partnership cannot be listed on stock exchange.	Public company can be listed on stock exchange.	Private Company cannot be listed on stock exchange.
7	Management	Subject to partnership deed all the partners have right to take active part in the management of the firm.	Board of directors carries on the business of company.	Board of directors carries on the business of company.

**“Arguments bring hidden and obscure facts to the light of reason and make them clear”.**

## Company Limited by Guarantee & Conversion of Public Company in To Private and Vice Versa

### Section: 43 Provision as to companies limited by guarantee:-

1. In the case of a company limited by guarantee and not having a share capital, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.
2. For the purpose of the provisions of this Ordinance relating to the memorandum of a company limited by guarantee and of sub-section (1) every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

### Section: 44 Conversion of public company into private company.-

No public company shall, except with the prior approval of the Commission in writing, and subject to such conditions as may be imposed by the Commission in this behalf, convert itself into a private company.

### Section: 45 Prospectus or statement in lieu of prospectus to be filed by private company on ceasing to be private company:-

1. If a company, being a private company, alters its articles in such a manner that they no longer include the provisions which, under clause (28) of sub-section (1) of section 2, are required to be included in the articles of a company in order to constitute it a private company, the company—
  - a. Shall, as on the date of the alteration, cease to be a private company; and
  - b. Shall, within a period of fourteen days after the said date, file with the registrar either a prospectus or a statement in lieu of prospectus as specified in sub-section (2) or sub-section (3).
2. Every prospectus filed under sub-section (1) shall state the matters specified in section 1 of **Part I of the Second Schedule** and set out the reports specified in section 2 of that Part, and the said sections 1 and 2 shall have effect subject to the provisions contained in section 3 of that Part.
3. Every statement in lieu of prospectus filed under sub-section (1) shall be in the form and contain the particulars set out in **section 1 of Part III of the Second Schedule** and, in the cases mentioned in **section 2 of that Part**, set out the reports specified therein, and the said sections 1 and 2 shall have effect subject to the provisions contained in **section 3 of that Part**.
4. Where the persons making any such report as is referred to in sub-section (2) or sub-section (3) have made therein, or have, without giving the reasons indicated therein, made any such adjustments as are

mentioned in **clause 36 of Part I of the Second Schedule or clause 5 of section 3 of Part III of the Second Schedule**, as the case may be, the prospectus or statement in lieu of prospectus filed as aforesaid shall have endorsed thereon or attached thereto a written statement, signed by those persons, setting out the adjustments and giving the reasons therefor.

5. If default is made in complying with the provisions of any of preceding sub-sections, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees and to a further fine not exceeding one hundred rupees for every day after the first during which the default continues.
6. Where any prospectus or statement in lieu of prospectus filed under sub-section (1) includes any untrue statement, any person who authorized the filing of such prospectus or statement shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the filing of the prospectus or statement, believe, that the statement was true.
7. For the purposes of sub-section (6),—
  - a. A statement included in a prospectus or a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
  - b. Where the omission from a prospectus or a statement in lieu of prospectus of any matter is calculated to mislead, the prospectus or statement in lieu of prospectus shall be deemed, in respect of such omission, to be a prospectus or a statement in lieu of prospectus in which an untrue statement is included.
8. For the purposes of sub-section (6) and clause (a) of sub-section (7), the expression "included" when used with reference to a prospectus or statement in lieu of prospectus, means included in the prospectus or statement in lieu of prospectus itself or contained in any report or memorandum appearing on the face thereof, or by reference incorporated therein.

**Section: 46 Consequence of default in complying with conditions constituting a company a private company.-**

Where the articles of a company include the provisions which, under clause (28) of sub-section (1) of section 2, are required to be included in the articles of a company in order to constitute it a private company, but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under this Ordinance, and this Ordinance shall apply to the company as if it were not a private company:

**Provided that** the Commission, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other ground it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Commission just and expedient, order that the company be relieved from such consequences as aforesaid.

**Section: 47 Liability for carrying on business with less than 1 or, in the case of a private company, two members.-**

If at any time the number of members of a company is reduced, in the case of a private company [other than a single member company], or in the case of any other company, and the company carries on business for more than six months while the number is so reduced, every person who is a member of the company during the



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time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two members or 4 members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued therefor without joinder in the suit of any other member.

**Note: Second Schedule of Companies Ordinance 1984 has been uploaded in the content of lesson 16.**

## Service & Authentication of Documents

### Definition of Document under section 2, sub-section (1) and clause (14)

“Document” includes summons, notice, requisition, order, other legal process, voucher and register;

### Section: 48 Service of documents on a company:-

A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under a certificate of posting or by registered post, or by leaving it at the registered office of the company.

### Section: 49 Service documents on registrar:-

A document may be served on the registrar by sending it to him at his office by registered post, or by delivering it to him, or leaving it for him at his office, against an acknowledgment of receipt.

### Section: 50 Service of notice on members, etc.:-

1. A notice may be given by a company to any member either personally or by sending it by post to him to his registered address or, if he has no registered address in Pakistan to the address, if any, within Pakistan supplied by him to the company for the giving of notices to him.
2. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.
3. If a member has no registered address in Pakistan, and has not supplied to the company an address within Pakistan for the giving of notices to him, a notice addressed to him or to the shareholder generally and advertised in a newspaper circulating in the Province or the part of Pakistan not forming part of a province in which the registered office of the company is situate shall be deemed to be duly given to him on the day on which the advertisement appears:

**Provided that** in the case of a listed company such notice shall in addition to its being published as aforesaid be also published at least in one issue each of a daily newspaper in English language and a daily newspaper in a Urdu language having circulation in the Province in which the stock exchange on which the company is listed is situate.

4. A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.
5. A notice may be given by the company to the person entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title or representatives of the deceased, or assignees of the insolvent, or by any like description, at the address, if any, in Pakistan supplied for the purpose by the person claiming to be so entitled, or until such an address has been so supplied by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

6. In addition to any other mode provided by this Ordinance for notice of any general meeting, notice of every general meeting shall be given in some manner hereinbefore authorized to—
  - a. Every member of the company except those members who, having no registered address within Pakistan, have not supplied to the company an address within Pakistan for the giving of notices to them;
  - b. Every person entitled to a share in consequence of the death or insolvency of a member who, but for his death or insolvency, would be entitled to receive, notice of the meeting; and
  - c. The auditors of the company.

**Section: 51 Authentication of documents and proceedings:-**

Save as expressly provided in this Ordinance, a document or proceeding requiring authentication by a company may be signed by the chief executive or a director, secretary or other authorized officer of the company, and need not be under its common seal.

## Prospectus

**Definition of Prospectus under Section 2 of the Companies Ordinance 1984**

**“Prospectus”** means any document described or issued as prospectus, and includes any notice, circular, advertisement, or other communication, inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate, or inviting deposits from the public, other than deposit invited by a banking company or a financial institution approved by the Federal Government, whether described as prospectus or otherwise;

**Section: 52 Prospectus to be dated:-**

A prospectus issued by or on behalf of a company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

**Section: 53 Matters to be stated and reports to be set out in prospectus:-**

1. Every prospectus issued shall state the matters specified in section 1 of Part I of the Second Schedule and set out the reports specified in section 2 of that Part and the said sections 1 and 2 shall have effect subject to the provisions contained in section 3 of that part.

**Second Schedule: Matters to be specified in the prospectus and reports to be set out therein:**

- A. The content of the Memorandum, with the names, addresses, descriptions and occupations of the signatories to the Memorandum and the number of shares subscribed for by them.

The content of the Memorandum:

- a. Name Clause
- b. Registered Office Clause
- c. Capital Clause
- d. Liability Clause
- e. Object Clause

- 
- B. The number of value of shares, if any, and the nature and extent of interest of the holder in the property and profits of the company.
  - C. The names, addresses, descriptions, occupations of:-
    - a. The directors or proposed directors;
    - b. The chief executive or proposed chief executive, if any;
    - c. The managing agent, or proposed managing agent, if any (where permissible);
    - d. The secretary or proposed secretary, if any;
  - D. Any provision in the articles or in any contract which has been entered into as the appointment of a chief executive, managing agent, if any, or secretary, the remuneration payable to him or them, and the compensation, if any, payable to him or them for loss of office.
  - E. The date and time of the opening and closing of the subscription list.
  - F. The amount payable on application on each share, and in the case of second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares allotted.
  - G. The substance of any contract or arrangement, or proposed contract or arrangement, whereby any option or preferential right of any kind has been or is proposed to be given to any person to subscribe for any shares in or debentures of, the company, given the number, description and amount of any such shares or debentures and including the following particulars of the option or right.

## Prospectus

### Definition of Prospectus under Section 2 of the Companies Ordinance 1984

**“Prospectus”** means any document described or issued as prospectus, and includes any notice, circular, advertisement, or other communication, inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate, or inviting deposits from the public, other than deposit invited by a banking company or a financial institution approved by the Federal Government, whether described as prospectus or otherwise;

### Section: 53 Matters to be stated and reports to be set out in prospectus:-

1. Every prospectus issued shall state the matters specified in section 1 of Part I of the Second Schedule and set out the reports specified in section 2 of that Part and the said sections 1 and 2 shall have effect subject to the provisions contained in section 3 of that part.

(1A) sufficient number of copies of the prospectus issued under sub-section shall be made available at the registered office of the company, with the stock exchange at which the company is listed or proposes to be listed and with the bankers to the issue, and the prospectus in its full text or in such abridged form as may be prescribed, shall be published at least in one Urdu and one English daily newspaper].

2. No prospectus shall be issued or an advertisement of a prospectus published in a newspaper less than seven days or more than thirty days before the subscription list, as specified in the prospectus, is due to open:

**Provided that** the Commission may for special reasons allow a prospectus to be issued or an advertisement of a prospectus to be published more than thirty days before the subscription list is due to open.

3. If a prospectus is issued which does not comply with the provisions of sub-section (1) or sub-section (2), every person who is knowingly responsible for the issue of such prospectus shall be liable to a fine not exceeding ten thousand rupees and in the case of a continuing default to a further fine not exceeding two hundred rupees for every day from the day of the issue of the prospectus until a prospectus complying with the requirements aforesaid is issued and a copy thereof is filed with the registrar.
4. A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
5. No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a prospectus which complies with the requirements of this section:

Provided that this sub-section shall not apply if it is shown that the form of application was issued either-

- a. In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

- b. In relation to shares or debentures which were not offered to the public.
6. If any person acts in contravention of the provisions of sub-section (5) he shall be liable to a fine not exceeding two thousand rupees.
7. A director or other person responsible for the prospectus shall not incur liability by reason of any non-compliance with, or contravention of, any of the requirements of this section, if—
- As regards any matter not disclosed, he proves that he had no knowledge thereof; or
  - He proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
  - That non-compliance or contravention was in respect of matters which, in the opinion of the registrar or officer dealing with the case, were immaterial, or was otherwise such as ought, in the opinion of that registrar or officer, as the case may be, having regard to all the circumstances of the case, reasonably to be excused:

**Provided that** no director or other person shall incur any liability in respect of the failure to include in a prospectus, a statement with respect to the matters specified in clause 18 of Part I of the Second Schedule, unless it is proved that he had knowledge of the matters not disclosed.

8. This section shall not apply—
- To issue to the existing members or debenture-holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favor of other persons; or
  - To the issue of a prospectus or form of application relating to shares or debenture which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a stock exchange; but, subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.
9. Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under any other provision of this Ordinance.

**Section: 54 Expert to be unconnected with formation or management of company:-**

A prospectus inviting persons to subscribe for shares in or debentures of a company shall not include a statement purporting to be made by an expert, unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion, or in the management, of the company.

**Section: 55 Expert's consent to issue of prospectus containing statement by him:-**

A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued, unless—

- He has given his written consent to the issue thereof with the statement included in the form and context in which it is included and has not withdrawn such consent before the delivery of a copy of the prospectus for registration; and
- A statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

**Section: 56 Penalty and interpretation:-**

1. If any prospectus is issued in contravention of section 54 or 55, the company, and every person who is knowingly a party to the issue thereof, shall be punishable with fine not exceeding five thousand rupees.
2. In section 54 and 55, the expression "expert" includes an engineer, a valuer, an accountant and every other person whose profession gives authority to a statement made by him.

**Section: 57 Approval, issue and registration of prospectus:-**

1. No listed company, and no company which proposes to make an application to a stock exchange for listing of its securities, and no other person shall issue, circulate or publish any prospectus or other document offering for subscription or publicly offering for sale any security unless approval of the Commission to its issue, circulation or publication has been obtained within the period of sixty days preceding the date of its issue.
2. [The Commission may, while according approval under sub-section (1), impose such condition as it may deem necessary];
3. No prospectus shall be issued by or on behalf of a company unless on or before the date of its publication, there has been delivered to the registrar a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing, and having endorsed thereon or attached thereto:
  - (a) Any consent to the issue of the prospectus required by section 55 from any person as an expert; and
  - (b) In the case of a prospectus issued generally, also a copy of every contract required by clause 16 of Part I of the Second Schedule to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and
  - (c) Where the persons making any report required by Part II of that Schedule have made therein, or have without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 36 of Part I of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.
4. Every prospectus to which this section applies shall, on the face of it;
  - (a) State that a copy has been delivered to the registrar as required by subsection (3);
  - (b) Specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents; and
  - (c) Where application has been made, or is proposed to be made, to a stock exchange for the listing of the security, state that such an application has been made or is proposed to be made.

**Section: 58 Terms of contract mentioned in prospectus or statement in lieu of prospectus not to be varied:-**

A company shall not, at any time, vary the terms of contract referred to in the prospectus or a statement in lieu of prospectus except subject to the approval of, or except on authority given by, the company in general meeting.

**Section: 59 Civil liability for mis-statements in prospectus:-**

1. Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes for or purchases any share or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein namely,—

- a. Every person who is a director of the company at the time of the issue of the prospectus;
- b. Every person who has authorized himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;
- c. Every person who is a promoter of the company; and
- d. Every person who has given consent to the issue of the prospectus under section 55 or sub-section (5) of section 57:

**Section: 60 Criminal liability for mis-statements in prospectus:-**

1. Where a prospectus includes any untrue statement, every person who signed or authorized the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.
2. A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given—
  - (a) The consent required by section 55 to the inclusion therein of a statement purporting to be made by him as an expert, or
  - (b) The consent required by sub-section (5) of section 57.



## Allotment of Shares & Debentures (Part I)

### Section: 67 Application for, and allotment of, shares and debentures:-

1. No application for allotment of shares in and debentures of a company in pursuance of a prospectus shall be made for shares or debentures of less than such nominal amount as the Commission may, from time to time, specify, either generally or in a particular case.

#### Contract Act, 1872

**An offer is defined** as under when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence to, he said to make a proposal.

2. The Commission may specify the form of an application for subscription to shares in or debentures of a company which may, among other matters, contain such declarations or verifications as it may, in the public interest, deem necessary; and such form then shall form part of the prospectus.
3. All certificates, statements and declarations made by the applicant shall be binding on him. Certificate is an official document to prove something.
4. An application for shares in or debentures of a company which is made in pursuance of a prospectus shall be irrevocable.
5. Whoever contravenes the provisions of sub-section (1) or sub-section (2), or makes an incorrect statement, declaration or verification in the application for allotment of shares, shall be liable to a fine which may extend to ten thousand rupees.

### Section: 68 Restriction as to allotment:-

1. No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of section 1 of Part I of the Second Schedule has been subscribed, and the full amount thereof has been paid to and received in cash by the company.
2. The amount referred to in sub-section (1) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Ordinance referred to as the minimum subscription.
3. All moneys received from applicants for shares shall be deposited and kept in a separate bank account in a schedule bank until returned in accordance with the provisions of sub-section (5) or until the certificate to commence business is obtained under section 146.

4. The amount payable on application on each share shall be the full nominal amount of the share.
5. If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for share shall be forthwith repaid to them without surcharge, and, if any such money is not so repaid within fifty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with surcharge at the rate of one and-a-half per cent for every month or part thereof from the expiration of the fiftieth day:  
**Provided that** a director shall not be liable if he proves that the default in repayment of the money was not due to any misconduct or negligence on his part.
6. Any condition purporting to require or bind any applicant for shares to waive compliance with any requirement of this section shall be void.
7. This section, except sub-section (4) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.
8. In the case of the first allotment of shares capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription, that is to say:
  - a. The amount, if any, fixed by the memorandum or articles and specified in the statement in lieu of prospectus as the minimum subscription referred to in sub-section (1) upon which the directors may proceed to allotment; or
  - b. If no amount is so fixed and specified, the whole amount of the share capital other than that issued or agreed to be issued as paid up otherwise than in cash; has been subscribed and the full nominal amount of each share payable in cash has been paid to and received by the company.
9. Sub-section (8) shall not apply to a private company.
10. In the event of any contravention of any provisions of this section, every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding ten thousand rupees and in the case of a continuing contravention to a further fine not exceeding two hundred rupees for every day after the first during which the contravention continues

**Section: 69 Statement in lieu of prospectus:-**

1. A company having a share capital, which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless, at least three days before the first allotment of either share or debenture, there has been delivered to the registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in section 1 of Part II of the Second Schedule and, in the cases mentioned in section 2 of that Part, setting out the reports specified therein, and the said section 1 and 2 shall have effect subject to the provisions contained in section 3 of that Part.

2. Every statement in lieu of prospectus delivered under sub-section (1), where the person making any such report as aforesaid have made therein, or have without giving the reason indicated therein, made any such adjustments as are mentioned in clause 5 of Part II of the Second Schedule, shall have endorsed thereon or attached thereto a written statement signed by those persons, setting out the adjustments and giving the reasons thereof.
3. This section shall not apply to a private company.
4. If a company acts in contravention of sub-section (1) or sub-section (2), the company, and every officer of the company who willfully authorizes or permits the contravention, shall be liable to a fine not exceeding five thousand rupees and in the case of a continuing contravention with a further fine not exceeding one hundred rupees for every day after the first during which the contravention continues.
5. Where a statement in lieu of prospectus delivered to the registrar under sub-section (1) includes any untrue statement, any person who signed or authorized the delivery of the statement in lieu of prospectus for registration shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of delivery for registration of the statement in lieu of prospectus believe, that the statement was true.
6. For the purposes of this section:
  - a. A statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
  - b. Where the omission from a statement in lieu of prospectus of any matter is calculated to mislead, the statement in lieu of prospectus shall be deemed, in respect of such omission, to be a statement in lieu of prospectus in which an untrue statement is included.
7. For the purposes of sub-section (5) and clause (a) of sub-section (6), the expression "included", when used with reference to a statement in lieu of prospectus, means included in the statement in lieu of prospectus itself or contained in any report or memorandum appearing on the face thereof, or by reference incorporated therein, or issued therewith.

## Allotment of Shares & Debentures (Part II)

### Section: 70 Effect of irregular allotment:-

1. An allotment made by a company to an applicant in contravention of the provisions of section 68 or 69 shall be voidable at the instance of the applicant within thirty days after the holding of the statutory meeting of the company and not later, or in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting within thirty days after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.
2. If any officer of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of section 68 or 69 with respect to allotment, he shall, without prejudice to any other liability, be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

**Provided that** proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

### Section: 71 Repayment of money received for shares not allotted:-

1. Where a company issues any invitation to the public to subscribe for its shares or other securities, the company shall take a decision within ten days of the closure of the subscription lists as to what applications have been accepted or are successful and refund the money in the case of the unaccepted or unsuccessful applications within ten days of the date of such decision.
2. If the refund required by sub-section (1) is not made within the time specified therein, the directors of the company shall be jointly and severally liable to repay that money with surcharge at the rate of one and-a-half per cent. for every month or part thereof from the expiration of the fifteenth day and, in addition, to a fine not exceeding five thousand rupees and in the case of a continuing offence to a further fine not exceeding one hundred rupees for every day after the said fifteenth day on which the default continues:  
**Provided that** a director shall not be liable if he proves that the default in the repayment of money was not due to any misconduct or negligence on his part.
3. Any condition purporting to require or bind any applicant for shares or other securities to waive any requirement of this section shall be void.

### Section: 72 Allotment of shares and debentures to be dealt in on stock exchange:-

1. Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the seventh day after the first issue of the prospectus or if the permission has not been granted before the expiration of twenty-one days from the date of the closing of the subscription lists or such longer period not exceeding forty-two days as may, within the said twenty-one days, be notified to the applicant for permission by or on behalf of the stock exchange.

2. Where the permission has not been applied for as aforesaid, or has not been granted as aforesaid the company shall forthwith repay without surcharge all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money from the expiration of the eight day together with surcharge at the rate of one and-a-half per cent. for every month or part thereof from the expiration of the eighth day and in addition, to a fine not exceeding five thousand rupees and in the case of a continuing offence to a further fine of one hundred rupees for every day after the said eight day on which the default continues:  
**Provided that** a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
3. All moneys received as aforesaid shall be deposited and kept in a separate bank account in a scheduled bank so long as the company may become liable to repay it under sub-section (2); and, if default is made in complying with this sub-section, the company and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to a fine not exceeding five thousand rupees.
4. Any condition purporting to require or bind any applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

**Section: 73 Return as to allotments:-**

1. Whenever a company having a share capital makes any allotment of its shares, the company shall, within thirty days thereafter,-
  - a. File with the registrar a return of the allotment, stating the number and nominal amount of the shares comprised in the allotment 1[and such particulars as may be prescribed] of each allottee, and the amount paid on each share; and
  - b. In the case of shares allotted as paid up otherwise than in cash, produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the amount to be treated as paid-up, and the consideration for which they have been allotted; and
  - c. File with the registrar—
    - i. In the case of bonus shares, a return stating the number and nominal amount of such shares comprised in the allotment and 2[such particulars which may be prescribed] of each allottee together with a copy of the resolution authorizing the issue of such shares;
    - ii. In the case of issue of shares at a discount, a copy of the resolution passed by the company authorizing such issue together with a copy of the order of the Commission sanctioning the issue, and where the maximum rate of discount exceeds ten per cent, a copy of the order of the Commission permitting the issue at the higher percentage.

2. Where such a contract as is mentioned in clause (b) of sub-section (1) is not reduced to writing, the company shall, within thirty days after the allotment, file with the registrar the prescribed particulars of the contract stamped with the same stamp duly as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1899 (II of 1899), and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.
3. If the registrar is satisfied that in the circumstances of any particular case the period of thirty days specified in sub-sections (1) and (2) for compliance with the requirements of this section is inadequate, he may extend that period as he thinks fit, and, if he does so, the provisions of sub-sections (1) and (2) shall have effect in that particular case as if for the said period of thirty days the extended period allowed by the registrar were substituted.
4. If default is made in complying with any requirement of this section, the company and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.
5. This section shall apply mutatis mutandis to shares which are allotted or issued or deemed to have been issued to a scheduled bank or a financial institution in pursuance of any obligation of a company to issue shares to such scheduled Bank or financial institution:

**Section: 74 Limitation of time for issue of certificates:-**

1. Every company shall, within ninety days after the allotment of any of its shares, debentures or debenture stock, and within forty-five days after the application for the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, and unless sent by post or delivered to the person entitled thereto, within that period, shall give notice of this fact to the shareholders or debenture-holders, as the case may be, immediately thereafter in the manner prescribed, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

**Provided that** the company shall, within five days after an application is made for the registration of the transfer of any shares, debentures or debenture stock to a central depository, register such transfer in the name of the central depository.

**Explanation:** The expression "transfer", for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

2. If default is made in complying with the requirements of sub-section (1) the company, and every officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

**Section: 75 Issue of duplicate certificates:-**

1. A duplicate of a certificate of shares, debentures or debenture stock issued under section 74 shall be issued by the company within forty-five days from the date of application if the original—

- a. Is proved to have been lost or destroyed, or
  - b. Having been defaced or mutilated or torn is surrendered to the company.
2. The company, after making such inquiry as to the loss, destruction, defacement or mutilation of the original, as it may deem fit to make, shall, subject to such terms and conditions, if any, as it may consider necessary, issue the duplicate:  
  
**Provided that** the company shall not charge fee exceeding the sum prescribed and the actual expenses incurred on such inquiry.
3. If the company for any reasonable cause is unable to issue duplicate certificate, it shall notify this fact, along with the reasons within thirty days from the date of the application, to the applicant.
4. If default is made in complying with the requirements of this section, the company and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees.
5. If a company with intent to defraud, renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to twenty thousand rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

## Transfer of Shares and Debentures

### Section: 76 Transfer of shares and debentures:-

1. An application for registration of the transfer of shares and debentures in a company may be made either by the transferor or the transferee, and subject to the provisions of this section, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application was made by the transferee:

**Provided that** the company shall not register a transfer of shares or debentures unless proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip.

2. Where a transfer deed is lost, destroyed or mutilated before its lodgment, the company may on an application made by the transferee and bearing the stamp required by an instrument of transfer, register the transfer of shares or debentures if the transferee proves to the satisfaction of the directors of the company that the transfer deed duly executed has been lost, destroyed or mutilated:

**Provided that** before registering the transfer of shares or debentures the company may demand such indemnity as it may think fit.

3. All references to the shares or debentures in this section, shall in case of a company not having share capital, be deemed to be references to interest of the members in the company.
4. Every company shall maintain at its registered office a register of transfers of shares and debentures made from time to time and such register shall be open to inspection by the members and supply of copy thereof in the manner stated in section 150.
5. Nothing in sub-section (1) shall prevent a company from registering as shareholder or debenture-holder a person to whom the right to any share or debenture of the company has been transmitted by operation of law.
6. In the case of a public company, a financial institution duly approved by the Commission may be appointed as the transfer agent on behalf of the company.
7. If a company makes default in complying with any of the provisions of sub-sections (1) to (4), it shall be liable to a fine not exceeding five thousand rupees and every officer of the company who is knowingly or willfully a party to such default shall be liable to a like penalty.

### Section: 77 Director not to Refuse of Shares:-

The directors of a company shall not refuse to transfer any fully paid shares or debentures unless the transfer deed is, for any reason, defective or invalid:

**Provided that** the company shall within thirty days 1[or, where the transferee is a central depository, within five days] from the date on which the instrument of transfer was lodged with it notify the defect or invalidity to the transferee who shall, after the removal of such defect or invalidity, be entitled to relodge the transfer deed with the company:

**Provided further that** the provisions of this section shall, in relation to a private company, be subject to such limitations and restrictions as may have been imposed by the articles of such company.



**Section: 78 Notice of refusal to transfer:-**

1. If a company refuses to register a transfer of any shares or debentures, the company shall, within thirty days after the date on which the instrument of transfer was lodged with the company, send to the transferee notice of the refusal indicating reasons for such refusal.
2. If default is made in complying with section 77 or this section, the company and every officer of the company who is a party to the default shall be liable to a fine not exceeding 1[twenty] thousand rupees and to a further fine not exceeding 2[one thousand] rupees for every day after the first during which the default continues.

**Section: 78A Appeal against refusal for registration of transfer:-**

1. The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Commission against any refusal of the company to register the transfer or transmission, or against any failure on its part, within the period referred to in sub-section (1) of section 78 either to register the transfer or transmission or to send notice of its refusal to register the same.
2. An appeal to the Commission under sub-section (1) may be preferred-
  - a. In case the appeal is against the refusal to register a transfer or transmission, within two months of the receipt by him of the notice of refusal; and
  - b. In case the appeal is against the failure referred to in sub-section (1) within two months from the expiry of the period referred to in sub-section (1) of section 78.
3. The Commission shall, after causing reasonable notice to be given to the company and also to the transferor and the transferee or, as the case may require, to the person giving intimation of the transmission by operation of law and the previous owner, if any, and giving them a reasonable opportunity to make their representation, may, by an order in writing, direct either that the transfer or transmission shall be registered by the company or that it need not be registered by it and in the former case, the company shall give effect to the decision within fifteen days of the receipt of the order.
4. Before making an order under sub-section (3) on an appeal against any refusal of the company to register any transfer or transmission the Commission may require the company to disclose to it the reasons for such refusal.
5. The Commission may, in its aforesaid order, give such incidental and consequential directions as to the payment of costs or otherwise as it deems fit.
6. If default is made in giving effect to the order of the Commission within the period specified in sub-section (3), every director and officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees, for every day after the first during which the default continues.]

**Section: 79 Transfer to successor-in-interest:-**

The transfer of shares or debentures from a deceased member or holder to his lawful nominee successor-in-interest shall be made on application by such nominee successor duly supported by a document evidencing

nomination or lawful award of the relevant property to such nominee or successor and thereupon the nominee or successor shall be entered as a member:

**Provided that** the company may, on furnishing of a suitable indemnity by such nominee or successor, proceed to transfer the security in his name and enter him in the register of members.

**Section: 80 Transfer to nominee of a deceased member:-**

1. Notwithstanding anything contained in any other law for the time being in force or in any disposition by a member of a company of his interest represented by the shares held by him as a member of the company, a person may on acquiring interest in a company as member, represented by shares, at any time after acquisition of such interest deposit with the company a nomination conferring on one or more persons the right to acquire the interest in the shares therein specified in the event of his death:

**Provided that**, where a member nominates more than one person, he shall specify in the nomination the extent of right conferred upon each of the nominees, so however that the number of shares therein specified are possible of ascertainment in whole numbers.

2. Where any nomination, duly made and deposited with the company as aforesaid, purports to confer upon any person the right to receive the whole or any divisible part of the interest therein mentioned, the said person shall, on the death of the member, become entitled to the exclusion of all other persons, to become the holder of the shares or the part thereof, as the case may be, and on receipt of proof of the death of the member along with the relative scrips, the transmission of the said shares shall be registered in favor of the nominee to the extent of his interests unless—
  - a. Such nomination is at any time varied by another nomination made and deposited before the death of the member in like manner or expressly cancelled by notice in writing to the company; or
  - b. Such nomination at any time becomes invalid by reason of the happening of some contingency specified therein and if the said person predeceases the member, the nomination shall, so far as it relates to the right conferred upon the said person, become void and of no effect:

**Provided that** where provision has been duly made in the nomination conferring upon some other person such right instead of the person deceased, such right shall, upon the deceased as aforesaid of the said person, pass to such other person.

3. The person to be nominated as aforesaid shall not be a person other than the following relatives of the member, namely, a spouse, father, mother, brother, sister and son or daughter, including a step or adopted child.
4. The nomination as aforesaid shall in no way prejudice the right of the member making the nomination to transfer, dispose of or otherwise deal in the shares owned by him during his lifetime and shall have effect in respect of the shares owned by the said member on the day of his death.

**Section: 81 Transfer by nominee or legal representative:-**

A transfer of the shares or debentures or other interest of a deceased member of a company made by his nominee or legal representative shall, although the nominee or legal representative is not himself a member, be as valid if he had been a member at the time of execution of the instrument of transfer.

## Commission, Discount, Premium & Redeemable Preference Shares

### Section: 82 Power to pay certain commission, and prohibition of payment of other commissions, discounts, etc.:-

1. It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in or debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in or debentures of the company if;
  - a. The payment of the commission is authorized by the articles;
  - b. The commission paid or agreed to be paid does not exceed such rate per cent of amount as may generally or in a particular case be fixed by the Commission; and
  - c. The amount or rate per cent of the commission paid or agreed to be paid is;
    - i. In the case of shares or debentures offered to the public for subscription, disclosed in the prospectus; or
    - ii. In the case of shares or debentures not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar for registration and, where a circular or notice, not being a prospectus, inviting subscription for the shares or debentures, is issued, also disclosed in that circular or notice; and
  - d. The number of shares or debentures which persons have agreed for a commission to subscribe absolutely is disclosed in the manner aforesaid.
2. Save as aforesaid and save as provided in section 84, no company shall allot any of its shares or debentures, or apply any of its moneys, either directly or indirectly, in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in or debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in or debentures of the company, whether the shares, debentures or money be so allotted or applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.
3. Nothing in this section shall effect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, but brokerage shall not in any case exceed one per cent of the price at which shares or debentures issued have been actually and not merely sold through the broker or shall be paid at not more than such other rate per cent as may from time to time be specified by the Commission, generally or in a particular case.

4. A vendor, promoter, or other person who receives payment in shares, debentures or money from a company shall have and shall be deemed always to have had power to apply any part of the shares, debentures or money so received in payment of any commission the payment of which, if made directly by the company, would have been legal under this section.
5. If default is made in complying with the provisions of this section, the company and every officer of the company who knowingly and willfully is in default shall;
  - a. For non-compliance with the provisions of clause (b) a sub-section (1), be liable to a fine not exceeding two thousand rupees;
  - b. For non-compliance with the provisions of clause (c) or clause (d) of that sub-section, be liable to a fine not exceeding one thousand rupees; and
  - c. For non-compliance with any other provision of this section, be liable to a fine not exceeding five hundred rupees.

**Section: 83 Application of premium received on issue of shares:-**

1. Where a company issues shares at a premium, whether in cash or otherwise, a sum equal to the aggregate amount or the value of the premiums on those shares shall be transferred to an account, to be called "the share premium account"; and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up capital of the company.
2. The share premium account may, notwithstanding anything contained in sub-section (1), be applied by the company—
  - a. In writing off the preliminary expenses of the company;
  - b. In writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
  - c. In providing for the premium payable on the redemption of any redeemable preference shares or debentures of the company; or
  - d. In paying up un-issued shares of the company to be issued to members of the company as fully paid bonus shares.
3. Where a company has before the commencement of this Ordinance, issued any shares at a premium, this section shall apply as if the shares had been issued after such commencement:

**Provided that** any part of the premium which has been so applied that it does not at the commencement of this Ordinance form an identifiable part of the company's reserves within the meaning of the Fourth Schedule or the Fifth Schedule shall be disregarded in determining the sum to be included in the share premium account.

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**Section: 84 Power to issue shares at a discount:-**

1. Subject to the provisions of this section, it shall be lawful for a company to issue shares in the company at a discount:

**Provided that—**

- a. The issue of the shares at a discount must be authorized by resolution passed in general meeting of the company and must be sanctioned by the Commission;
  - b. The resolution must specify the maximum rate of discount, at which shares are to be issued;
  - c. Not less than one year must at the date of issue have elapsed since the date on which the company was entitled to commence business; and;
  - d. The share to be issued at a discount must be issued within sixty days after the date on which the issue is sanctioned by the Commission or within such extended time as the Commission may allow.
2. Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the Commission for an order sanctioning the issue; and on such application the Commission may, if, having regard to all the circumstances of the case, it thinks proper so to do, make an order sanctioning the issue on such terms and conditions as it thinks fit.
  3. Issue of shares at a discount shall not be deemed to be reduction of capital.
  4. Every prospectus relating to the issue of shares, and every balance sheet issued by the company subsequent to the issue of shares, shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus or balance sheet.
  5. If default is made in complying with sub-section (4), the company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand rupees.

## Redemption of Preference Shares ---- Regulation of Deposits

### Section: 85 Redemption of preference shares:-

1. Subject to the provisions of this section, a company limited by shares may redeem the preference shares issued by it:

#### Provided that:-

- a. No such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or from out of a sinking fund created for this purpose or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or out of sale proceeds of any property of the company;
  - b. No such shares shall be redeemed unless they are fully paid;
  - c. Where any such shares are redeemed otherwise than out of the proceeds of the fresh issue, there shall be out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called “the capital redemption reserve fund”, a sum equal to the amount applied in redeeming the shares, and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company;
  - d. Where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of the profits of the company before the shares are redeemed or out of the share premium account.
2. If a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who knowingly and willfully is in default shall be liable to a fine not exceeding five thousand rupees.

### Section: 86 Further issue of capital:-

1. Where the directors decide to increase the capital of the company by the issue of further shares, such shares shall be offered to the members in proportion to the existing shares held by each member, irrespective of class, and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time, within which the offer, if not accepted, will be deemed to be declined:

**Provided that** the Federal Government may, on an application made by any public company on the basis of special resolution passed by it, allow such company to raise its further capital without issue of right shares:

**Provided further that** a public company may reserve a certain percentage of further issue of its employees under “Employees Stock Option Scheme” to be approved by the Commission in accordance with the rules made under this Ordinance.

2. The offer of new shares shall be strictly in proportion to the number of existing shares held: Provided that fractional shares shall not be offered and all fractions less than a share shall be consolidated and disposed of by the company and the proceeds from such disposition shall be paid to such of the entitled shareholders as may have accepted such offer.
3. The offer of new shares shall be accompanied by a circular duly signed by the directors or an officer of the company authorized by them in this behalf in the form prescribed by the Commission containing

material information about the affairs of the company, latest statement of the accounts and setting forth the necessity for issue of further capital.

4. A copy of the circular referred to in sub-section (3) duly signed by the directors or an officer authorized as aforesaid shall be filed with the registrar before the circular is sent to the shareholders.
5. The circular referred to in sub-section (3) shall specify a date by which the offer, if not accepted, will be deemed to be declined.
6. Omitted by the Finance Act, 1 of 1995.
7. If the whole or any part of the shares offered under sub-section (1) is declined or is not subscribed, the directors may allot and issue such shares in such manner as they may deem fit].

**Section: 87 Issue of shares in lieu of outstanding balance of any loans, etc.:-**

**Notwithstanding** anything contained in section 86 or the memorandum and articles, a company may issue ordinary shares or grant option to convert into ordinary shares the outstanding balance of any loans, advances or credit, as defined in the Banking Companies Ordinance, 1962 (LVII of 1962), or other non-interest bearing securities and obligations outstanding or having a term of not less than three years in the manner provided in any contract with any scheduled bank or a financial institution to the extent of twenty percent of such balance:

**Provided that** such shares shall not be issued or option to convert the outstanding balance exercised unless in any two of the preceding three years after expiry of two years from the date of commencement of commercial production, the return on such non-interest bearing securities, obligations, loans, advances or credit has fallen below the minimum rate of return laid down by the State Bank of Pakistan for the said years.]

**Section: 88 Deposits not to be invited without issuing an advertisement:-**

1. The Federal Government may prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited, accepted or retained by a company.
2. No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless—
  - a. Such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1); and
  - b. An advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed.
3. The provisions of this Ordinance relating to a prospectus shall, so far as may be, apply to an advertisement referred to in sub-section (2).
4. Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in excess of the limits prescribed under sub-section (1) or in contravention of the manner or conditions prescribed under that sub-section or in contravention of the provisions of sub-section (2), as the case may be,—
  - a. The company shall be punishable,—
    - i. Where such contravention relates to the acceptance of any deposit, with fine which shall not be less than the amount of the deposits so accepted; and
    - ii. Where such contravention relates to the invitation for any deposit, with fine which may extend to twenty thousand rupees; and
  - b. Every officer of the company which is in default shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

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**Explanation:--** For the purposes of this section, “deposit” means any deposit of money with, and includes any amount borrowed by, a company, but shall not include a loan raised by issue of debentures or a loan obtained from a banking company or financial institution.

5. Nothing contained in this section shall apply to—
  - i. A banking company, or
  - ii. Such other class of companies as the Commission may specify in this behalf.



## Nature of shares and certificates of shares

### Section: 89 Nature of shares and certificate of shares:-

1. The shares or other interest of any member in a company shall be moveable property, transferable in the manner provided by the articles of the company.
2. Each share in a company shall have a distinctive number.
3. A certificate under the common seal of the company specifying any shares held by any member shall be prima facie evidence of the title of the member to the shares therein specified.

### Section: 90 Classes and kinds of share capital:-

A company limited by shares may have different kinds of share capital and classes therein as provided by its memorandum and articles:

**Provided that** different rights and privileges in relation to the different classes of shares may only be conferred in such manner as may be prescribed.

### Section: 91 only fully paid shares to be issued:-

No company shall issue partly paid shares:

**Provided that** where a company has partly paid shares on the commencement of this Ordinance, it—

- (i) Shall not issue any further share capital until all the shares previously issued has become fully paid up; and
- (ii) Shall pay dividend only in proportion to the amount paid up on each share.

### Section: 92 Power of company limited by shares to alter its share capital:-

1. A company limited by shares, if so authorized by its articles, may alter the conditions of its memorandum so as to—
  - a. Increase its share capital by such amount as it thinks expedient;
  - b. Consolidate and divide the whole or any part of its share capital into shares of larger amount than its existing shares;
  - c. Sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum; or
  - d. Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the share so cancelled: Provided that, in the event of consolidation or sub-division of shares, the rights attaching to the new shares shall be strictly proportional to the rights attaching to the previous shares so consolidated or sub-divided: Provided further that, where any shares issued are of a class which is the same as that of shares previously issued, the rights attaching to the new shares shall be the same as those attaching to the shares previously held.

2. The new shares issued by a company shall rank “Pari Passu” with the existing shares of the class to which the new shares belong in all matters, including the right to such bonus or right issue and dividend as may be declared by the company subsequent to the date of issue of such new shares.
3. The powers conferred by sub-section (1) shall be exercisable by the company only in a general meeting.
- 3A Notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, where the authorized capital of a company is fully subscribed, or the un-subscribed capital is insufficient, the same shall be deemed to have been increased to the extent necessary for issue of shares to a scheduled bank or financial institution in pursuance of any obligation of the company to issue shares to such scheduled bank or financial institution.]
4. A cancellation of shares in pursuance of sub-section (1) shall not be deemed to be a reduction of share capital within the meaning of this Ordinance.
5. The company shall file with the registrar notice of the exercise of any power referred to in sub-section (1) within fifteen days from the exercise thereof.

**Section: 93 Notice to registrar of consolidation of share capital, etc.:-**

1. Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, it shall, within fifteen days of the consolidation and division, file notice with the registrar of the same, specifying the shares consolidated and divided.
2. If a company makes default in complying with the requirements of sub-section (5) of section 92 or sub-section (1) of this section, it shall be liable to a fine which may extend to one hundred rupees for every day during which the default continues, and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to the like penalty.

**Section: 94 Notice of increase of share capital or of members:-**

1. Where a company having a share capital has resolved to increase its share capital beyond the authorized capital 2[or such capital is increased under sub-section (3-A) of section 92] and where a company not having a share capital has resolved to increase the number of its members beyond the number previously registered, it shall file with the registrar, within fifteen days after the passing of the resolution, a notice of the increase of capital or members, as the case may be, and the registrar shall record the increase:

**Provided that** where default is made by a company in filing a notice of increase in the authorized capital under sub-section (3-A) of section 92, the scheduled bank or the financial institution to whom shares have been issued may file notice of such increase with the registrar and such notice shall be deemed to have been filed by the company itself and the scheduled bank or financial institution shall be entitled to recover from the company the amount of any fee properly paid by it to the registrar in respect of such increase.

2. The notice to be given under sub-section (1) shall include particulars of the shares to be affected and the conditions, if any, subject to which the new shares are to be issued.

3. If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine which may extend to one hundred rupees for every day during which the default continues, and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to the like penalty.
4. No resolution referred to in sub-section (1) shall take effect unless the notice required by that sub-section to be filed with the registrar is duly sent to him.

## Reduction of Share Capital

### Section: 96 Reduction of share capital:-

1. Subject to confirmation by the Court, a company limited by shares, if so authorized by its articles, may by special resolution reduce its share capital in any way, and in particular and without prejudice to the generality of the foregoing powers may—
  - a. Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
  - b. Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or un-represented by available assets; or
  - c. Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the needs of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

2. A special resolution under sub-section (1) is in this Ordinance referred to as a resolution for reducing share capital.

### Section: 97 Application to Court for confirming order:-

Where a company has passed a resolution for reducing share capital, it may apply by a petition to the Court for an order confirming the reduction.

### Section: 98 Addition to name of company of “and reduced”:-

On and from the passing by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any share-holder of any paid-up share capital, then on and from the making of the order confirming the reduction, the company shall, unless otherwise directed by the Court for any special reasons, add to its name until such date as the Court may fix, the words "and reduced" as the last words thereof, and those words shall, until that date, be deemed to be part of the name of the company:

**Provided that**, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital, or payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense with the addition of the words "and reduced".

### Section: 99:- Objection by creditors and settlement of list of objecting creditors:-

Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who, on the date fixed by the Court, is entitled to any debt or claim which, if that date were the date of commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

1. The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

## Reduction of Share Capital

### Section: 96 Reduction of share capital:-

3. Subject to confirmation by the Court, a company limited by shares, if so authorized by its articles, may by special resolution reduce its share capital in any way, and in particular and without prejudice to the generality of the foregoing powers may—
  - a. Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
  - b. Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or un-represented by available assets; or
  - c. Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the needs of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

4. A special resolution under sub-section (1) is in this Ordinance referred to as a resolution for reducing share capital.

### Section: 97 Application to Court for confirming order:-

Where a company has passed a resolution for reducing share capital, it may apply by a petition to the Court for an order confirming the reduction.

### Section: 98 Addition to name of company of “and reduced”:-

On and from the passing by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any share-holder of any paid-up share capital, then on and from the making of the order confirming the reduction, the company shall, unless otherwise directed by the Court for any special reasons, add to its name until such date as the Court may fix, the words "and reduced" as the last words thereof, and those words shall, until that date, be deemed to be part of the name of the company:

**Provided that**, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital, or payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense with the addition of the words "and reduced".

### Section: 99:- Objection by creditors and settlement of list of objecting creditors:-

2. Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who, on the date fixed by the Court, is entitled to any debt or claim which, if that date were the date of commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

3. The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

**Section: 100 Power to dispense with consent of creditor on security being given for his debt:-**

1. Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating as the Court may direct, the following amount, that is to say,—
  - i. if the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; and
  - ii. If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry, and adjudication as if the company were being wound up by the Court.

**Section: 101 Order confirming reduction:-**

If the Court is satisfied with respect to every creditor of the company who under this Ordinance is entitled to object to the reduction that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, the Court may make an order confirming the reduction on such terms and conditions as it thinks fit.

**Section: 102 Registration of order and minute of reduction:-**

1. The registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and on the filing with him of a certified copy of the order and of a minute approved by the Court and showing with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid-up on each share, shall register the order and minute.
2. A resolution for reducing share capital as confirmed by an order of the Court registered under subsection (1) shall take effect on such registration and not before.
3. Notice of the registration shall be published in such manner as the Court may direct.
4. The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

**Section: 103 Minute to form part of memorandum:-**

1. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally

incorporated therein, and shall be embodied in every copy of the memorandum issued after its registration.

2. If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine which may extend to fifty rupees for each copy in respect of which default is made, and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to the like penalty.

**Section: 104 Liability of members in respect of reduced shares:-**

1. A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount paid, or, as the case may be, the received amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

**Provided that,** if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Ordinance with respect to winding up by the Court, to pay the amount of his debt or claim, then—

- i. Every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt, or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and
  - ii. If the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.
2. Noting in this section shall affect the rights of the contributories among themselves.

**Section: 105 Penalty on concealment of name of creditor:-**

If any officer of the company willfully conceals the name of any creditor entitled to object to the reduction, or willfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

**Section: 106 Publication of reasons for reduction:-**

In the case of reduction of share capital, the Court may require the company to publish in the manner specified by the Court the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

**Section: 107 Increase and reduction of share capital in case of a company limited by guarantee having a share capital:-**

A company limited by guarantee may, if it has a share capital and is so authorized by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Ordinance.

## Variation of Shareholder's Rights

### Section: 108 Variation of shareholder's rights:-

1. The variation of the right of shareholders of any class shall be effected only in the manner laid down in section 28.
2. Not less than ten per cent of the class of shareholders who are aggrieved by the variation of their rights under sub-section (1) may, within thirty days of the date of the resolution varying their rights, apply to the Court for an order canceling the resolution: Provided that the Court shall not pass such an order unless it is shown to its satisfaction that some facts which would have had a bearing on the decision of the shareholders were withheld by the company in getting the aforesaid resolution passed or, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant.
3. An application under sub-section (2) may be made on behalf of the shareholders entitled to make it by such one or more of their number as they may authorize in writing in this behalf.
4. The decision of the Court on any such application shall be final.
5. The company shall, within fifteen days after the service on the company of any order made on any such application, forward a copy of the order to the registrar and, if default is made in complying with this provision, the company and every officer of the company who is knowingly and willfully in default shall be liable to a fine which may extend to two hundred rupees for each day during which the default continues.
6. The expression "variation" includes abrogation, revocation or enhancement.
7. Section 5 of the Limitation Act 1908 (IX of 1908), shall apply to an application made under sub-section (2).

### Section 5 of the Limitation Act 1908 (IX of 1908): Extension of period in certain case:-

An appeal or application for [a revision or] a review of judgment or for a leave to appeal or any other application to which this section may be made applicable [by or under any enactment] for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.



## Registration of Mortgages & Charges

### Section: 121 Certain mortgages and charges to be void if not registered:-

*“Mortgage is a convince of title of property given as a security for the payment of a debt and that becomes on payment of debt.”*

1. Every mortgage, charge or other interest created after the commencement of this Ordinance by a company and being either:
  - a. A mortgage or charge for the purpose of securing any issue of debentures; or
  - b. A mortgage or charge on uncalled share capital of the company; or
  - c. A mortgage or charge on any immovable property wherever situate, or any interest therein; or
  - d. A mortgage or charge on any book debts of the company; or
  - e. A mortgage or charge, not being a pledge, on any movable property of the company; or
  - f. A floating charge on the undertaking or property of the company, including stock-in-trade; or
  - g. A mortgage or charge on a ship or any share in a ship; or
  - h. A mortgage or charge on goodwill, on a patent or license under patent on, a trade mark, or on a copyright or a license under a copyright; or
  - i. A mortgage or charge or other interest based on agreement for the issue of [any instrument in the nature of redeemable capital]; or
  - j. A mortgage or charge or other interest based on a Musharika agreement; or
  - k. A mortgage or charge or other interest based on hire-purchase or leasing agreement for acquisition of fixed assets;

Shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with a copy of the instrument, if any, verified in the prescribed manner, by which the mortgage or charge is created or evidenced are filed with the registrar for registration in the manner required by this Ordinance within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable:

#### Provided that:

- i. In the case of a mortgage or charge created out of Pakistan comprising solely property situate outside Pakistan, twenty-one days after the date on which the instrument or copy could, in due course of post, and if dispatched with due diligence, have been received in Pakistan shall be substituted for twenty-one days after the date of the creation of the mortgage or charge as the time within which the particulars and instrument or copy are to be filed with the registrar; and
- ii. Where mortgage or charge is created in Pakistan but comprises property outside Pakistan, the instrument creating or purporting to create the mortgage or charge and a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate ; and

- iii. Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purpose of this sub-section be treated as a mortgage or charge on those book debts; and
  - iv. The holding of debentures entitling the holder to a charge on immovable property shall not be deemed to be an interest in immovable property.
2. Where any mortgage or charge on any property of a company required to be registered under sub-section (1) has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration.

**Section: 122 Registration of charges on properties acquired subject to charge:-**

1. Where a company registered in Pakistan acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy, certified in the prescribed manner to be a correct copy of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar for registration in the manner required by this Ordinance within twenty-one days after the date on which the acquisition is completed:

**Provided that,** if the property is situate and the charge was created outside Pakistan, twenty-one days after the date on which the copy of the instrument could in due course of post, and if dispatched with due diligence, have been received in Pakistan shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

2. If default is made in complying with this section, the company and every officer of the company who is knowingly and willfully in default shall be liable to a fine of two thousand rupees.

**Section: 123 Particulars in case of series of debentures entitling holders “Pari Passu”:-**

1. Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled “Pari passu” is created by a company, it shall be sufficient for the purposes of section 121 if there are filed with the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars, namely:
  - a. The total amount secured by the whole series;
  - b. The dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined;
  - c. A general description of the property charged; and
  - d. The names of the trustees, if any, for the debenture-holders; together with a copy of the deed verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register:

**Provided that**, where more than one issue is made of debentures in the series, there shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

**Section: 124 Particulars in case of commission, etc., on debentures:-**

Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure the particulars required to be filed for registration under section 121 and 123 shall include particulars as to the amount or rate per cent, of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

**Provided that**, the deposit of any debentures as security for any debt of the company shall not for the purposes of this section be treated as issue of the debentures at a discount.

**Section: 125 Register of mortgages and charges:-**

1. The registrar shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company and requiring registration under section 121 or section 122 and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage, or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.
2. A register kept in pursuance of sub-section (1) shall be open to inspection by any person on payment of the prescribed fee.

**Section: 126 Index to register of mortgages and charges:-**

The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Ordinance.

**Section: 127 Certificate of registration:-**

The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 121, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of section 121 to 125 as to registration have been complied with.

**Section: 128 Endorsement of certificate of registration on debenture or certificate of debenture stock:-**

The company shall cause a copy of every certificate of registration given under section 127 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the mortgage or charge so registered:

**Provided that**, nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

**Section: 129 Duty of company and right of interested party as regards registration:-**

1. It shall be the duty of a company to file with the registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issue of debentures of a series, requiring registration under section 121, but registration of any such mortgage or charge may be effected on the application of any person interested therein.
2. Where the registration is affected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.
3. Whenever the terms or conditions or extent or operation of any mortgage or charge registered under sub-section (1) are modified, it shall be the duty of the company to send to the registrar the particulars of such modification together with a copy of the instrument evidencing such modification verified in the prescribed manner, and the provisions of sub-section (1) as to registration of mortgage or charge shall apply to such modification of the mortgage or charge as aforesaid.

**Section: 130 Copy of instrument creating mortgage or charge to be kept at registered office:-**

Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 121 and of every instrument evidencing modification of the terms or conditions thereof, to be kept at the registered office of the company:

**Provided that,** in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

**Section: 131 Rectification of register of mortgages:-**

1. The Commission on being satisfied that the omission to register a mortgage or charge within the time required by section 121, or that the omission or mis-statement of any particular with respect to any such mortgage or charge, or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created, was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and, on such terms and conditions as seem to the Commission just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs of the application as it thinks fit.
2. A certified copy of the order of the Commission passed under sub-section (1) shall be filed with the registrar within twenty-one days of the date of such order by the company or the person on whose application it is passed.
3. Where the Commission extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered.

## Receivers & Managers

### Section: 137 Registration of appointment of receiver or manager:-

1. If any person obtains an order for the appointment of a receiver of, or a person to manage, the property of a company, or appoints such a receiver or person under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.
2. If any person makes default in complying with the requirements of sub-section (1), he shall be liable to a fine not exceeding two hundred rupees for every day during which the default continues.

### Section: 138 Filing of accounts of receiver or manager:-

1. Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall within thirty days of expiry of every six months while he remains in possession, and also within thirty days on ceasing to act as receiver, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also, within fifteen days of ceasing to act as receiver, file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.
2. Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.
3. If default is made in complying with the requirements of sub-section (1) or sub-section (2), the company and every director or other officer of the company and every receiver who knowingly and willfully authorizes or permits the default, shall be liable to a fine not exceeding two thousand rupees and, in the case of a continuing default, to a further fine not exceeding one hundred rupees for every day after the first during which the default continues.
4. The provisions of sub-sections (1), (2) and (3) shall apply to any person appointed to manage the property of a company under any powers contained in an instrument in the same manner as they apply to a receiver so appointed.

### Section: 139 Disqualification for appointment as receiver or manager:-

The following shall not be appointed under any powers contained in an instrument as a receiver or manager of the property of a company, namely:-

- a. a minor;
- b. a person who is of unsound mind and stands so declared by a competent Court;
- c. a body corporate;
- d. a director of the company;

- e. an un-discharged insolvent unless he is granted leave by the Court by which he has been adjudged an insolvent; or
- f. a person disqualified by a Court from being concerned with or taking part in the management of a company in any other way, unless he is granted leave by the Court.

**Section: 140 Application to Court:-**

1. A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the Court may give such direction, or may make such order declaring the rights of persons before the Court, or otherwise, as the Court thinks just.
2. A receiver or manager of the property of a company appointed as aforesaid shall, to the same extent as if he had been appointed by order of a Court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this sub-section shall be deemed to limit any right to indemnity which he would have apart from this sub-section, or to limit his liability on contracts entered into without authority or to confer any right to indemnity in respect of that liability.

**Section: 141 Power of Court to fix remuneration, etc., of receiver or manager:-**

1. The Court may, on an application made to it by the receiver or manager of the property, by order fix the amount to be paid by way of remuneration to any person who, under the power contained in an instrument, has been appointed as receiver or manager of the property of the company: Provided that the amount of remuneration shall not exceed such limits as may be prescribed.
2. The power of the Court under sub-section (1) shall, where no previous order has been made with respect thereto,-
  - a. extend to fixing the remuneration for any period before the making of the order or the application therefor;
  - b. be exercisable notwithstanding that the receiver or manager had died or ceased to act before the making of the order or the application therefor ; and
  - c. where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his representative to account for the excess or such part thereof as may be specified in the order:
 

**Provided that** the power conferred by clause (c) shall not be exercised as respects any period before the making of the application or the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.
3. The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, or by the registrar, vary or amend an order made under sub-section (1) and issue directions to the receiver respecting his duties and functions or any other matter as it may deem expedient:
 

**Provided that** an order made under sub-section (1) shall not be varied so as to increase the amount of remuneration payable to any person.

## Registered Office, Publication of Name

### Section: 142 Registered office of company:-

1. A company shall as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.
2. Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar who shall record the same.
3. The inclusion in the annual return or any other document of a company of the statement as to the address of its registered office shall not be taken to meet the requirements of sub-section (2).
4. If a company fails to comply with the requirements of sub-section (1) or (2), it shall be liable to a fine which may extend to two hundred rupees for every day during which such non-compliance continues, and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to the like penalty.

### Section: 143 Publication of name by a limited company:-

*“Publication is an act by which something is made known to public”.*

Every limited company:-

- a. shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English or Urdu characters, and also, if the registered office is situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place;
- b. shall have its name engraven in legible English or Urdu characters on its seal;
- c. shall have its name mentioned in legible English or Urdu characters, in all bill-heads and letter papers and in all documents, notices and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

### Section: 144 Penalties for non-publication of name:-

1. If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Ordinance, it shall be liable to a fine which may extend to two hundred rupees for every day during which its name is not so kept painted or affixed, and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to the like penalty.
2. If any officer of a limited company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company wherein its name is not so engraven as aforesaid, or issues or

authorizes the issue of any bill-head, letter paper, document, notice or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine which may extend to two thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof unless the same is duly paid by the company.

**Section: 145 Publication of authorized as well as paid-up capital:-**

1. Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorized capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.
2. Any company which makes default in complying with the requirements of sub-section (1) and every officer of the company who is knowingly a party to the default shall be liable to a fine which may extend to five thousand rupees.

**Section: 146 Restrictions on commencement of business:-**

1. A company shall not commence any business or exercise any borrowing powers unless—
  - a. shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;
  - b. every director of the company has paid to the company full amount on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash;
  - c. no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange;
  - d. there has been filed with the registrar a duly verified declaration by the chief executive or one of the directors and the secretary in the prescribed form that the aforesaid conditions have been complied with and the registrar has issued a certificate referred to in subsection (2); and
  - e. in the case of a company which has not issued a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus.
2. The registrar shall, on the filing of a duly verified declaration in accordance with the provisions of sub-section (1) and after making such enquiries as he may deem fit to satisfy himself that all the requirements of this Ordinance have been complied with in respect of the commencement of business and matters precedent and incidental thereto, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled: **Provided that**, in the case of a company which has not issued a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.
3. Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.



4. Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.
5. If any company commences business or exercises borrowing powers in contravention of this section, every officer and other person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding one thousand rupees for every day during which the contravention continues.
6. Nothing in this section shall apply to a private company, or to a company limited by guarantee and not having a share capital.

## Meetings & Proceedings (Part I)

### Section: 157 Statutory meeting of company:-

1. Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than three months, nor more than six months, from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".
2. The directors shall, at least twenty-one days before the date on which the meeting is held, forward a report, in this Ordinance referred as "the statutory report", to every member.
3. The statutory report shall be certified by not less than three directors, one of whom shall be the chief executive of the company, and shall state—
  - a. the total number of shares allotted, distinguishing shares allotted otherwise than in cash, and stating the consideration for which they have been allotted;
  - b. the total amount of cash received by the company in respect of all the shares allotted;
  - c. an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company showing separately any commission or discount paid or to be paid on the issue or sale of shares or debentures;
  - d. the names, addresses and occupations of the directors, chief executive, secretary, auditors and legal advisers of the company and the changes, if any, which have occurred since the date of the incorporation;
  - e. the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification;
  - f. the extent to which underwriting contracts, if any, have been carried out and the extent to which such contracts have not been carried out, together with the reasons for their not having been carried out; and
  - g. the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, chief executive, secretary or officer or to a private company of which he is a director.
4. The statutory report shall also contain a brief account of the state of the company's affairs since its incorporation and the business plan, including any change or proposed change affecting the interest of shareholders and business prospects of the company.
5. The statutory report shall, so far as it relates to the shares allotted by the company, the cash received in respect of such shares and to the receipts and payments of the company, be accompanied by a certificate of the auditors of the company as to the correctness of such allotment, receipts of cash, receipts and payments.

6. The directors shall cause at least five copies of the statutory report, certified as aforesaid, to be delivered to the registrar for registration forthwith after sending the report to the members of the company.
7. The directors shall cause a list showing the names, occupations, nationality and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.
8. The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.
9. The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or after the original meeting, may be passed, and an adjourned meeting shall have the same powers as an original meeting.
10. If a petition is presented to the Court in manner provided by part XI for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.
11. In the event of any default in complying with the provisions of any of the preceding sub-sections, the company and every officer of the company who knowingly and willfully authorises or permits such default shall be liable –
  - a. if the default relates to a listed company, to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees and in the case of a continuing default to a further fine not exceeding two thousand rupees for every day after the first during which the default continues; and
  - b. if the default relates to any other company, to a fine not exceeding five thousand rupees and in the case of a continuing default to a further fine not exceeding two hundred rupees for every day after the first during which the default continues.
12. This section shall not apply to a private company but if any such private company is converted into a company of either of the classes mentioned in sub-section (1), this section shall become applicable thereto and a reference in that sub-section to the date of commencement of business shall be construed as a reference to the date of such conversion.
13. The provisions of this section shall not apply to a public company which converts itself from a private company after one year of incorporation.]

**Section: 158 Annual general meeting:-**

1. Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of [four] months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:

**Provided that**, in the case of a listed company, the Commission, and, in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, not being the first such meeting, shall be held by a period not exceeding [sixty] days.

2. An annual general meeting shall, in the case of a listed company, be held in the town in which the registered office of the company is situate:  
**Provided that** the Commission, for any special reason, may, on the application of such company, allow the company to hold a particular meeting at any other place.
3. The notice of an annual general meeting shall be sent to the shareholders at least twenty-one days before the date fixed for the meeting and, in the case of a listed company, such notice, in addition to its being dispatched in the normal course, shall also be published at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which the company is listed is situated.
4. If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable—
  - a. if the default relates to a listed company, to a fine not less than [twenty] thousand rupees and not exceeding [fifty] thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues; and
  - b. if the default relates to any other company, to a fine not exceeding [ten] thousand rupees and to a further fine not exceeding [five] hundred rupees for every day after the first during which the default continues.

## Meetings & Proceedings (Part II)

### Section: 159 Calling of extraordinary general meeting:-

1. All general meetings of a company, other than the annual general meeting referred to in section 158 and the statutory meeting mentioned in section 157, shall be called extraordinary general meetings.
2. The directors may at any time call an extraordinary general meeting of the company to consider any matter which requires the approval of the company in a general meeting, and shall, on the requisition of members representing not less than one-tenth of the voting powers on the date of the deposit of the requisition, forthwith proceed to call an extraordinary general meeting.
3. The requisition shall state the objects of the meeting, be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.
4. If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.
5. Any meeting called under sub-section (4) by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.
6. Any reasonable expense incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sum due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.
7. Notice of an extraordinary general meeting shall be sent to the members at least twenty-one days before the date of the meeting, and in the case of a listed company shall also be published in the manner provided for in sub-section (3) of section 158:

**Provided that**, in the case of an emergency affecting the business of the company, the registrar may, on the application of the directors, authorise such meeting to be held at such shorter notice as he may specify.

8. Every officer of the company who knowingly or willfully fails to comply with any of the provisions of this section shall be liable—
  - a. if the default relates to a listed company, to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues; and

- b. if the default relates to any other company, to a fine which may extend to two thousand rupees and in the case of a continuing default to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

**Section: 160 Provisions as to meetings and votes:-**

1. The following provisions shall apply to the general meetings of a company or meetings of a class of members of the company, namely:-
  - a. notice of the meeting specifying the place and the day and hour of the meeting along with a statement of the business to be transacted at the meeting shall be given—
    - i. to every member of the company;
    - ii. to any person entitled to a share in consequence of death of a member if the interest of such person is known to the company; and
    - iii. to the auditor or auditors of the company; in the manner in which notices are required to be served by section 50, but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;
  - b. where any special business, that is to say business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement;
  - c. subject to the provisions of this Ordinance so far as they relate to the election and appointment of directors, the provisions of clause (b) shall apply “Mutatis Mutandis” to a meeting where ordinary business, being business other than special business, is to be transacted;
  - d. all the members may participate in the meeting either personally or through proxy.
2. The quorum of a general meeting shall be—
  - a. in the case of a public [listed] company, unless the articles provide for a larger number, not less than [ten] members present personally, who represent not less than twenty-five per cent. of the total voting power, either of their own account or as proxies;
  - b. in the case of [any other company], unless the articles provide for a larger number, two members present personally who represent not less than twenty-five percent of the total voting power, either of their own account or as proxies; and
  - c. In the case of a single member company, single member present in person or by proxy. **Provided that**, if within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present, being not less than two, shall be a quorum, unless the articles provide otherwise.

3. The chairman of the board of directors, if any, shall preside as chairman at every general meeting of the company, but if there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, any one of the directors present may be elected to be chairman, and if none of the directors is present or is unwilling to act as chairman the members present shall choose one of their member to be the chairman.
4. In the case of a company having a share capital, every member shall have votes proportionate to the paid-up value of the shares or other securities carrying voting rights held by him according to the entitlement of the class of such shares or securities, as the case may be:

**Provided that,** at the time of voting, fractional votes shall not be taken into account.

5. No member holding shares or other securities carrying voting rights shall be debarred from casting his vote, nor shall anything contained in the articles have the effect of so debarring him.
6. In the case of a company limited by guarantee and having no share capital, every member thereof shall have one vote.
7. On a poll, votes may be given either personally or by proxy.
8. Every officer of the company who knowingly or willfully fails to comply with any of the provisions of this section shall be liable,--
  - a. if the default relates to a listed company, to a fine which may extend to [fifty] thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues; and
  - b. if the default relates to any other company, to a fine not exceeding [ten] thousand rupees and in the case of a continuing default to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

**Section: 160-A Circumstances in which proceedings of a General Meeting may be declared invalid:-**

The Court may, on a petition, by members having not less than ten per cent of the voting power in the company, that the proceedings of a general meeting be declared invalid by reason of a material defect or omission in the notice or irregularity in the proceedings of the meeting, which prevented members from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of a fresh general meeting: **Provided that** the petition shall be made within thirty days of the impugned meeting.

## Meetings & Proceedings (Part III)

### Section: 161 Proxies:-

1. Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person, as his proxy to attend and vote instead of him, and a proxy so appointed shall have such rights as respects speaking and voting at the meeting as are available to a member:  
**Provided that--**
  - a. this sub-section shall not apply in the case of a company not having a share capital;
  - b. a member shall not be entitled to appoint more than one proxy to attend any one meeting;
  - c. if any member appoints more than one proxy for any one meeting and more than one instruments of proxy are deposited with the company, all such instruments of proxy shall be rendered invalid; and
  - d. a proxy must be a member unless the articles of the company permit appointment of a non-member as proxy.
2. Every notice of a meeting of a company shall prominently set out the member's right to appoint a proxy and the right of such proxy to attend, speak and vote in the place of the member at the meeting and every such notice shall be accompanied by a proxy form.
3. The instrument appointing a proxy shall—
  - a. be in writing; and
  - b. be signed by the appointer or his attorney duly authorized in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorized by it.
4. An instrument appointing a proxy, if in the form set out in Regulation 39 of Table A in the FIRST SCHEDULE shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles.
5. The proxies shall be lodged with the company not later than forty-eight hours before the time of the meeting and any provision to the contrary in the company's articles shall be void.
6. The members or their proxies shall be entitled to do any or all the following things in a general meeting, namely,-
  - a. subject to the provisions of section 167, demand a poll on any question; and
  - b. on a question before the meeting in which poll is demanded, to abstain from voting or not to exercise their full voting rights; and any provision to the contrary in the company's articles shall be void.
7. Every member entitled to vote at a meeting of the company shall be entitled to inspect during the business hours of the company all proxies lodged with the company.
8. Deleted.



9. The provisions of this section shall apply mutatis mutandis to the meeting of a particular class of members as they apply to a general meeting of all the members.
10. Failure to issue notices in time or issuing notices with material defect or omission or any other contravention of this section which has the effect of preventing participation or use of full rights by a member or his proxy shall make the company and every officer of the company who knowingly and willfully is a party to the default or contravention liable to a fine which may extend to five thousand rupees if the default relates to a listed company and to a fine which may extend to two thousand rupees if the default relates to any other company.

**Section: 162 Representation of corporations at meetings of companies and of creditors:-**

1. A company which is a member of another company may, by resolution of the directors, authorize any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorized shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.
2. A company which is a creditor of another company may authorize any of its officials or any other person to act as its representative at any meeting of the creditors of that other company held in pursuance of this Ordinance or any other meeting to which it is entitled to attend in pursuance of the provisions contained in any debenture or trust deed or any other document and the person so authorized shall be entitled to exercise the same powers as are available to the company which he represents.

**Section: 163 Representation of Federal Government, etc., at meetings of Companies:-**

1. The Federal Government, or a Provincial Government, as the case may be, if a member of a company, may appoint such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company.
2. A person appointed to act as aforesaid shall, for the purpose of this Ordinance, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers, including the right to appoint proxy, as the Federal Government or the Provincial Government, as the case may be, may exercise as a member of the company.

**Section: 164 Notice of resolution:-**

1. With the notice for a meeting, the company shall send to the members, copies of draft resolutions, other than routine or procedural resolutions, which are proposed for consideration in the meeting.
2. The members having not less than ten per cent. voting power in the company may give notice of a resolution and such resolution together with the supporting statement, if any, which they propose to be considered at the meeting, shall be forwarded so as to reach the company,-
  - a. in the case of a meeting requisitioned by the members, together with the requisition for the meeting;
  - b. in any other case, at least fifteen days before the meeting; and the company shall forthwith circulate such resolution to all the members.

3. In the event of any default in complying with any of the provisions of this section, the company and every officer of the company who is knowingly or willfully a party to such default shall be liable to a fine which may extend to five thousand rupees if the default relates to a listed company and to a fine which may extend to two thousand rupees if the default relate to any other company.

**Section: 165 Voting to be by show of hands in first instance:-**

At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded, be decided on a show of hands.

**Section: 166 Chairman's declaration of result of voting by show of hands to be evidence:-**

At any general meeting, a declaration by the chairman that on a show of hands, a resolution has or has not been carried, or has or has not been carried either unanimously or by a particular majority, and an entry to that effect in the books containing the minutes of the proceedings of the company, shall, until the contrary is proved, be evidence of the fact, without proof of the number or proportion of the votes cast in favor of or against such resolution.

**Section: 167 Demand for poll:-**

1. Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the chairman of the meeting of his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the person or persons specified below, that is to say,
  - a. in case of a public company, by at least five members having the right to vote on the resolution and present in person or by proxy;
  - b. in the case of a private company, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy if more than seven such members are personally present;
  - c. by any member or members present in persons or by proxy and having not less than one-tenth of the total voting power in respect of the resolution; or
  - d. by any member or members present in person or by proxy and holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up which is not less than one-tenth of the total sum paid up on all the shares conferring that right.
2. The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

**Section: 168 Time of taking poll:-**

1. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken at such time, not more than fourteen days from the day on which it is demanded, as the chairman of the meeting may direct.
2. When a poll is taken, the chairman or his nominee and a representative of the members demanding the poll shall scrutinize the votes given on the poll and the result shall be announced by the chairman.

3. Subject to the provisions of this Ordinance, the chairman shall have power to regulate the manner in which a poll shall be taken.
4. The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

**Section: 169 Resolution passed at adjourned meeting:-**

Where a resolution is passed at an adjourned meeting of-

- a. a company;
- b. the holders of any class of shares in a company;
- c. the directors of a company; or
- d. the creditors of a company;

The resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

**Section: 170 Power of Commission to call meetings:-**

1. If default is made in holding the statutory meeting, annual general meeting or any extraordinary general meeting on the requisition of members in accordance with section 157, section 158 or section 159, as the case may be, the Commission may, notwithstanding anything contained in this Ordinance or in the article of the company, either of its own motion or on the application of any director or member of the company, call, or direct the calling of, the said meeting of the company in such manner as the Commission may think fit, and give such ancillary or consequential directions as the Commission thinks expedient in relation to the calling, holding and conducting of the meeting and preparation of any document required with respect to the meeting.

**Explanation: -** The directions that may be given under sub-section (1) may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

2. Any meeting called, held and conducted in accordance with any such direction shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted, and all expenses incurred in connection thereto shall be paid by the company unless the 1[Commission] directs the same to be recovered from any officer of the company which he is hereby authorized to do.

**Section: 171 Penalty for default in complying with the directions of the Commission for holding the meeting:-**

If default is made in complying with any directions of the Commission under section 170, the company and every officer of the company who is in default shall be liable to a fine which may extend to ten thousand rupees and in the case of a continuing default to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

**Section: 172 Filing of resolution, etc.:-**

1. A printed or typed copy of every special resolution shall, within fifteen days from the passing thereof, be filed with the registrar duly authenticated by the chief executive or secretary of the company.

2. Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.
3. A copy of every special resolution shall be forwarded to any member at his request on payment of such fee not exceeding the prescribed amount as the company may determine.
4. In the event of any default in complying with the provisions of sub-section (1), the company and every officer who is knowingly and wilfully in default shall be liable to a fine which may extend to one hundred rupees for every day during which the default continues.
5. In the event of any default in complying with the provisions of sub-section (2) or (3), the company and every officer who is knowingly and wilfully in default shall be liable to a fine which may extend to one thousand rupees for each default.

**Section: 173 Minutes of proceedings of general meetings and directors:-**

1. Every company shall cause a fair and accurate summary of the minutes of all proceedings of general meetings and meetings of its directors and committee of directors, along with the names of those participating in such meetings, to be entered in properly maintained books. A copy of the minutes of meeting of board of directors shall be furnished to every director within fourteen days of the date of meeting.
2. Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.
3. Until the contrary is proved, every general meeting of the company or meeting of directors or committee of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.
4. The books containing the minutes of proceedings of the general meetings of the company and those of the meetings of the directors and committee of director shall be kept at the registered office of the company.
5. In the event of failure to comply with the provisions of sub-section (1) or sub-section (4), the company and every officer of the company who is knowingly in default shall be liable to a fine which may extend to five thousand rupees and to a further fine which may extend to one hundred rupees for every day after the first day during which the failure continues.
6. The books containing the minutes of proceedings of the general meetings shall be open to inspection by members without charge during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that not less than two hours in each day be allowed for inspection.
7. Any member shall at any time after seven days from the meeting be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a certified copy of the

minutes of any general meeting at such charge not exceeding the prescribed amount as may be fixed by the company.

8. If any inspection required under sub-section (6) is refused, or if any copy required under sub-section (7) is not furnished within the time specified therein, the company and every officer of the company who is knowingly and willfully in default shall be liable in respect of each offence to a fine which may extend to one thousand rupees and to a further fine which may extend to fifty rupees for every day after the first day during which the default continues, and the registrar may direct immediate inspection or supply of copy, as the case may be.

## Directors (Part I)

### Who is director?

Director is a person appointed or elected to sit on a board that manages the affairs of a company.

Definition of Director as per section 2 of the Companies Ordinance 1984:

"Director" includes any person occupying the position of a director, by whatever name called.

### Kinds of director

#### 1. Dejure director:

Dejure director is a validly appointed director.

#### 2. Defacto director:

Defacto director is a director who is not a validly appointed director.

### Relevant case Law: **Freeman v Lockyer v Buckhurst Park Properties (mangal) Ltd 1964.**

The company carried on business as a property developer. The articles provided the power to appoint managing director but this was never exercised. It was in the knowledge of the directors that one of them was acting as Managing director. The managing director made a contract with a firm of architects to make a planning application of a proposed estate. The company later refused to pay the fee on the grounds that the director had no actual or apparent authority. It was held that since by acquiescence, the company had represented that the director was a managing director having the authority to enter in to normal commercial contracts. The company was held liable to pay the fee.

#### 3. Shadow director

Holder of majority shares of a company who is neither a director nor openly participate in the company's governance, but whose directions or instructions are routinely followed with by the employees and the directors. In the eyes of law, he is a de facto director and is equally liable for the obligations of the company with the other de facto and de jure directors.

#### 4. Executive director

Executive director is a term sometimes applied to the chief executive officer (CEO) or managing director of an organization, company, or corporation.

The role of the Executive Director is to design, develop and implement strategic plans for their organization in a cost-effective and time-efficient manner. The Executive Director is also responsible for the day-to-day operation of the organization, including managing committees and staff and developing business plans in collaboration with the board for the future of the organization. In essence, the board grants the executive director the authority to run the organization. The Executive Director is accountable to the Chairman of the Board and reports to the board on a regular basis - quarterly, semiannually, or annually. The Board may offer

suggestions and ideas about how to improve the organization, but the Executive Director decides whether or not, and how, to implement these ideas.

The Executive Director is a leadership role for an organization and often fulfills a motivational role in addition to office-based work. The Executive Director leads the organization and develops its organizational culture.

**Section: 174 Minimum number of directors:-**

1. Notwithstanding anything contained in any other law for the time being in force,-
  - a. Every single member company shall have at least one director;
  - b. Every other private company shall have not less than two directors; and
  - c. Every public company other than a listed company shall have not less than three directors appointed and elected in the manner provided in this Ordinance.
  
2. Every listed company shall have not less than seven directors to be elected in a general meeting in the manner provided in this Ordinance

**Position of directors:**

The directors are professional men hired by the company to direct its affairs. Directors are not at all servants of a company; they are rather officers of the company. A director is in fact a controller of the company.

A director may however work as an employee in a different capacity. For example, in Lee versus Lee's Air Farming Limited.

The principal controller and a director of a company was also working as its pilot. Following his death while performing duties as a pilot, his widow recovered compensation under the Workmen Compensation Act.

**Directors as agent:**

It was recognized in a case : Ferguson v Wilson 1866 that directors are in the eyes of law, agents of the company. The court in this case said that the company has no person; it can act only through directors and the case is, as regard those directors, merely the ordinary case of principal and agent.

Thus it is clear that the general principal of agency governs the relations of directors with the company and of persons dealing with the company through its directors. It is company which is liable to it not the directors.

**Directors as trustees:**

It is said that directors are trustees of the company's money, properties and their powers and as such must account for all the moneys over which they exercise control and shall refund any moneys improperly paid away and shall exercise their powers honestly in the interest of the company and all the shareholders, and not their own sectional interests. For misuse of money and power of the company, they can be sued.

Another reason why directors are described as trustee is the peculiar nature of their office. The directors are persons selected to manage the affairs of the company for the benefit of the shareholders. It is an office of trust, which if they undertake, it is their duty to perform fully and entirely. Some of their duties to the company are of the same nature as those of a trustee. For example, they, like trustees occupy a fiduciary position. Moreover, almost all the powers of directors are powers in trust. The power to make calls to forfeit shares, to

issue further capital, the general powers of management and the power to accept or refuse a transfer of shares are all powers in trust which have to be restricted in good faith for the benefit of the company as a whole

### **Directors are trustees for whom?**

Directors are trustees for the company and of individual shareholders. This principle was laid down in Percival v Wright.

### **Directors as organs of corporate body:**

These days' companies are controlling chief part of the economy of world

### **Appointment of directors:**

The success of a company depends upon the competence and integrity of its directors. Section 175 of the Companies Ordinance 1984 states that only a natural person shall be a director and no director shall be the variable representative of a body corporate.

### **Section: 176 First directors and their term:-**

1. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum and until so determined, all the subscribers of the memorandum who are natural persons shall be deemed to be the directors of the company.
2. The first directors shall hold office until the election of directors in the first annual general meeting.

### **Section: 177 Retirement of directors:-**

On the date of the first annual general meeting of a company all directors of the company for the time being who are subject to election shall stand retired from office and thereafter all such director shall retire on the expiry of the term laid down in section 180:

**Provided that** the directors so retiring shall continue to perform their functions until their successors are elected:

**Provided further that** the directors so continuing to perform their functions shall take immediate step to hold the election of directors and in case of any impediment report the circumstances of the case to the registrar within fifteen days of the expiry of the term laid down in section 180.

### **Section: 178 Procedure for election of directors:-**

1. The directors of a company shall subject to section 174, fix the number of elected directors of the company not later than thirty-five days before the convening of the general meeting at which directors are to be elected, and the number so fixed shall not be changed except with the prior approval of a general meeting of the company.
2. The notice of the meeting at which directors are proposed to be elected shall among other matters, expressly state-
  - a. The number of elected directors fixed under sub-section (1); and
  - b. The names of the retiring directors.



3. Any person who seeks to contest an election to the office of director shall, whether he is a retiring director or otherwise, file with the company, not later than fourteen days before the date of the meeting at which elections are to be held, a notice of his intention to offer himself for election as a director:  
**Provided that** any such person may, at any time before the holding of election, withdraw such notice.
4. All notices received by the company in pursuance of sub-section (3) shall be transmitted to the members not later than seven days before the date of the meeting, in the manner provided for sending of a notice of general meeting in the normal manner or in the case of a listed company by publication at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which its securities are listed is situate.
5. The directors of a company having a share capital shall, unless the number of persons who offer themselves to be elected is not more than the number of directors fixed under sub-section (1), be elected by the members of the company in general meeting in the following manner, namely:-A
  - a. member shall have such number of votes as is equal to the product of the number of voting shares or securities held by him and the number of directors to be elected;
  - b. A member may give all his votes to a single candidate or divide them between more than one of the candidates in such manner as he may choose; and
  - c. The candidate who gets the highest number of votes shall be declared elected as director and then the candidate who gets the next highest number of votes shall be so declared and so on until the total number of directors to be elected has been so elected.
6. The directors of a company not having share capital shall be elected by members of the company in general meeting in the manner as provided in articles of association of the company.]

**Section: 179 Circumstances in which election of directors may be declared invalid:-**

The Court may, on the application of members holding not less than twenty percent of the voting power in the company, made within thirty days of the date of election, declare election of all directors or any one or more of them invalid if it is satisfied that there has been material irregularity in the holding of the elections and matters incidental or relating thereto.

**Section: 180 Term of office of directors**

1. A director elected under section 178 holding office for a period of three years unless he earlier resigns, becomes disqualified from being a director or otherwise ceases to hold office.
2. Any casual vacancy occurring among the directors may be filled up by the directors and the person so appointed shall hold office for the remainder of the term of the director in whose place he is appointed.

**Section: 181 Removal of director:-**

A company may by resolution in general meeting remove a director appointed under section 176 or section 180 or elected in the manner provided for in section 178:

**Provided that** a resolution for removing a director shall not be deemed to have been passed unless the number of votes cast against it is equal to, or exceeds:-

- i. The minimum number of votes that were cast for the election of a director at the Immediately preceding election of directors, if the resolution relates to removal of a director elected in the manner provided in sub-section (5) of section 178; or
- ii. The total number of votes for the time being computed in the manner laid down in sub-section (5) of section 178 divided by the number of directors for the time being, if the resolution relates to removal of a director appointed under section 176 or section 180.

**Section: 182 Creditors may nominate directors:-**

In addition to the directors elected or deemed to have been elected by shareholders, a company may have directors nominated by the company's creditors or other special interests by virtue of contractual arrangements.

**Section: 183 Certain provisions not to apply to directors representing special interests:-**

Nothing in section 178, section 180 or section 181 shall apply to—

- a. directors nominated by a corporation or company formed under any law in force and owned or controlled, whether directly or indirectly, by the Federal Government or a Provincial Government on the board of directors of a company in or to which such corporation or company has made investment or otherwise extended credit facilities;
- b. Directors nominated by the Federal Government or a Provincial Government on the board of directors of the company; or
- c. Directors nominated by foreign equity holders on the board of the Pakistan Industrial Credit and Investment Corporation Limited, or of any other company set up under a regional co-operation or other co-operation arrangement approved by the Federal Government:

**Provided that**, where a director referred to in clause (a), (b) or (c) is nominated, such number of the votes computed in the manner laid down in subsection (5) of section 178 as is equal to the minimum number of votes which would have been sufficient to elect such director if he had offered himself for election shall stand excluded from the total number of votes otherwise available at an election of the director to the authority or person nominating him:

**Provided further that** a director nominated under this section shall hold office during the pleasure of the corporation, company, Government or authority which nominates him.

**Section: 184 Consent to act as director to be filed with registrar:-**

1. No person shall be appointed or nominated as a director or chief executive of a company or represent as holding such office, nor shall any person describe or name any other person as a director or proposed director or chief executive or proposed chief executive of any company, unless such person or such other person has given his consent in writing for such appointment or nomination.
2. Within fourteen days from the date of appointment or nomination, as the case may be, the company shall file with the registrar a list of persons who have consented to act as director or chief executive of the company along with their consent to do so in the prescribed form.

3. This section shall not apply to a private company, not being a private company which is a subsidiary of a public company.

**Section: 185 Validity of acts of directors:-**

No act of a director, or of a meeting of directors attended by him, shall be invalid merely on the ground of any defect subsequently discovered in his appointment to such office:

Provided that, as soon as any such defect has come to notice, the director shall not exercise the right of his office till the defect has been rectified.

**Section: 186 Penalties:-**

Whoever knowingly and willfully contravenes or fails to comply with any of the provisions of sections 174 to 185 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from becoming or continuing a director of the company for a period not exceeding three years.

## Directors (Part II)

### Section: 187 Ineligibility of certain persons to become director:-

No person shall be appointed as a director of a company if he-

- a. is a minor;
- b. is of unsound mind;
- c. has applied to be adjudicated as an insolvent and his application is pending;
- d. is an undischarged insolvent;
- e. has been convicted by a court of law for an offence involving moral turpitude;
- f. has been debarred from holding such office under any provision of this Ordinance;
- g. has betrayed lack of fiduciary behavior and a declaration to this effect has been made by the Court under section 217 at any time during the preceding five years;
- h. is not a member

**Provided that** clause (h) shall not apply in the case of—

- i. a person representing the Government or an institution or authority which is a member;
  - ii. a whole-time director who is an employee of the company;
  - iii. a chief executive; or
  - iv. a person representing a creditor;
- i. has been declared by a Court of competent jurisdiction as defaulter in repayment of loan to a financial institution, exceeding such amount as may be notified by the Commission from time to time; and
  - j. is a member of a Stock Exchange engaged in the business of brokerage, or is a spouse of such member:

**Provided that** clauses (i) and (j) shall be applicable only in case of a listed company.

Section: 188 Vacation of office by the directors:-

1. A director shall ipso facto cease to hold office if—
  - a. he becomes ineligible to be appointed a director on any one or more of the grounds enumerated in clauses (a) to (h) of section 187;
  - b. he absents himself from three consecutive meetings of the directors or from all the meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absence from the directors;
  - c. he or any firm of which he is a partner or any private company of which he is a director—
    - i. without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of chief executive or a legal or technical adviser or a bank; or
    - ii. accepts a loan or guarantee from the company in contravention of section 195.
2. Nothing contained in sub-section (1) shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on any grounds additional to those specified in that subsection.

**Section: 189 Penalty for unqualified person acting as director, etc:-**

If a person who is not qualified to be a director or chief executive or who has otherwise vacated the office of director or chief executive describes or represents himself or acts as a director or chief executive, or allows or causes himself to be described as such, he shall be liable in respect of each day during which he so describes or represents or acts, or allows or causes himself to be described, as such, to fine which may extend to two hundred rupees.

**Section: 190 Ineligibility of bankrupt to act as director, etc:-**

1. If any person being an undischarged insolvent acts as chief executive, director or managing agent of a company, he shall be liable to imprisonment for a term not exceeding two years, or to a fine not exceeding ten thousand rupees, or to both.
2. In this section the expression "company" includes a company incorporated outside Pakistan which has a place of business in Pakistan.

**Section: 191 Restriction on director's remuneration, etc:-**

1. The remuneration of a director for performing extra services, including the holding of the office of chairman, shall be determined by the directors or the company in general meeting in accordance with the provisions in the company's articles.
2. The remuneration to be paid to any director for attending the meetings of the directors or a committee of directors shall not exceed the scale approved by the company or the directors, as the case may be, in accordance with the provisions of the articles.

**Section: 192 Restriction on assignment of office by directors:-**

1. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.
2. Notwithstanding anything contained in sub-section (1), the appointment by a director, with the approval of the directors, of an alternate or substitute director to act for him during his absence from Pakistan of not less than three months, shall not be deemed to be an assignment of office.
3. The alternate director appointed under sub-section (2) shall ipso facto vacate office if and when the director appointing him returns to Pakistan.

**Section: 193 Proceedings of directors:-**

1. The quorum for a meeting of directors of a listed company shall not be less than one-third of their number or four, whichever is greater.
2. The directors of a public company shall meet at least once in each quarter of a year.

3. If a meeting of directors is conducted in the absence of a quorum specified in sub-section (1), or a meeting of directors is not held as required by sub section (2), the chairman of the directors and the directors shall be liable—
  - a. to a fine not exceeding ten thousand rupees and in the case of a continuing default to a further fine not exceeding one hundred rupees for every day after the first during which the default continues, if the contravention relates to a listed company; or
  - b. to a fine not exceeding two thousand rupees and in the case of a continuing default to a further fine not exceeding fifty rupees for every day after the first during which the default continues, if the contravention relates to a non-listed company.

**Section: 194 Liabilities, etc., of directors and officers:-**

Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, chief executive or officer of the company or any person, whether an officer of the company or not, employed by the company as auditor, from, or indemnifying him against, any liability which by virtue of any law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void:

**Provided that,** notwithstanding anything contained in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, chief executive, officer, or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which Judgment is given in his favor or in which he is acquitted, or in connection with any application under section 488 in which relief is granted to him.

**Section: 195 Loans to directors, etc.:-**

1. Save as otherwise provided in sub-section (2), no company, hereafter in this section referred to as "the lending company", shall, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by.—
  - a. any director of the lending company or of a company which is its holding company or any partner or relative of any such director;
  - b. any firm in which any such director or relative is a partner;
  - c. any private company of which any such director is a director or member;
  - d. anybody corporate at a general meeting of which not less than twenty five per cent of the total voting power may be exercised or controlled by any such director or his relative, or by two or more such directors together or by their relatives; or
  - e. anybody corporate, the directors or chief executive whereof are or is accustomed to act in accordance with the directions or instructions of the chief executive, or of any director or directors, of the lending company: Provided that a company may, with the approval of the Commission, make a loan or give any guarantee or provide any security in connection with a loan made by any other person to a director who is in the whole-time employment of the company for the purpose of acquisition or construction of a dwelling house or land therefor or for defraying the cost of any conveyance for personal use or household effects or for defraying any expense on his medical treatment or the medical treatment of any relative as are ordinarily made or provided by the company to its employees.

**Explanation:-** "Relative" in relation to a director means his spouse and minor children.

2. Sub-section (1) shall not apply to—
  - a. any loan made, guarantee given or security provided—
    - i. by a private company, unless it is a subsidiary of a public company;
    - ii. by a banking company;
  - b. any loan made by a holding company to its subsidiary; or
  - c. any guarantee given or security provided by a holding company in respect of any loan made to its subsidiary.
3. Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Ordinance could not have been made, given or provided, if this section had then been in force, the lending company shall within six months from the commencement of this Ordinance enforce the repayment of the loan made or, as the case may be, of the loan in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary:

**Provided that** this sub-section shall not apply where the loan made, guarantee given or security provided to a whole-time director is approved by the Commission as provided in the proviso to sub-section (1).

4. Every person shall within fourteen days of his appointment as director or chief executive of a company file with the registrar the particular of any loan taken, or guarantee or security obtained, prior to his becoming director or chief executive of the lending company which could not have been taken or obtained without the prior approval of the Commission had he at the time of taking the loan or obtaining the guarantee or security been the director or chief executive of the lending company.
5. Every person who is knowingly a party to any contravention of this section, including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable with fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months:

**Provided that** where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

6. All persons who are knowingly parties to any contravention of subsection (1) or (3) shall be liable, jointly and severally, to the lending company for the repayment of the loan or for making good the sum 1[with markup not less than the borrowing cost of the lending company] which the lending company may have been called upon to pay by virtue of the guarantee given or the security provided by such company.
7. Sub-section (1) shall apply to any transaction represented by a book-debt which was from its inception in the nature of a loan or an advance.

8. No officer of the lending company or of the borrowing body corporate shall be punishable under subsection (5) or shall incur the liability referred to in subsection (6) in respect of any loan made, guarantee given or security provided after the commencement of this Ordinance in contravention of clause (d) or (e) of sub-section (1), unless at the time when the loan was made, the guarantee was given or the security was provided by the lending company, he knew or had express notice that clause was being contravened thereby.

**Section: 196 Powers of directors:-**

1. The business of a company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not by this Ordinance, or by the articles, or by a special resolution, required to be exercised by the company in general meeting.
2. The directors of a company shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely:
  - a. to make calls on shareholders in respect of moneys unpaid on their shares;
  - b. to issue shares;
  - c. to issue debentures or [participation term certificate, any instrument in the nature of redeemable capital];
  - d. to borrow moneys otherwise than on debentures;
  - e. to invest the funds of the company;
  - f. to make loans;
  - g. to authorize a director or the firm of which he is a partner or any partner of such firm or a private company of which he is a member or director to enter into any contract with the company for making sale, purchase or supply of goods or rendering services with the company;
  - h. to approve annual or half-yearly or other periodical accounts as are required to be circulated to the members;
  - i. to approve bonus to employees;
  - j. to incur capital expenditure on any single item or dispose of a fixed asset in accordance with the limits as prescribed by the Commission from time to time];
  - k. to undertake obligations under leasing contracts exceeding one million rupees;
  - l. to declare interim dividend; and
  - m. having regard to such amount as may be determined to be material (as construed in Generally Accepted Accounting Principles) by the Board-
    - i. to write off bad debts, advances and receivables;
    - ii. to write off inventories and other assets of the company; and
    - iii. to determine the terms of and the circumstances in which a law suit may be compromised and a claim or right in favor of company may be released, extinguished or relinquished:]

**Provided that** the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdraw able by cheque, draft, order or otherwise, or the placing of moneys or deposit by a banking company with another banking company on such conditions as the directors may prescribe, shall not be deemed to be a borrowing of moneys or, as



the case may be, a making of loan by a banking company within the meaning of this section.

3. The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, do any of the following things, namely:-
  - a. sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing; and
  - b. remit, give any relief or give extension of time for the repayment of any debt outstanding against any person specified in sub-section (1) of section 195.
4. Whosoever contravenes any provision of this section shall be punishable with a fine which may extend to [one hundred thousand] rupees and shall be individually and severally liable for losses or damages arising out of such action.

**Section: 197 Prohibition regarding making of political contributions:-**

1. Notwithstanding anything contained in this Ordinance, a company shall not contribute any amount—
  - a. to any political party; or
  - b. for any political purpose to any individual or body.
2. If a company contravenes the provisions of sub-section (1), then-
  - i. the company shall be liable to a fine which may extend to ten thousand rupees; and
  - ii. every director and officer of the company who is knowingly and wilfully in default shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

**197-A. Prohibition regarding distribution of gifts:-**

1. Notwithstanding anything contained in this Ordinance, a company shall not distribute gifts in any form to its members in its meeting.
2. If default is made in complying with this section, the company and every officer of the company who is a party to the default shall be liable to a fine not exceeding five hundred thousand rupees.]

## Chief Executive---Secretary

### Section: 198 Appointment of first chief executive:-

1. Every company other than a company managed by a managing agent shall have a chief executive appointed in the manner provided in this section and section 199.
2. The directors of every company shall as from the date from which it commences business or as from a date not later than the fifteenth day after the date of its incorporation, whichever is earlier, appoint any individual to be the chief executive of the company.
3. The chief executive appointed as aforesaid shall, unless he earlier resigns or otherwise ceases to hold office, hold office up to the first annual general meeting of the company or, if a shorter period is fixed by the directors as the time of his appointment, for such period.

### Section: 199 Appointment of subsequent chief executive:-

1. Within fourteen days from the date of election of directors under section 178 or the office of the chief executive falling vacant, as the case may be, the directors of a company shall appoint any person, including an elected director, to be the chief executive, but such appointment shall not be for a period exceeding three years from the date of appointment.
2. On the expiry of his term of office under section 198 or sub-section (1), a chief executive shall be eligible for reappointment.
3. The chief executive retiring under section 198 or this section shall continue to perform his functions until his successor is appointed unless non-appointment of his successor is due to any fault on his part or his office is expressly terminated.

### Section: 200 Terms of appointment of chief executive and filling up of casual vacancy:-

1. The terms and conditions of appointment of a chief executive shall be determined by the directors or the company in general meeting in accordance with the provisions in the company's articles.
2. The chief executive shall if he is not already a director of the company, be deemed to be its director and be entitled to all the rights and privileges, and subject to all the liabilities, of that office.

### Section: 201 Restriction on appointment of chief executive:-

No person who is ineligible to become a director of a company under section 187 shall be appointed or continue as the chief executive of any company.

### Section: 202 Removal of chief executive:-

The directors of a company by resolution passed by not less than three-fourths of the total number of directors for the time being, or the company by a special resolution, may remove a chief executive before the expiration

of his term of office notwithstanding anything contained in the articles or in any agreement between the company and such chief executive.

**Section: 203 Chief executive not to engage in business competing with company's business:-**

1. A chief executive of a public company shall not directly or indirectly engage in any business which is of the same nature as and directly competes with the business carried on by the company of which he is the chief executive or by a subsidiary of such company.

**Explanation:-** A business shall be deemed to be carried on indirectly by the chief executive if the same is carried on by his spouse or any of his minor children.

2. Every person who is appointed as chief executive of a public company shall forthwith on such appointment disclose to the company in writing the nature of such business and his interest therein.

**Section: 204 Penalty:-**

Whoever contravenes or fails to comply with any of the provisions of sections 198 to 203 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from becoming a director or chief executive of a company for a period not exceeding three years.

**Section: 204-A Certain companies to have secretaries:-**

A listed company shall have a whole time secretary and a single member company shall have a secretary possessing such qualification as may be prescribed.

**Section: 205 Register of directors, officers, etc.:-**

1. Every company shall keep at its registered office a register of its directors and officers, including the chief executive, managing agent, secretary, chief accountant, auditors and legal adviser, containing with respect to each of them 2[such particulars as may be prescribed.
2. Every person referred to in sub-section (1) shall, within a period of ten days of his appointment or any change therein, as the case maybe, furnish to the company the particulars specified in subsection (1) and, within the periods respectively mentioned in this section, the company shall file with the registrar a return in duplicate in the prescribed form containing the particulars specified in the said register and notification in the prescribed form of any change among the directors, the chief executive, managing agent, chief accountant, secretary, auditor or legal advisor or in any of the particulars contained in the register.
3. The period within which the said return is to be filed with the registrar shall be a period of fourteen days from the date of incorporation of the company and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.
4. The register to be kept under this section shall during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member of the company

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without charge and of any other person on payment of the prescribed fee or such lesser sum as the company may specify for each inspection.

5. If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2) or subsection (3), the company and every officer of the company or other person who is knowingly and wilfully in default shall be liable to a fine which may extend to five hundred rupees and to a further fine which may extend to fifty rupees for every day after the first during which the default continues.
6. In the case of any such refusal, the registrar on application made by the person to whom inspection has been refused and upon notice to the company, may by order direct an immediate inspection of the register.

## Investments, Contracts & Officers etc.

### Section: 206 Bar on appointment of managing agents, sole purchase, sales agents, etc.:-

1. No company whether incorporated in Pakistan or outside Pakistan shall appoint any managing agent, by whatever name called, that is to say a person, firm or company entitled to the management of the affairs of a company, by virtue of an agreement or contract with the company: Provided that this sub-section shall not apply to a company which is managed by a managing agent wholly owned or controlled by the Federal Government or Provincial Government.
2. The Federal Government may, by notification in the official Gazette, exempt any of the following classes of agreements or contracts from the operation of sub-section (1), namely:-
  - a. an agreement or contract with an investment adviser in relation to an investment company registered under the rules made under the Securities and Exchange Ordinance, 1969 (XVII of 1969);
  - b. an agreement or contract, approved by the Federal Government, with a Foreign Collaborator in relation to a company which owns a hotel in Pakistan; and
  - c. an agreement or contract approved by the Federal Government in relation to a company formed for setting up, in collaboration with one or more public sector financial institutions, an industrial undertaking which in the opinion of the said Government, is likely to contribute to the economic development of Pakistan.
3. No company whether incorporated in Pakistan or outside Pakistan which is carrying on business in Pakistan shall, without the approval of the Commission, appoint any sole purchase, sale or distribution agent: Provided that this sub-section shall not apply to a sole purchase, sale or distribution agent appointed by a company incorporated, or person ordinarily residing, outside Pakistan, unless the major portion of the business of such company or person is conducted in Pakistan.
4. Whoever contravenes any of the provisions of this section shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one hundred thousand rupees, or with both; and, if the person guilty of the offence is a company or other body corporate, every director, chief executive, or other officer, agent or partner thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission be deemed to be guilty of the offence.

### Section: 207 Terms and conditions of appointment of managing agent:-

1. Where a managing agent is appointed in pursuance of any exemption available under section 206, such appointment shall be subject to such terms and conditions as the Federal Government may deem fit to impose.
2. In the event of any contravention of the terms and conditions imposed by the Federal Government under sub-section (1), the company and every officer thereof who is knowingly and wilfully in default shall be liable to a fine which may extend to twenty thousand rupees and such officer shall in the event of the company incurring a loss on account of such contravention be jointly and severally liable for the loss.

**Section: 208 Investments in Associated companies and undertaking:-**

1. A company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature period and amount of investment and terms and conditions attached thereto. Provided that the return on investment in the form of loan shall not be less than the borrowing cost of investing company. Explanation: The expression 'investment' shall include loans, advances, equity, by whatever name called, or any amount, which is not in the nature of normal trade credit.
2. No change in the nature of an investment or the terms and conditions attached thereto shall be made except under the authority of a special resolution.
3. If default is made in complying with the requirements of this section, every director of a company who is knowingly and wilfully in default shall be liable to fine which may extend to one million rupees and in addition, the directors shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this section.
4. This section shall not apply to: —
  - a. a banking company;
  - b. any other financial institution approved by the Commission;
  - c. a private company which is not a subsidiary of a public company; and
  - d. a company whose principal business is the acquisition of shares, stock, debentures or other securities.]

**Section: 209 Investments of company to be held in its own name:-**

1. Save as otherwise provided in sub-sections (2) to (5) or any other law for the time being in force, and subject to the provisions of sub-sections (6) to (8). — a) all investments made by a company on its own behalf shall be made and held by it in its own name; and (b) where any such investments are not so held immediately before the commencement of this Ordinance the company shall within a period of one year from such commencement, either cause them to be transferred to its own name or dispose of them.
2. Where the company has a right to appoint or get elected any person as a director of any other company and a nominee of the company in exercise of such right has been so appointed or elected, the shares in such other company of an amount not exceeding the nominal value of the qualification shares which are required to be held by a director thereof, may be registered or held by such company jointly in its own name and in the name of such person or nominee, or in the name of such person or nominee alone.
3. A holding company may hold any shares in its subsidiary company in the name of its nominee or nominees if and in so far as it is necessary so to do for ensuring that the number of members of the subsidiary company is not reduced below seven in case it is a public company, or below two in case it is a private company.

4. Sub-section (1) shall not apply to investments made by an investment company, that is to say, a company whose principal business is the purchase and sale of securities.
5. Nothing in this section shall be deemed to prevent a company—
  - a. from depositing with a bank, being the banker of the company, any shares or securities for the collection of any dividend or interest payable thereon; or
  - b. from depositing with or transferring to or holding in the name of a scheduled bank or a financial institution approved by the Commission shares or securities in order to facilitate the transfer thereof: Provided that, if, within a period of six months from the date on which shares or securities are so deposited, transferred or held, no transfer of such shares or securities takes place, the company shall as soon as practicable after the expiry of such period have the shares or securities retransferred to itself from the scheduled bank or, as the case may be, the financial institution, and again hold the shares or securities in its own name;
  - c. from depositing with or transferring to any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it,
  - d. from depositing with, or transferring to, or holding, or registering in the name of a central depository any shares or securities.
6. The certificates or the letter of allotment relating to the shares or securities in which investments have been made by a company shall, except in the cases referred to in sub-sections (4) and (5), be in the custody of the company or of such scheduled bank or financial institution as may be approved by the Commission.
7. Where, in pursuance of sub-sections (2), (3), (4) or (5), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall forthwith enter in a register maintained by it for the purpose at its registered office—
  - a. the nature, value and such other particulars as may be necessary fully to identify such shares or securities; and
  - b. the bank or person in whose name or custody such shares or securities are held.
8. The register kept under sub-section (7) shall be open to the inspection of any member or debenture-holder or creditor of the company without charge, during business hours, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose so that not less than two hours in each day are allowed for such inspection.
9. If default is made in complying with any of the requirements of sub-sections (1) to (8), the company, and every officer of the company who is knowingly and wilfully in default, shall be liable to a fine which may extend to five thousand rupees and to a further fine not exceeding two hundred rupees for every day after the first during which the default continues.
10. Without prejudice to the provisions of sub-section (9), if any inspection required under sub-section (8) is refused, the registrar may on an application direct an immediate inspection of the register.

**Section: 210 Form of contract:-**

1. Contracts on behalf of a company may be made as follows, that is to say, —

- i. any contract which, if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;
  - ii. any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.
2. All contracts made according to sub-section (1) shall be effectual in law and shall bind the company and its successors and all other parties thereto, their heirs, or legal representatives, as the case may be.

**Section: 211 Bill of exchange and promissory notes:-**

A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company, if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority, express or implied.

**Section: 212 Execution of deeds:-**

A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place either in or outside Pakistan, and every deed signed by such attorney, on behalf of the company, and under his seal, where sealing is required, shall bind the company, and have the same effect as if it were under its common seal.

**Section: 213 Power for company to have official seal for use abroad:-**

1. A company whose objects require or comprise the transaction of business beyond the limits of Pakistan may, if authorized by its articles, have for use in any territory not situate in Pakistan, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory where it is to be used.
2. A company having such an official seal may by writing under its common seal, authorize any person appointed for the purpose in any territory not situate in Pakistan to affix the same to any deed or other document to which the company is party in that territory.
3. The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is mentioned therein, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.
4. The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.
5. A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

**Section: 214 Disclosure of interest by director:-**



1. Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors: Provided that a director shall be deemed also to be interested or concerned if any of his relatives, as defined in the Explanation to sub-section (1) of section 195, is so interested or concerned.
2. The disclosure required to be made by a director under sub-section (1) shall be made,—
  - a. in the case of a contract or arrangement to be entered into, at the meeting of the directors at which the question of entering into the contract or arrangement is first taken into consideration or, if the director was not, on the date of that meeting, concerned or interested in the contract or arrangement, at the first meeting of the directors held after he becomes so concerned or interested; and
  - b. in the case of any other contract or arrangement, at the first meeting of the directors held after the director becomes concerned or interested in the contract or arrangement.
3. For the purposes of sub-sections (1) and (2), a general notice given to the directors to the effect that a director is a director or a member of a specified body corporate or a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.
4. Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.
5. No such general notice, and no renewal thereof, shall be of effect unless either it is given at a meeting of the directors, or the director concerned takes reasonable steps to ensure that it is brought up and read at the first meeting of the directors after it is given.
6. A director who fails to comply with sub-section (1) or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.
7. Nothing in this section shall be taken to prejudice the operation of any law restricting a director of a company from having any concern or interest in any contract or arrangement with the company.

**Section: 215 Interest of other officers, etc.:-**

1. Save as provided in section 214 in respect of director, no other officer of a company who is in any way, directly or indirectly, concerned or interested in any proposed contract or arrangement with the company shall, unless he discloses the nature and extent of his interest in the transaction and obtains the prior approval of the directors, enter into any such contract or arrangement.
2. An officer who contravenes sub-section (1) shall be liable to a fine which may extend to five thousand rupees.

**Section: 216 Interested director not to participate or vote in proceedings of directors:-**

1. No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.
2. Sub-section (1) shall not apply to—
  - a. a private company which is neither a subsidiary nor a holding company of a public company;
  - b. any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company;
  - c. any contract or arrangement entered into or to be entered into with a public company, in which the interest of the director aforesaid consists solely in his being a director of such company and the holder of not more than such shares therein as are requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (1).
3. Every director who knowingly contravenes any of the provisions of sub-section (1), or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.

**Section: 217 Declaring a director to be lacking fiduciary behavior:-**

The Court may declare a director to be lacking fiduciary behavior if he contravenes the provisions of section 214 or sub-section (1) of section 215 or section 216:

**Provided that** before making a declaration the Court shall afford the director concerned an opportunity of showing cause against the proposed action.

## Accounts

### Section: 230 Books of account to be kept by company:-

1. Every company shall keep at its registered office proper books of account with respect to—
  - a. all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
  - b. all sales and purchases of goods by the company;
  - c. all assets of the company;
  - d. all liabilities of the company; and
  - e. in the case of a company engaged in production, processing, manufacturing or mining activities, such particulars relating to utilization of material or labor or the other inputs or items of cost as may be prescribed, if such class of companies is required by the Commission by a general or special order to include such particulars in the books of accounts:  
**Provided that** all or any of the books of account aforesaid may be kept at such other place in Pakistan as the directors may decide, and when the directors so decide, the company shall, within seven days of the decision, file with the registrar a notice in writing giving the full address of the other place.
2. Where a company has a branch office, whether in or outside Pakistan, the company shall be deemed to have complied with the provisions of sub-section (1) if proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarized returns, made up to date at intervals of not more than three months are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).
3. For the purposes of sub-section (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or the branch office, as the case may be, and to explain its transactions.
4. The books of account and other books and papers of every company shall be open to inspection by the directors during business hours.
5. The directors shall from time to time determine whether and to what extent and at what time and places and under what conditions or regulations the accounts and books or papers of the company or any of them shall be open to the inspection of members, not being directors, and no member, not being a director, shall have any right of inspecting any account and books or papers of the company except as conferred by the Ordinance or authorized by the directors or by the company in general meeting.
6. The books of account of every company relating to a period of not less than ten years immediately preceding the current year shall be preserved in good order: Provided that, in the case of a company incorporated less than ten years before the current year, the books of account for the entire period preceding the current year shall be so preserved.

7. If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief accountant, of the company who has knowingly by his act or omission been the cause of such default shall,—
- a. in respect of a listed company, be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than twenty thousand rupees nor more than fifty thousand rupees, and with a further fine which may extend to five thousand rupees for every day after the first during which the default continues; and
  - b. in respect of any other company, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to ten thousand rupees.

**Explanation:** The term “chief accountant” shall include the chief accountant or any other person, by whatever name called, who is charged with the responsibility of maintenance of books of account of the company.

8. The provisions of this section except those of sub-section (6), shall apply “mutatis mutandis” to the books of account which a liquidator is required to maintain and keep.

Section: 231 Inspection of books of account by registrar, etc.:-

1. The books of account and books and papers of every company shall be open to inspection by the registrar or by any officer authorized by the Commission in this behalf if, for reasons to be recorded in writing, the registrar or the Commission considers it necessary so to do.
2. It shall be the duty of every director, officer or other employee of the company to produce to the person making inspection under sub-section (1) all such books of account and books and papers of the company in his custody or under his control, and to furnish him with any such statement, information or explanation relating to the affairs of the company, as the said person may require of him within such time and at such place as he may specify.
3. It shall also be the duty of every director, officer or other employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.
4. The person making the inspection under this section may, during the course of inspection: (i) make or cause to be made copies of books of account and other books and papers, or (ii) place or cause to be placed by marks of identification thereon in token of the inspection having been made.
5. Where an inspection of the books of account and books and papers of the company has been made under this section by an officer authorized by the Commission, such officer shall make a report to the Commission.
6. Any officer authorized to make an inspection under this section shall have all the powers that the registrar has under this Ordinance in relation to the making of inquiries.

Section: 232 Default in compliance with provisions of section 231:-

1. If default is made in complying with the provisions of section 231, every person who is in default shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than ten thousand rupees.
2. Where a director or any other officer of a company has been convicted of an offence under this section, he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and, on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years.

Section: 233 Annual accounts and balance-sheet:-

1. The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in annual general meeting a balance-sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the

## Audit

### Section: 252 Appointment and remuneration of auditors:-

1. Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting:

**Provided that** an auditor or auditors appointed in a general meeting may be removed before conclusion of the next annual general meeting through a special resolution.

2. Appointment of a partnership by the firm name to be the auditors of a company shall be deemed to be the appointment of all the persons who are partners in the firm at the time of appointment.
3. The first auditor or auditors of a company shall be appointed by the directors within sixty days of the date of incorporation of the company; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting:

**Provided that-**

- a. the company in a general meeting may remove any such auditor or auditors and appoint in his or their place any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and
- b. if the directors fail to exercise their powers under this sub-section, the company in general meeting may appoint the first auditor or auditors:

**Provided further that** the auditors appointed in an annual general meeting shall not be removed during their tenure except through special resolution.

4. The directors may fill any casual vacancy in the office of an auditor, but, while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.
5. Any auditor appointed to fill in any casual vacancy shall hold office until the conclusion of the next annual general meeting.
6. Where the first auditors are not appointed under clause (b) of the proviso to sub-section (3) within one hundred and twenty days of the date of incorporation of the company, or where at an annual general meeting no auditors are appointed, or where auditors appointed are unwilling to act as auditors of the company, or where a casual vacancy in the office of an auditor is not filled within thirty days after the occurrence of the vacancy, [or auditors are removed by the company, the Commission] may appoint a person to fill the vacancy.
7. The company shall, within one week of the Commission's power under sub-section (6) becoming exercisable, give notice of that fact to the Commission.
8. The remuneration of the auditors of a company shall be fixed —

- a. in the case of an auditor appointed by the directors or by the Commission, as the case may be; and
- b. in all other cases, by the company in general meeting or in such manner as the general meeting may determine.

**Section: 253 Provisions as to resolutions relating to appointment and removal of auditors:-**

1. A notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor.
2. The notice referred to in sub-section (1) shall be given by a member of the company to the company not less than fourteen days before the annual general meeting, and the company shall forthwith send a copy of such notice to the retiring auditor and shall also give notice thereof to its members not less than seven days before the date fixed for the annual general meeting and, if the company is a listed company, shall also publish it at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which the company is listed is situate.
3. Where notice is given of such a resolution and the retiring auditor makes with respect thereto a representation in writing to the company not exceeding a reasonable length and requests its communication to the members of the company, the company shall, unless the representation is received by it too late for it to do so —
  - a. in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
  - b. send a copy of the representation to every member of the company to whom notice of the meeting is sent whether before or after receipt of the representation by the company; and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard in person, require that the representation shall be read out at the meeting;

**Provided that** it shall not be necessary to send out or to read out the representation at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the registrar is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the registrar may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

4. Sub-section (3) of this section shall apply to a resolution to remove the first auditors by virtue of sub-section (3) of section 252 as it applies in relation to a resolution that a retiring auditor shall not be reappointed.
5. Every company shall, within fourteen days from the date of any appointment of an auditor, send to the registrar intimation thereof, together with the consent in writing of the auditor concerned.

6. Every company shall, within fourteen days from the date of retirement, removal or otherwise ceasing to hold office of an auditor, send intimation thereof to the registrar.

**Section: 254 Qualification and disqualification of auditors:-**

1. A person shall not be qualified for appointment as an auditor:-
  - i. in the case of a public company or a private company which is subsidiary of a public company unless he is a Chartered Accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961); and
  - ii. in the case of a private company having paid up capital of three million rupees or more unless he is a Chartered Accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961).]
  
2. A firm whereof all the partners practising in Pakistan are Chartered Accountants may be appointed by its firm name as auditors of a company referred to in sub-section (1) and may act in its firm name.
  
3. None of the following persons shall be appointed as auditor of a company, namely: —
  - a. a person who is, or at any time during the preceding three years was, a director, other officer or employee of the company;
  - b. a person who is a partner of , or in the employment of, a director, officer or employee of the company;
  - c. the spouse of a director of the company;
  - d. a person who is indebted to the company;
  - e. a body corporate;
  - f. a person or his spouse or minor children, or in case of a firm, all partners of such firm who holds any shares of an audit client or any of its associated companies:

**Provided that** if such a person holds shares prior to his appointment as auditor, whether as an individual or a partner in a firm the fact shall be disclosed on his appointment as auditor and such person shall disinvest such shares within ninety days of such appointment.

**Explanation:** Reference in this section to an “officer” or “employee” shall be construed as not including reference to an auditor.

4. A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of the provisions of sub-section (3), disqualified for appointment as auditor of any other company which is that company’s subsidiary or holding company or a subsidiary of that holding company.
  
5. If, after his appointment, an auditor becomes subject to any of the disqualifications specified in this section, he shall be deemed to have vacated his office as auditor with effect from the date on which he becomes so disqualified.
  
6. A person who, not being qualified to be an auditor of a company, or being or having become subject to any disqualification to act as such, acts as auditor of a company shall be liable to fine which may extend to twenty five thousand rupees.



7. The appointment as auditor of a company of an unqualified person, or of a person who is subject to any disqualifications to act as such, shall be void, and, where such an appointment is made by a company, the Commission may appoint a qualified person in place of the auditor appointed by the company.

**Section: 255 Powers and duties of auditors:-**

1. Every auditor of a company shall have a right of access at all times to the books, papers, accounts and vouchers of the company, whether kept at the registered office of the company or elsewhere, and shall be entitled to require from the company and the directors and other officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.
2. In the case of a company having a branch office outside Pakistan, it shall be sufficient if the auditor is allowed access to such copies of, and extracts from, the books and papers of the branch as have been transmitted to the principal office of the company in Pakistan.
3. The auditor shall make a report to the members of the company on the accounts and books of accounts of the company and on every balance-sheet and profit and loss account or income and expenditure account and on every other document forming part of the balance-sheet and profit and loss account or income and expenditure account, including notes, statements or schedules appended thereto, which are laid before the company in general meeting during his tenure of office, and the report shall state—
  - a. whether or not they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of the audit;
  - b. whether or not in their opinion proper books of accounts as required by this Ordinance have been kept by the company;
  - c. whether or not in their opinion the balance-sheet and profit and loss account or in the income and expenditure account have been drawn up in conformity with this Ordinance and are in agreement with the books of accounts;
  - d. whether or not in their opinion and to the best of their information and according to the explanations given to them, the said accounts give the information required by this Ordinance in the manner so required and give a true and fair view—
    - i. in the case of the balance-sheet, of the state of the company's affairs as at the end of its financial year;
    - ii. in the case of the profit and loss account or the income and expenditure account, of the profit or loss or surplus or deficit, as the case may be, for its financial year; and
    - iii. in the case of the statement of changes in financial position or sources and application of funds of a listed company, of the changes in the financial position or the sources and application of funds for its financial year;
  - e. whether or not in their opinion:
    - i. the expenditure incurred during the year was for the purpose of the company's business; and
    - ii. the business conducted, investments made and expenditure incurred during the year were in accordance with the objects of the company;
  - f. whether or not in their opinion zakat deductible at source under the Zakat and Usher Ordinance, 1980 (XVIII of 1980), was deducted by the company and deposited in the Central Zakat Fund established under section 7 of that Ordinance.

**Explanation:** Where the auditor's report contains a reference to any other report, statement or remarks which they have made on the balance-sheet and profit and loss account or income and expenditure account examined by them, such statement or remarks shall be annexed to the auditor's report and shall be deemed to be a part of the auditor's report.

4. Where any of the matters referred to in sub-section (3) is answered in the negative or with a qualification, the report shall state the reason for such answer along with the factual position to the best of the auditor's information.
5. The Federal Government may, by general or special order, direct that, in the case of all companies generally or such class or description of companies as may be specified in the order, the auditor's report shall also include a statement of such additional matters as may be so specified.
6. The auditor of a company shall be entitled to attend any general meeting of the company, and to receive all notices of, and any communications relating to, any general meeting which any member of the company is entitled to receive, and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor:

**Provided that,** in the case of a listed company, the auditor or a person authorised by him in writing shall be present in the general meeting in which the balance-sheet and profit and loss account and the auditor's report are to be considered.

7. If any officer of a company refuses or fails, without lawful justification, the onus whereof shall lie on him, to allow any auditor access to any books and papers in his custody or power, or to give any such information possessed by him as and when required, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers or fails to give notice of any general meeting to the auditor, he shall be liable to fine which may extend to five thousand rupees and in the case of a continuing offence to a further fine which may extend to one hundred rupees for every day after the first during which the default, refusal or contravention continues.
8. The provisions of this section shall apply mutatis mutandis to the auditor appointed for audit of the books of account of a liquidator.

#### **Section: 256 Reading and inspection of auditor's report:-**

The auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

#### **Section 257 Signature on audit report, etc.:-**

1. Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of sub-section (2) of section 254, only a partner in the firm practicing in Pakistan, shall sign the auditor's report or sign or authenticate any other documents of the company required by law to be signed or authenticated by the auditor. signed.
2. The report of auditors shall be dated and indicate the place at which it is

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**Section: 258 Audit of cost accounts:-**

1. Where any company or class of companies is required under clause (e) of sub-section (1) of section 230 to include in its books of account the particulars referred to therein, the Federal Government may direct that an audit of cost accounts of the company shall be conducted in such manner and with such stipulations as may be specified in the order by an auditor who is a chartered accountant within the meaning of the Chartered Accountant Ordinance, 1961 (X of 1961), or a cost and management accountant within the meaning of the Cost and Management Accountants Act, 1966 (XIV of 1966); and such auditor shall have the same powers, duties and liabilities as an auditor of a company and such other powers, duties and liabilities as may be prescribed.

## Dividends & Manner & Time of Payment Thereof

### Section: 248 Certain restrictions on declaration of dividends:-

1. The company in general meeting may declare dividends; but no dividend shall exceed the amount recommended by the directors.
2. No dividend shall be declared or paid by a company for any financial year out of the profits of the company made from the sale or disposal of any immovable property or assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of selling and purchasing any such property or assets, except after such profits are set off or adjusted against losses arising from the sale of any such immovable property or assets of a capital nature.

### Section: 249 Dividend to be paid only out of profits:-

No dividend shall be paid by a company otherwise than out of profits of the company.

### Section: 250 Dividend not to be paid except to registered shareholders or to their order or to their bankers:-

1. No dividend shall be paid by a company in respect of any share therein except to the registered holder of such share or to his order or to his bankers or to a financial institution nominated by him for the purpose.
2. Nothing contained in sub-section (1) shall be deemed to require the bankers of a registered shareholder or the financial institution nominated by him to make a separate application to the company for payment of the dividend.
3. The dividend warrants shall be sent by a company by registered post unless the shareholder entitled to receive the dividend requires otherwise in writing.

### Section: 251 Period for payment of dividend:-

1. When a dividend has been declared, it shall not be lawful for the directors of the company to withhold or defer its payment and the chief executive of the company shall be responsible to make the payment in the manner provided in section 250 within forty-five days of the declaration in the case of a listed company and within thirty days in the case of any other company.

**Explanation:** Dividend shall be deemed to have been declared on the date of the general meeting in case of a dividend declared or approved in the general meeting and on the date of commencement of closing of share transfer for purposes of determination of entitlement of dividend in the case of an interim dividend and where register of members is not closed for such purpose, on the date on which such dividend is approved by the directors.

2. Where a dividend has been declared by a company but is not paid within the period specified in sub-section (1), the chief executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to one million rupees:

**Provided that** no offence shall be deemed to have been committed within the meaning of the foregoing provisions in the following cases, namely—

- a. where the dividend could not be paid by reason of the operation of any law;
- b. where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;
- c. where there is a dispute regarding the right to receive the dividend;
- d. where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- e. where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company; and

the Commission has, on an application of the company on the prescribed form made within forty-five days from the date of declaration of the dividend, and after providing an opportunity to the shareholder or person who may seem to be entitled to receive the dividend of making representation against the proposed action, permitted the company to withhold or defer payment as may be ordered by the Commission.

3. A chief executive convicted under sub-section (2) shall from the day of the conviction cease to hold the office of chief executive of the company and shall not, for a period of five years from that day, be eligible to be the chief executive or a director of that company or any other company.

## Investigation and Related Matters

### Section: 263 Investigation of affairs of company on application by members or report by registrar:-

1. The Commission may appoint one or more competent persons as inspectors to investigate the affairs of any company and to report thereon in such manner as the Commission may direct—
  - a. in the case of a company having a share capital, on the application of members holding not less than one-tenth of the total voting powers therein;
  - b. in the case of a company not having a share capital, on the application of not less than one-tenth in number of the persons entered on the company's register of members;
  - c. in the case of any company, on receipt of a report under sub-section (5) of section 231 or on a report by the registrar under sub-section (6) of section 261.

### Section: 264 Application by members to be supported by evidence and power to call for security:-

1. An application by members of a company under clause (a) or clause (b) of section 263 shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Commission may, before appointing an inspector, require the applicants to give such security for payment of the costs of the investigation as the Commission may specify.

### Section: 265 Investigation of company's affairs in other cases:-

1. Without prejudice to its power under section 263, the Commission—
  - a. shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct, if—
    - i. the company, by a resolution in general meeting, or
    - ii. the Court, by order, declares that the affairs of the company ought to be investigated by an inspector appointed by the Commission; and
  - b. may appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct if in the opinion of the Commission there are circumstances suggesting—
    - i. that the business of the company is being or has been conducted with intent to defraud its creditors, members or any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or
    - ii. that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its members or have been carrying on unauthorized business; or
    - iii. that the affairs of the company have been so conducted or managed as to deprive the members thereof of a reasonable return; or
    - iv. that the member of the company have not been given all the information with respect to its affairs which they might reasonably expect; or
    - v. that any shares of the company have been allotted for inadequate consideration; or

- vi. that the affairs or the company are not being managed in accordance with sound business principles or prudent commercial practices; or
- vii. that the financial position of the company is such as to endanger its solvency:

**Provided that,** before making an order under clause (b), the Commission shall give the company an opportunity to show cause against the action proposed to be taken.

**Section: 266 Inspector to be a Court for certain purposes:-**

1. A person appointed as inspector under section 263 or section 265 shall, for the purposes of his investigation, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:-
  - a. enforcing the attendance of persons and examine them on oath or affirmation;
  - b. compelling the discovery and production of books and papers and any material objects; and
  - c. issuing commissions for the examination of witnesses; and every proceeding before such person shall be deemed to be “judicial proceeding” within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).
2. Any contravention of or non-compliance with any orders, directions or requirement of the inspector exercising powers of a Court under sub-section (1) shall, in all respects, entail the same liabilities, consequences and penalties as are provided for such contravention, non-compliance or default under the Code of Civil Procedure, 1908 (Act V of 1908) and Pakistan Penal Code, 1860 (Act XLV of 1860).

**Section: 267 Power of inspectors to carry investigation into affairs of associated companies:-**

1. If an inspector appointed under section 263 or section 265 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of—
  - a. any other body corporate which is, or has at any relevant time been, the company’s associated company or its subsidiary or holding company, or a subsidiary of its holding company, or a holding company of its subsidiary;
  - b. any other body corporate which is, or has at any relevant time been, managed as chief executive by any person who is or was at the relevant time the chief executive of the company ;
  - c. any person who is or has at any relevant time been the company’s chief executive or managing agent or an associate of such chief executive or managing agent; the inspector shall, subject to the provisions of sub-section (2) have power so to investigate and shall report on the affairs of the other body corporate or of the chief executive or the managing agent or an associate of the chief executive or managing agent, as the case may be, so far as he thinks that the results of his investigation thereof are relevant to the investigation of the affairs of the company.
2. In the case of anybody corporate or the chief executive referred to in clause (b) or clause (c) of sub-section (1), the inspector shall not exercise his power of investigation into, and reporting on, its or his affairs without first having obtained the approval of the Commission, by a properly verified application in which he shall state the facts in detail and the grounds on which he applies for such approval:
 

**Provide that,** before giving approval under the sub-section, the Commission shall give the body corporate or chief executive concerned a reasonable opportunity to show cause why such approval should not be given.

**Section: 268 Duty of officers, etc., to assist the inspector:-**

1. It shall be the duty of all officers and other employees and agents of the company and all persons who have dealings with the company to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.
2. Any such person who makes default in complying with the provisions of sub-section (1) shall, without prejudice to any other liability, be punishable in respect of each offence with imprisonment of either description for a term which may extend to one year and shall also be liable to a fine which may extend to ten thousand rupees.
3. In this section —
  - a. the expression “agents”, in relation to any company, body corporate or person, includes the bankers, legal advisers and auditors of the company;
  - b. the expression “officer”, in relation to any company or body corporate, include any trustee for the debenture-holders of such company or body corporate; and
  - c. any reference to officers and other employees and agents shall be construed as a reference to past as well as present officers and other employees and agents, as the case may be.

**Section: 269 Inspector’s report:-**

1. The inspector may, and if so directed by the Commission shall, make interim reports to the Commission, and on the conclusion of the investigation, shall make a final report to the Commission; and any such report shall be typed or printed as the Commission may direct.
2. The Commission—
  - a. shall forward a copy of any report made by the inspectors to the company at its registered office with such directions as the Commission thinks fit;
  - b. may, if it thinks fit, furnish a copy thereof, on request and on payment of the prescribed fee, to any person—
    - i. who is a member of the company or other body corporate or is interested in the affairs of the company;
    - ii. whose interests as a creditor of the company or other body corporate appear to the Commission to be affected;
  - c. shall, when the inspectors are appointed under clause (a) or clause (b) of section 263, furnish, at the request of the applicants for the investigation, a copy of the report to them;
  - d. shall, where the inspector are appointed under section 265 in pursuance of an order of the Court, furnish a copy of the report to the Court;
  - e. may forward a copy of the report to the registrar with such directions as it may deem fit; and
  - f. may also itself cause the report or any part thereof to be published or direct the company to do so or send the same to its shareholders.

**Section: 270 Prosecution:-**

1. If, from any report made under section 269, it appears to the Commission that any person has, in relation to the company or in relation to any other body corporate, whose affairs have been



investigated by virtue of section 267, been guilty of any offense for which he is criminally liable, the Commission may, after taking such legal advice as it thinks fit, prosecute such person for the offence, and it shall be the duty of all officers and other employees and agents of the company or body corporate, as the case may be, other than the accused in the proceedings, to give the Commission or any person nominated by it in this behalf all assistance in connection with the prosecution which they are reasonably able to give.

2. Sub-section (3) of section 268 shall apply for the purpose of this section as it applies for the purposes of that section.

**Section: 271 Power of Commission to initiate action against management:-**

1. If from any report made under section 269 the Commission is of the opinion that—
  - a. the business of the company is being or has been conducted with intent to defraud its creditors, members or any other persons or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or
  - b. the person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its member or have been carrying on unauthorized business; or
  - c. the affairs of the company have been so conducted or managed as to deprive the shareholders thereof of a reasonable return; or
  - d. that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect; or
  - e. any shares of the company have been allotted for inadequate consideration; or
  - f. the affairs of the company are not being managed in accordance with sound business principles or prudent commercial practices; or
  - g. the financial position of the company is such as to endanger its solvency; the Commission may apply to the Court and the Court may, after taking such evidence as it may consider necessary, by an order—
    - i. remove from office any director including the chief executive, managing agent or other officer of the company; or
    - ii. direct that the directors of the company should carry out such changes in the management or in the accounting policies of the company as may be specified in the order; or
    - iii. notwithstanding anything contained in this Ordinance or any other law for the time being in force, direct the company to call a meeting of its members to consider such matters as may be specified in the order and to take appropriate remedial action; or
    - iv. direct that any existing contract which is to the detriment of the company or its members or is intended to or does benefit any officer or director shall be annulled or modified to the extent specified in the order:  
**Provided that** no such order shall be made so as to have effect from any date preceding the date of the order:

**Provided further that** any director, including a chief executive, managing agent or other officer who is removed from office under clause (i), unless the court specified a lesser period, shall not be a director, chief executive, managing agent, or officer of any company for a period of five years from the date of his removal.

2. No order under this section shall be made unless the director or other officer likely to be affected by such order has been given an opportunity of being heard.
3. The action taken under sub-section (1) shall be in addition to and not in substitution of any other action or remedy provided in any other law for the time being in force.

**Section: 272 Effect of Court's order:-**

1. On the issue of the Court's order under the preceding section removing from office any director, including chief executive, managing agent, or other officer, such director, managing agent or other officer shall be deemed to have vacated his office and-
  - i. if the Court's order has removed a director, the casual vacancy in the office of director shall be filled in accordance with the relevant provisions contained in the articles of association of the company; and
  - ii. if the Court's order has removed from office a chief executive, the remaining directors shall elect another person to be the chief executive; and
  - iii. if the Court's order has removed from office all the directors including the chief executive, a general meeting of the company shall be called forthwith for electing new directors.

**Section: 273 No compensation to be payable for annulment or modification of contract:-**

Notwithstanding anything contained in any other law for the time being in force, and except as ordered by the Court for special reasons to be recorded in writing, no director, chief executive, managing agent or other officer of the company shall be entitled to be paid any compensation for annulment or modification of a contract to which he is a party or of which he is a beneficiary, if such contract is annulled or modified by an order issued by the Court under section 271.

**Section: 274 No right to compensation for loss of office:-**

No person shall be entitled to or be paid any compensation or damages for the loss of office by reason of an order issued under section 271.

**Section: 275 Application for winding up of company or an order under section 290:-**

1. If any company or other body corporate the affairs of which have been investigated by inspectors is liable to be wound up under this Ordinance, and it appears to the Commission from any report made under section 269 that it is expedient so to do by reason of any such circumstances as are referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (vii) of clause (b) of section 265, the Commission may, unless the company or other body corporate is already being wound up by the Court, cause to be presented to the court by the registrar or any person authorized by the Commission in this behalf-
  - a. A petition for the winding up of the company or body corporate, on the ground that it is just and equitable that it should be wound up;
  - b. an application for an order under section 290; or
  - c. both a petition and an application as aforesaid.

**Section: 276 Proceedings for recovery of damages or property:-**

1. If from any report referred to in sub-section (1) of section 269 it appears to the Commission that proceedings ought, in the public interest, to be brought by the company or anybody corporate whose affairs have been investigated in pursuance of clause (a), clause (b) or Clause (c) of sub-section (1) of section 267—
  - a. for the recovery of damages in respect of any fraud, misfeasance, breach of trust or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or
  - b. for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained;

the Commission may itself bring proceedings for that purpose in the name of such company or body corporate.
2. The Commission shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (1) and the Court or other authority before which proceedings are brought shall pass an order accordingly.

**Section: 278 Inspector's report to be evidence:-**

A copy of any report of any inspector or inspectors appointed under section 263 or section 265 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

## Prevention of Oppression & Mismanagement

### Section: 290 Application to Court:-

1. If any member or members holding not less than twenty per cent of the issued share capital of a company, or a creditor or creditors having interest equivalent in amount to not less than twenty per cent of the paid up capital of the company, complains, or complain, or the registrar is of the opinion, that the affairs of the company are being conducted, or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner not provided for in its memorandum, or in a manner oppressive to the members or any of the members or the creditors or any of the creditors or are being conducted in a manner prejudicial to the public interest, such member or members or, the creditor or creditors, as the case may be, the registrar may make an application to the Court by petition for an order under this section.
2. If, on any such petition, the Court is of opinion-
  - a. that the company's affairs are being conducted, or are likely to be conducted, as aforesaid; and
  - b. that to wind-up the company would unfairly prejudice the members or creditors;

the Court may, with a view to bringing to an end the matters complained of, make such order as it think fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of purchase by the company, for, the reduction accordingly of the company's capital, or otherwise.

3. Where an order under this section makes any alteration in, or addition to, a company's memorandum or articles, then, notwithstanding anything in any other provision of this Ordinance, the company shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; and the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Ordinance shall apply to the memorandum or articles as so modified accordingly.
4. A copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen days after the making thereof, be delivered by the company to the registrar for registration; and if the company makes default in complying with this sub-section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to fine which may extend to five thousand rupees and to a further fine not exceeding one hundred rupees for every day after the first during which the default continues.
5. The provisions of this section shall not prejudice the right of any person to any other remedy or action.

### Section: 291 Powers of court under section 290:-

Without prejudice to the generality of the powers of the Court under section 290, an order under that section may provide for-

- a. the termination, setting aside or modification of any agreement, however arrived at between the company and any director, including the chief executive, managing agent or other officer, upon such terms and conditions as may, in the opinion of the Court, be just and equitable in all the circumstances;
- b. setting aside of any transfer, delivery of goods, payment, execution or other transactions not relating to property made or done by or against the company within three months before the date of the application which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference; and
- c. any other matter, including a change in management, for which in the opinion of the Court it is just and equitable that provision should be made.

**Section: 292 Interim orders:-**

Pending the making by it of a final order under section 290 the Court may, on the application of any party to the proceedings, make such interim order as it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.

**Section: 293 Claim for damages inadmissible:-**

Where an order of the Court made under section 290 terminates, sets aside, or modifies an arrangement, the order shall not give rise to any claim whatever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise.

**Section: 294 Application of certain sections to proceedings under this Part:-**

In relation to an application under section 290, sections 410 to 415 shall “mutatis mutandis” apply as they apply in respect of winding up.

**Section: 295 Management by Administrator:-**

1. If at any time a creditor or creditors having interest equivalent in amount to not less than sixty per cent, of the paid up capital of a company, represents or represent to the Commission that:-
  - a. the affairs or business of the company are or is being or have or has been conducted or managed in a manner likely to be prejudicial to the interest of the company, its members or creditors, or any director of the company or person concerned with the management of the company is or has been guilty of breach of trust, misfeasance or other misconduct towards the company or towards any of its members or creditors or director;
  - b. the affairs or business of the company are or is being or have or has been conducted or managed with intent to defraud its members or creditors or any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of such persons or for purposes as aforesaid; or
  - c. the affairs of the company have been so conducted or managed as to deprive the members thereof of a reasonable return; or
  - d. any industrial project or unit to be set up or belonging to the company has not been completed or has not commenced operations or has not been operating smoothly or its production or performance has so deteriorated that-
    - i. the market value of its shares as quoted on the stock exchange or the net worth of its share has fallen by more than seventy-five per cent of its par value; or

- ii. debt equity ratio has deteriorated beyond 9:1; or
- iii. current ratio has deteriorated beyond 05 :1; or
- e. any industrial unit owned by the company is not in operation for over a period of two years or has been in operation intermittently or partially during the preceding two years; or
- f. the accumulated losses of the company exceed sixty per cent of its paid up capital;

and request the Commission to take action under this section, the Commission may, after giving the company an opportunity of being heard, without prejudice to any other action that may be taken under this Ordinance or any other law, by order in writing, appoint an Administrator, hereinafter referred to as the Administrator within sixty days of the date of receipt of the representation, from a panel maintained by it on the recommendation of the State Bank of Pakistan to manage the affairs of the company subject to such terms and conditions as may be specified in the order:

**Provided that** the Commission may, if it considers it necessary so to do, for reasons to be recorded, or on the application of the creditors on whose representation it proposes to appoint the Administrator, and after giving a notice to the State Bank of Pakistan, appoint a person whose name does not appear on the panel maintained for the purpose to be the Administrator.

**Explanation:** For the purposes of clause(c), the members shall be deemed to have been deprived of a reasonable return if, having regard to enterprises similarly placed, the company is unable to, or does not, declare any or adequate dividend for a period of three consecutive years.

2. The Administrator shall receive such remuneration as the Commission may determine.
3. On and from the date of appointment of the Administrator, the management of the affairs of the company shall vest in him, and he shall exercise all the powers of the directors or other persons in whom the management vested and all such directors and persons shall stand divested of that management and powers and shall cease to function or hold office.
4. Where it appears to the Administrator that any purchase or sales agency contract has been entered into, or any employment given, patently to benefit any director or other person in whom the management vested or his nominees and to the detriment of the interest of the general members, the Administrator may, with the previous approval in writing of the Commission, terminate such contract or employment.
5. No person shall be entitled to, or be paid, any compensation or damages for termination of any office, contract or employment under sub-section (3) or sub-section (4).
6. If at any time it appears to the Commission that the purpose of the order appointing the Administrator has been fulfilled, it may permit the company to appoint directors and, on the appointment of directors, the Administrator shall cease to hold office.
7. Save as provided in sub-section (8), no suit, prosecution or other legal proceeding shall lie against the Administrator for anything which is in good faith done or intended to be done by him in pursuance of this section or of any rules made thereunder.

8. Any person aggrieved by an order of the Commission under sub-section (1) or sub-section (10), or of the Administrator under sub-section (3) may, within sixty days from the date of the order, appeal against such order to the Federal Government.
9. If any person fails to deliver to the Administrator any property, records or documents relating to the company or does not furnish any information required by him or in any way obstructs the Administrator in the management, of the affairs of the company or acts for or represents the company in any way, the Commission may by order in writing, direct that such person shall pay by way of penalty a sum which may extend to one million rupees, and, in the case of a continuing failure or obstruction, a further sum which may extend to ten thousand rupees for every day after the first during which the failure or obstruction continues.
10. The Commission may issue such directions to the Administrator as to his powers and duties as it deems desirable in the circumstances of the case, and the Administrator may apply to the Commission at any time for instructions as to the manner in which he shall conduct the management of the company or in relation to any matter arising in the course of such management.
11. Any order or decision or direction of the Commission made in pursuance of this section shall be final and shall not be called in question in any Court.
12. The Federal Government may, by notification in the official Gazette, make rules to carry out the purposes of this section.
13. The provisions of this section shall have effect notwithstanding anything contained in any other provision of this Ordinance or any other law or contract, or in the memorandum or articles of a company.

## Companies Established Outside Pakistan Provisions as to Establishment of Places of Business in Pakistan

### Section: 450 Application of this Part to foreign companies:-

This Part shall apply to all foreign companies, that is to say, companies incorporated or formed outside Pakistan which, after the commencement of this Ordinance, establish a place of business within Pakistan or which have, before the commencement of this Ordinance, established a place of business in Pakistan and continue to have an established place of business within Pakistan at the commencement of this Ordinance.

### Section: 451 Documents to be delivered to registrar by foreign companies:-

1. Every foreign company which, after the commencement of this Ordinance, establishes a place of business in Pakistan shall, within thirty days of the establishment of the place of business, deliver to the registrar-
  - a. a certified copy of the charter, statute or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and if the instrument is not written in the English or Urdu language, a certified translation thereof in the English or Urdu language;
  - b. the full address of the registered or principal office of the company;
  - c. a list of the directors, chief executive and secretaries (if any) of the company;
  - d. a return showing the full present and former names and surnames, father's name or, in the case of a married woman or widow, the name of her husband or deceased husband, present and former nationality, designation and full address in Pakistan of the principal officer of the company in Pakistan by whatever name called;
  - e. the full present and former names and surnames, father's name, or, in case of a married woman or widow, the name of her husband or deceased husband, present and former nationality, occupation and full addresses of some one or more persons resident in Pakistan authorized to accept on behalf of the company service of process and any notice or other document required to be served on the company together with his consent to do so; and
  - f. the full address of that office of the company in Pakistan which is to be deemed its principal place of business in Pakistan of the company.
2. The list referred to in clause (c) of sub-section (1) shall contain the following particulars, that is to say:-
  - a. with respect to each director-
    - i. in the case of an individual, his present and former name and surname in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, and any other directorship which he hold;
    - ii. in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality and nationality of origin, if different from that nationality, of each of its director;
  - b. with respect to the secretary, or where there are joint secretaries, with respect to each of them-
    - i. in the case of an individual, his present and former name and surname, and his usual residential address;



- ii. in the case of a body corporate, its corporate name and registered or principal office:  
 Provided that, where all the partner in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in clause (b).
3. Every foreign company, other than a company mentioned in sub-section (1) shall, if it has not delivered to the registrar before the commencement of this Ordinance the documents and particulars specified in section 277 of the Companies Act, 1913 (VII of 1913), shall continue to be subject to the obligation to deliver those documents and particulars and be liable to penalties in accordance with the provisions of that Act.

**Section: 452 Return to be delivered to registrar by foreign companies whose documents, etc., altered:-**

1. If any alteration is made or occurs in-
- a. the charter, statute or memorandum and articles of a foreign company or any such instrument as is referred to in section 451;
  - b. the address of the registered or principal office of the company;
  - c. the directors, chief executive or secretaries or in the particulars contained in the list referred to in section 451;
  - d. the principal officer referred to in section 451;
  - e. the name or addresses or other particulars of the persons authorized to accept service of process, notices and other documents on behalf of the company as referred to in the preceding section 451, or
  - f. the principal place of business of the company in Pakistan;
- the company shall, within thirty days of the alteration, deliver to the registrar for registration a return containing the prescribed particulars of the alteration and in the case of change in persons authorized to accept service of process, notices and other documents on behalf of the company, also his consent to do so.

**Section: 453 Accounts of foreign companies:-**

1. Every foreign company shall in every year make out and file with the registrar, together with a list of Pakistani members and debenture-holders and of the places of business of the company in Pakistan,-
- i. such number of copies of a balance sheet and profit and loss account, not being less than three, as may be prescribed, in such form, audited by such person, containing such particulars and including or having annexed or attached thereto such documents (including, in particular documents relating to every subsidiary of the company) as nearly as may be as under the provisions of this Ordinance it would, if it were a company formed and registered under this Ordinance, be required to file in accordance with the provisions of this Ordinance, in respect of the company's operations in Pakistan as if such operations had been conducted by a separate public company formed and registered in Pakistan under this Ordinance; and
  - ii. in a case where, by the law for the time being in force of the country in which the company is incorporated, such company is required to file with the public authority an annual balance sheet and profit and loss accounts, also such number of copies of that balance sheet and profit and loss account together with any documents annexed thereto, not being less than three, as may be prescribed, and if the same is not in the English language a certified translation thereof in the English language; or

- iii. in a case where a company is not required to file with the public authority of the country in which the company is incorporated an annual balance sheet and profit and loss account as referred to in clause (ii), the prescribed number of copies, not being less than three, of the balance sheet and profit and loss account and the report of auditors and other documents annexed thereto, in such form and manner as under the provisions of this Ordinance it would, if it had been a public company within the meaning of this Ordinance, be required to make out and lay before the company in general meeting.
2. The period within which the documents, returns or reports referred to in sub-section (1) are to be filed with the registrar shall be a period of forty five days from the date of submission of such documents or returns to the public authority of the country of incorporation or within six months of the date up to which the relevant accounts are made up, whichever is earlier.

shall -

**Section: 454 Certain obligations of foreign companies:-**

1. Every foreign company
  - a. maintain at its principal place of business in Pakistan, or, if it has only one place of business in Pakistan, in that place of business, a register of Pakistani members and debenture-holders, directors and officers, which shall be open to inspection and copies thereof supplied as in the case of similar registers maintained by a company under this Ordinance;
  - b. in every prospectus inviting subscriptions for its shares or debentures in Pakistan, state the country in which the company is incorporated;
  - c. conspicuously exhibit on the outside of every place where it carries on business in Pakistan the name of the company and the country in which the company is incorporated in letter easily legible in English or Urdu characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular language used in that place;
  - d. cause the name of the company and of the country in which the company is incorporated mentioned in legible English or Urdu characters in all bill-heads and letter papers, and in all notices, advertisements, documents and other official publications of the company; and
  - e. if the liability of the members of the company is limited, cause notice of that fact to be stated in legible English or Urdu characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter papers, notices, advertisements and other official publications of the company in Pakistan, and to be exhibited on the outside of every place where it carries on business in Pakistan.

**Section: 455 Service on foreign company:-**

1. Any process, notice or other document required to be served on such company as is referred to in this Part shall be deemed to be sufficiently served if addressed to any person whose name has been so filed with the registrar as aforesaid and left at or sent by post to the address which has been so filed:

**Provided that –**

- a. where any such company makes default in delivering to the registrar the name and address of a person resident in Pakistan who is authorized to accept on behalf of the company service of process, notices or other documents; or

- b. if at any time all the persons whose names and addresses have been so filed are dead or have ceased to so reside, or refuse to accept service on behalf of the company or for any reason cannot be served;  
a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Pakistan.

**Section: 456 Company's failure to comply with this part not to affect its liability under contracts, etc.:-**

Any failure by a foreign company to comply with any of the requirement or section 451 or section 452 shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof; but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until it has complied with the provisions of section 451 and section 452.

**Section: 457 Provisions relating to names, inquiries, etc. to apply to foreign companies:-**

The provisions of sections 37 to 41 relating to names and changes in the names of companies shall, as far as applicable, also apply to companies to which this Part applies; and the power of inspection, inquiries and investigation conferred by this Ordinance on the registrar and the Commission in respect of companies shall likewise extend to such companies.

**Section: 458 Intimation of ceasing to have place of business to be given:-**

1. Any company to which this Part applies shall at least thirty days before it intends to cease to have any place of business in Pakistan-
  - a. give a notice of such intention to the registrar; and
  - b. publish a notice of such intention at least in two daily newspapers circulating in the Province or Provinces in which such place or places of business are situate.
2. As from the date of intention to cease to have any place of business in Pakistan stated in the notice referred to in sub-section (1), unless the said date is by a similar notice altered, the obligation of the company to delivery any document to the registrar shall cease, provided it has no other place of business in Pakistan.

**Section: 459 Penalties:-**

1. If any foreign company fails to comply with any of the provisions of this Part, the company, and every officer or agent of the company who knowingly or willfully authorizes or permits the default, shall be liable to a fine which may extend to five thousand rupees and, in the case of a continuing default, to a further fine which may extend to one hundred rupees for every day after the first during which the default continues.

## Winding up of Company

**Section 297: Modes of winding up**----the winding up of a company may be either:

1. By the court or
2. Voluntary
3. Subject to the supervision of the court

**Section: 305 Circumstances in which company may be wound up by Court:-**

1. A company may be wound up by the Court-
  - a. if the company has, by special resolution, resolved that the company be wound up by the Court;
  - b. if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;
  - c. if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
  - d. if the number of members is reduced, in the case of private company, below two or, in the case of any other company, below seven;
  - e. if the company is unable to pay its debts;
  - f. if the company is-
    - g. conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities;
    - h. carrying on business not authorized by the memorandum;

(iii) conducting its business in a manner oppressive to any of its members or persons concerned with the formation or promotion of the company or the minority shareholders;

(iv) run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the company; or

(v) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this Ordinance or fail to carry out the directions or decisions of the Court or the registrar or the Commission given in the exercise of powers under this Ordinance;

(g) if, being a listed company, it ceases to be such company; or

(h) if the Court is of opinion that it is just and equitable that the company should be wound up; 1[or]

2[(i) if a company ceases to have a member.]

Explanation I: The promotion or the carrying on of any scheme or business, except the business carried on under the provisions of the Insurance Act, 1938 (IV of

## Petition for Winding Up

### Section: 309 Provisions as to applications for winding up:-

1. An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately, or by the registrar, or by the Commission or by a person authorized by the Commission in that behalf.

#### Provided that-

- a. a contributory shall not be entitled to present a petition for winding up a company unless-
  - i. either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or
  - ii. the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have or devolved on him through the death of a former holder;
- b. the registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the Commission has been obtained to the presentation of the petition:
 

**Provided that** no such sanction shall be given unless the company has first been afforded an opportunity of making a representation and of being heard;
- c. the Commission or a person authorized by the Commission in that behalf shall not be entitled to present a petition for the winding up of a company unless an investigation into the affairs of the company has revealed that it was formed for any fraudulent or unlawful purpose or that it is carrying on a business not authorized by its memorandum or that its business is being conducted in a manner oppressive to any of its members or persons concerned in the formation of the company or that its management has been guilty of fraud, misfeasance or other misconduct towards the company or towards any to its members; and such petition shall not be presented or authorized to be presented by the Commission unless the company has been afforded an opportunity of making a representation and of being heard;
- d. the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court;
- e. the Court shall not give a hearing to a petition for winding up a company by the company until the company has furnished with its petition, in the prescribed manner, the particulars of its assets and liabilities and business operations and the suits or proceedings pending against it.

**Section: 358 Circumstances in which company may be wound up voluntarily:-**

1. A company may be wound up voluntarily-
  - a. when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
  - b. if the company resolves by special resolution that the company be wound up voluntarily; and, in the subsequent provisions of this Part, the expression "resolution for voluntary winding up" means a resolution passed under clause (a) or clause (b).

**Section: 359 Commencement of voluntary winding up:-**

1. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

**Consequences of Voluntary Winding Up****Section: 360 Effect of voluntary winding up on status of company:-**

In the case of voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

**Provided that** the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

**Section: 350 Dissolution of company:-**

1. When the affairs of a company have been completely wound up, or when the Court is of the opinion that the official liquidator cannot proceed with the winding up of the company for want of funds and assets or any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company be made, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly:  
**Provided that** such dissolution of the company shall not extinguish and right of, or debt due to, the company against or from any person.
2. A copy of the order shall, within fifteen days of the making thereof, be forwarded by the official liquidator to the registrar, who shall make in his books a minute of the dissolution of the company.
3. If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which he is in default.

## SECURITIES AND EXCHANGE ORDINANCE, 1969

### ORDINANCE NO. XVII OF 1969

AN ORDINANCE is to provide for the protection of investors, regulation of markets and dealings in securities.

WHEREAS it is expedient to provide for the protection of investors, regulation of markets and dealings in securities and for matters ancillary thereto; AND WHEREAS the national interest of Pakistan in relation to the achievement of uniformity requires Federal legislation in the matter;

NOW, THEREFORE, in pursuance of the Proclamation of the 25th day of March 1969, read with the Provisional Constitution Order, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

#### CHAPTER - I

#### PRELIMINARY

##### 1. Short title, extent and commencement.-

- (1) This Ordinance may be called the Securities and Exchange Ordinance, 1969.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint. 2.

**Definitions.-**(1) in this Ordinance, unless there is anything repugnant in the subject or context,

- (a) **“Agent”** means a person appointed by a member to act on his behalf for the purposes recognized by an exchange;
- (ab) **“Associate”** means any partner, employee, officer or director of a member;
- (ac) **“Asset Management Company”** means a company which offers investment schemes under trust deeds and issues redeemable securities”;
- (ad) **“Balloter”** means a person who provides services to an issuer for selecting the required number of applicants of public issue through a computer draw;
- (b) **“Bank”** means a banking company as defined in the Banking Companies Ordinance, 1962 (LVII of 1962);
- (c) **“Broker”** means any person engaged in the business of effecting transactions in securities for the account of others;
- (ca) **“Central Depository”** means a company formed to establish and operate a system for the central handling of securities, whether or not listed on an exchange, whereby such securities are deposited with and held in

custody by, or registered in the name of, the company as a nominee for the depositors and dealings in respect of such securities are affected by means of entries in securities accounts without the physical delivery of scrips.”

(cb) “**Commission**” means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(d) “**Equity Security**” means any stock or transferable share (preferred or common) or similar security representing ownership; any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right itself; and such other security as may be prescribed;

(da) “**Exchange**” means a Stock Exchange or a Commodity Exchange;

(dd) “**Free Reserves**” for the purpose of an investment company, include any amount which, having been set aside out of the revenue or other surpluses is free in that it is not retained to meet any diminution in value of the assets, specific liability, contingency or commitment of that company known to exist at the date of the balance sheet;

(de) “**Integration**” means the merger of two or more Stock Exchanges in accordance with a scheme approved by the Commission;

(e) “**Investment Adviser**” includes, person who is, for compensation, engaged in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, but does not include,-

(i) A bank;

(ii) Any lawyer, accountant, engineer or teacher whose performance of such services is solely incidental to the practice of his profession;

(iii) Any broker, jobber, member or associate whose performance of such services is solely incidental to the conduct of his business as a broker, jobber, member or associate and who receives no separate compensation therefor;

(iv) The publisher of any newspaper, news magazine, or other publication of general and regular circulation; or

(v) The Investment Corporation of Pakistan;

(f) “**Investment Company**” means a company engaged principally or wholly in buying and selling securities of other companies and includes a company, not being a holding company, the investment of which in the share capital of other companies at any one time is of an amount equivalent to eighty per cent of the aggregate of its own paid up capital and free reserves, but does not include a bank or an insurance company or a corporation which is a member of a Stock Exchange;

(g) “**Issuer**” means any person who has issued or proposes to issue any security;

(h) “**Jobber or Dealer**” means any person engaged in the business of effecting transactions in securities for his own account, through a broker or otherwise, but does not include any person who trades in securities for his own account, either individually or in some fiduciary capacity, otherwise than as a part of a regular business;

(i) “**Member**” means a member of an Exchange;



- (j) “**Person**” includes a Hindu undivided family, a firm, an association or body of individuals, whether incorporated or not, a company and every other artificial juridical person;
- (k) “**Prescribed**” means prescribed by rules made under this Ordinance;
- (l) “**Security**” includes-
- (i) Any stock, transferable share, scrip, [Modaraba Certificate], note, debenture, debenture stock, [Participation term certificate] bond, investment contract, [forward or futures contract], and pre-organization certificate or subscription, and, in general, any interest or instrument commonly known as a “security” and, any certificate of deposit for, certificate of interest or participation in, temporary or interim certificate for, receipt for, or any warrant or right to subscribe to or purchase, any of the foregoing but does not include currency or any note, draft, bill of exchange or banker’s acceptance or any note which has a maturity at the time of issuance of not more than twelve months, exclusive of days of grace, or any renewal thereof whose maturity is likewise limited;
- (ii) Any Government security as defined in the Securities Act, 1920 (X of 1920);
- (iii) Any bonus entitlement voucher issued by the State Bank of Pakistan in accordance with any scheme announced by the Commission; and (iv) Commodity Futures Contract;
- (m) “**Stock Exchange**” means any person who maintains or provides a market place or facilities for bringing together buyers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a Stock Exchange, as that term is generally understood, and includes such market place and facilities;
- (n) “**Sub-underwriter**” means a person who has made a contract with an underwriter to take up a part of the securities not fully subscribed by the public issue;
- (o) “**Transfer Agent**” means a person appointed by the issuer to assist in the maintenance of record for issuance and transfer of securities and to perform functions of persons commonly known as Registrar;
- (p) “**Underwriter**” includes a person who has made a contract with an issuer to subscribe and pay in cash for those securities as are not fully subscribed by the public issue or a person who has initially bought the securities from an issuer for the purpose of selling such securities by means of a public offer; and
- (q) “**Venture Capital Company**” includes a company which is engaged principally in financing through direct equity investment in another company and provides managerial expertise thereto;

**Explanation:-**In clause (1) “Modaraba Certificate” has the same meaning as in the Modaraba Companies and Modarbah (Floatation and Control) Ordinance, 1980 (XXXI of 1980).

(2) The words and expressions used but not defined in this Ordinance shall have the same meaning as are assigned to them in the Companies Ordinance, 1984 (XLVII

of 1984).

## REGISTRATION AND REGULATION OF STOCK EXCHANGES

### Section: 3 No Exchange to operate without registration:-

1. No Exchange shall operate or carry on its functions, and no person shall use or utilize, for the purpose of any transaction or dealing in any security, the facilities or services of a Exchange, unless such Exchange is registered under this Ordinance.
2. The Authority shall determine the number and places for the establishment of exchanges.

**Section: 4 Eligibility for registration:-**

1. Any Exchange which fulfill such conditions or complies with such requirements as may be prescribed to ensure fair dealings protection of investors and its sustainable economic viability shall be eligible for registration under this Ordinance.
2. The conditions or requirements which may be prescribed for the purposes of subsection (1) may, among other matters, relate to-
  - a. qualifications for membership and admission, exclusion, suspension, expulsion and re-admission of members therein to or therefrom;
  - b. constitution and powers of the governing body and the powers and duties of the office bearers;
  - c. representation [from a class or classes of persons or professions] on the governing body of an Exchange or any of its Committees;
  - d. the manner in which business should be transacted including restrictions on the business of the members;
  - e. Memorandum and Articles of Association, rules, regulations and by-laws of an Exchange; and
  - f. the maintenance of accounts [and records] including those of members, and their audit.

**Section: 5 Registration:-**

1. Any Exchange which is eligible for registration under section 4 may, in such form, manner and on payment of such fee] as may be prescribed, apply to the Commission for registration.
2. The Commission, if it is satisfied, after such inquiry and after obtaining such further information as it may consider necessary,-
  - i. that the Exchange is eligible for registration; and
  - ii. that it would be in the interest of the trade and also in the public interest to register the Exchange; may grant a certificate of registration to the Exchange.
3. No application for registration shall be refused except after giving the applicant an opportunity of being heard.

**Section: 5A Brokers or agents not to engage in business without registration:-**

No person shall act as broker or agent to deal in the business of effecting transactions in securities unless he is registered with the Commission in such manner, on payment of such fees and charges and on such conditions as may be prescribed.

**Section: 6 Accounts, annual reports, returns, etc.:-**

1. Every Exchange and every director, officer and member thereof shall prepare and maintain such books of accounts and other documents in such manner as may be prescribed; and every such book of accounts or document shall be subject to inspection at all reasonable times by any person authorized by the [Commission] in this behalf.

2. Every Exchange shall submit to the [Commission], in such manner and containing such particulars as may be prescribed, an annual report and periodical returns relating to its affairs.
3. Without prejudice to the provisions of sub-section (1) and sub-section (2), every Exchange and every director, officer or member thereof shall furnish such documents, information or explanation relating to the affairs of the Exchange or, as the case may be, relating to the business on the Exchange of such director, officer or member as the [Commission] may, at any time, by order in writing require.

**Section: 7 Cancellation of registration, etc.:-**

1. Where the Commission is of opinion that Exchange or any member, director or officer of an Exchange has contravened any provision, or has otherwise neglected or failed to comply with any requirement, of this Ordinance, or of any rule, regulation or direction made or given thereunder, the Commission may, if it considers it necessary for the protection of investors or to ensure fair dealings or fair administration of the Exchange so to do, by order in writing-
  - a. suspend for such period as may be specified in the order the transaction of any business on the Exchange;
  - b. cancel the registration of the Exchange;
  - c. supersede the governing body or other authority of the Exchange;
  - d. remove the director, officer or member from his office in, or membership of, the Exchange;

**Provided that** no such order shall be made except after giving the governing body or other authority or, as the case may be, the director, officer or member, an opportunity of being heard.

2. An order made under clause (c) or clause (d) of sub-section (1) may also direct that the functions of the governing body or other authority which has been superseded or of the director or officer who has been removed shall be performed by such authority or person as may be specified therein.
3. An order under sub-section (1) shall have effect notwithstanding anything contained in any other law for the time being in force or in any Memorandum or Articles of Association;

Provided that no order made under clause (a) or clause (b) of sub-section (1) shall affect the validity of any contract lawfully entered into before the date of such order.

**Section: 8 Restriction on dealings in securities:-**

1. No person shall transact any business in securities on any Exchange otherwise than as may be prescribed.
2. No business shall be transacted on a Exchange in a security, other than a Government security, which is not listed on such Exchange.

**Provided that** business may be transacted in a delisted security for a period which may extend to six months in such manner as the Commission may direct.

3. No person shall act as a dealer in a security listed on a Stock Exchange outside such Stock Exchange;

4. No person other than a member shall act as a broker or a jobber for any security not listed on a stock exchange:

**Provided that** the prohibition in this sub-section shall not apply to discounting of any security evidencing a loan.

#### Section: 9 Listing of Securities:-

1. An issuer who intends to get any of his securities listed on a Stock Exchange shall submit an application therefore, in the prescribed form to the Stock Exchange and submit a copy of the application to the [Commission].
2. Upon receipt of an application under sub-section (1), the Stock Exchange may, if it is satisfied after making such inquiry as it may consider necessary that the applicant fulfils the conditions prescribed in this behalf, list the security for dealings on the Stock Exchange.
3. Where a Stock Exchange refuses to list a security, the [Commission] may, either on petition by the applicant made within the prescribed time or on its own motion, direct the Stock Exchange to list the security.
4. Where after the listing of a security, the Commission or Stock Exchange finds that the application is deficient in any material respect or that the issuer has failed to comply with any prescribed condition or requirement and that the continued listing of the security would not be in the public interest, the [Commission] or, as the case may be, the Stock Exchange may, by order, either require the issuer to correct the deficiency or comply with the prescribed condition or requirement within the time specified in the order or revoke the listing.
5. A listed security may be delisted on application by the issuer to the Stock Exchange which may deny the application or grant it on such conditions as appear necessary or appropriate for the protection of investors.
6. Where a Stock Exchange refuses to delist a security, the Commission may, on petition by the applicant made within the prescribed time, direct the Stock Exchange to delist the security.
7. The Commission or a Stock Exchange may, if it considers it to be in the interest of trade or in the public interest so to do, by order recording the reasons, suspend for a period not exceeding sixty days the trading of any listed security and may, from time to time, for the said reasons and in the said manner extend the suspension for further periods not exceeding sixty days at any time.
8. No application submitted under sub-section (1) shall be refused, and no listing shall be revoked under sub-section (4), unless the issuer has been given an opportunity of being heard.
9. **Compulsory listing of securities.-** Where the Commission, having regard to the nature of, and the dealings in, any security, is of the opinion that it is necessary or expedient in the public interest so to do, it may, after consulting a Stock Exchange and giving the issuer of such security an opportunity of being heard, direct the Stock Exchange to list the security.

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**INSIDER TRADING****Section: 15A Prohibition on stock exchange deals by insiders:-**

1. No person shall indulge in insider trading.
2. Insider trading shall include,-
  - a. an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;
  - b. any other person to whom inside information has been passed or disclosed by an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;
  - c. transaction by any person as specified in clauses (a) and (b), or any other person who knows, or ought to have known under normal and reasonable circumstances, that the information possessed and used for transacting any deal is inside information;
  - d. an insider person suggesting or recommending to another person to engage in dealing in any listed securities to which the inside information possessed by the insider person pertains, without the inside information being disclosed to the person who has dealt in such securities:
3. Nothing in this section shall apply to—
  - a. any transaction performed under an agreement that was concluded before the time of gaining access to inside information; or
  - b. the disclosure of inside information by an insider person as required under law.
4. No contract shall be void or unenforceable by reason only of an offence under this section.

**Section: 15B Inside information:-**

1. The expression “inside information” means,-
  - a. information which has not been made public relating, directly or indirectly, to listed securities or one or more issuers and which, if it were made public, would be likely to have an effect on the prices of those listed securities or on the price of related securities;
  - b. in relation to derivatives on commodities or information which has not been made public, relating, directly or indirectly, to one or more such derivatives and which are traded in accordance with accepted market practices on those markets; or
  - c. in relation to persons responsible for the execution of orders concerning listed securities, information which is conveyed by a client to such person and related to the client’s pending orders.

**Section: 15C Insiders:-**

1. Insiders shall include, -
  - a. sponsors, executive officers and directors of an issuer;
  - b. sponsors, executive officers, directors and partners of a legal person or unincorporated business association, in which the issuer holds shares or voting rights, directly or indirectly, of twenty per cent or more;

- c. sponsors, executive officers, directors and partners of a legal person or unincorporated business association who holds, directly or indirectly, shares or voting rights of ten per cent or more in an issuer;
- d. sponsors, executive officers and directors of an organization, that has been engaged in the placement of listed securities or the public offer of securities or the issuing and marketing of such securities, who has had access to insider information during his employment till a period of one year after leaving employment;
- e. any natural person holding, directly or indirectly, ten per cent or more shares of an issuer;
- f. sponsors, executive officers and directors of credit institutions in which the issuer has an account;
- g. any person obtaining inside information as part of his employment or when discharging his usual duties in an official capacity, or in any other way relating to work performed under contract of employment or otherwise;
- h. any person obtaining inside information through unlawful means; and
- i. a spouse, lineal ascendant or descendant, partner or nominee of a person referred to in clauses (a) to (h).

**Section: 15D Listed companies responsibilities to disclose inside information:-**

1. Listed companies shall inform the public, in the manner specified by the Commission, as soon as possible of inside information which directly concerns the listed securities.
2. Listed companies may delay the public disclosure of inside information, as referred to in sub-section (1) in order not to prejudice their legitimate interests, provided that such delay does not mislead the public and provided that the company is able to ensure the confidentiality of the information and the company shall inform the Commission of the decision to delay the public disclosure of inside information forthwith.
3. Whenever a listed company or a person acting on its behalf, discloses any inside information to any third party in the normal exercise of employment, profession or duties, complete and effective public disclosure of that information must be made simultaneously in the manner specified by the Commission:  
**Provided that** the provisions shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, regulations, articles of association or contract.
4. Listed companies or persons acting on its behalf shall maintain and regularly update a list of persons employed, under contract or otherwise in the manner specified by the Commission who have access to inside information and provide such list to the Commission whenever the Commission requests it.
5. Persons discharging managerial responsibilities within a listed company and, where applicable, persons closely associated with them, shall notify the Commission of transactions conducted on their own account relating to the securities of such listed company in the manner specified by the Commission.

6. The Exchanges shall adopt structural provisions, operating procedures and surveillance techniques to detect and prevent insider trading and market abuse practices, within such time as may be specified by the Commission and according to the regulations made hereunder.

**Section: 15E Liability for contravention:-**

1. Any person who contravenes the provisions of subsection (1) of section 15A shall, on being found guilty of contravention by the Commission, be liable to fine, which may extend to ten million rupees or three times the amount of gain made or loss avoided by such person, or loss suffered by another person, whichever amount is higher.
2. In addition to the fine imposed under sub-section (1), such person,-
  - a. may be directed by the Commission:-
    - i. to surrender to the Commission, an amount equivalent to the gain made or loss avoided by him; or
    - ii. to pay any other person who has suffered a loss, an amount equivalent to the loss so suffered by such person; and
  - b. may, where such person is an executive officer, director, auditor, advisor, consultant of a listed company, be removed from such office by an order of the Commission and debarred from auditing any listed company for a period of up to three years; or
  - c. may, where such person is registered as a broker or agent, be liable to cancellation of registration.
3. Where an insider person discloses inside information to any other person who is not required to possess such information for any reason, the insider person shall be liable to fine, to be imposed by the Commission, which may extend to thirty million rupees.
4. The Commission may, by notification in the official Gazette, make regulations to regulate persons who produce or disseminate research concerning listed securities or issuers of listed securities and persons who produce or disseminate other information recommending or suggesting investment strategy, intended for distribution channels or for the general public.]2

**Section: 15-A Prohibition on stock exchange deals by insiders:-**

- a. No person who is, or has been, at any time during the preceding six months, associated with a company shall, directly or indirectly, deal on a stock exchange in any listed securities of that or any other company or cause any other person to deal in securities of such company, if he has information which a) is not generally available;
- b. would, if it were so available, be likely to materially affect the price of those securities.

## Securities and Exchange Commission of Pakistan Act, 1997 Act No. XLII of 1997

An Act to provide for the establishment of the Securities and Exchange Commission of Pakistan and to provide for matters connected therewith and incidental thereto.

WHEREAS it is expedient to provide for the establishment of the Securities and Exchange Commission of Pakistan for the beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith and incidental thereto;

It is hereby enacted as follows:-

### Section: 1 Short title and commencement.-

1. This Act may be called as the Securities and Exchange Commission of Pakistan Act, 1997.
2. It extends to the whole of Pakistan.

### Section: 2 Definitions:-

In this Act, unless there is anything repugnant in the subject or context,-

- (a) “**Appointed Day**” means the day on which section 43 comes into force;
- (b) “**Authority**” means the Corporate Law Authority constituted under the Companies Ordinance, 1984 (XLVII of 1984);
- (c) “**Board**” means the Securities and Exchange Policy Board established under section 12;
- (d) “**Chairman**” means the Chairman of the Commission;
- (e) “**Civil Servant**” means a civil servant as defined in section 2 of the Civil Servants Act, 1973 (LXXI of 1973);
- (f) “**Clearing House**” means a clearing house by whatever name or designation established or arranged to be established by a Stock Exchange for the registration of dealing in securities or settlement of trading in futures contracts;
- (g) “**Commission**” means the Securities and Exchange Commission of Pakistan established under section 3;
- (h) “**Commissioner**” means a Commissioner of the Commission and shall include the Chairman thereof;
- (i) “**Committee**” means a committee of the Board constituted under section 15;
- (j) “**Dealing in Securities**” means making or offering to make, whether as principal or agent, with any person or inducing or attempting to induce any person to enter into or to offer to enter into-
  - i. any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities, or



- ii. any agreement the apparent or ostensible purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;
- (k) “**Employee**” means any officer or servant of the Commission;
- (l) “**Fund**” means the fund established under section 23;
- (la) “**Law of Insurance**” means the Insurance Ordinance, 2000 (XXXIX of 2000) or any other law in relation to insurance, the administration of which is vested in the Commission by the Federal Government by notification in the official Gazette.”
- (m) “**Member**” means a Member of the Board;
- (n) “**NBFI**” means a non-banking financial institution and includes a development finance institution, a modaraba, a leasing company, a housing finance company and an investment bank but shall not include a banking company as defined in clause (c) of section 5 of the Banking Companies Ordinance, 1962 (LVII of 1962);
- (o) “**Ordinance**” means the Companies Ordinance, 1984 (XLVII of 1984);
- (p) “**Private Sector Person**” means a person who is not in the service of Pakistan or of any statutory body or anybody which is owned or controlled by the Federal Government or a Provincial Government not including a University or an educational institution;
- (q) “**Regulations**” means the regulations made by the Board or the Commission; and
- (r) “**Rules**” means the rules made by the Federal Government.

## PART II THE COMMISSION

### Section: 3 Establishment of the Commission:-

1. There is hereby established a Commission to be called the Securities and Exchange Commission of Pakistan.
2. The Commission shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its own name and, subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of or deal with, any movable or immovable property or any interest vested in it, upon such terms as it deems fit.

### Section: 4 Head Office:-

The head office of the Commission shall be in Islamabad. The Commission may establish and close down offices at such other places in Pakistan as it considers necessary.

### Section: 5 the Commissioners:-

1. Subject to sub-section (2), the Commission shall consist of such number of Commissioners, including the Chairman, appointed by the Federal Government as may be fixed by the Federal Government but

such number shall not be less than five and more than seven. A Commissioner shall be a person who is known for his integrity, expertise, experience and eminence in any relevant field, including the securities market, law, accountancy, economics, finance, insurance and industry.

2. The majority of the Commissioners shall always be of private sector persons.
3. Subject to the provisions of this Act, the Commission shall, in discharge of its functions and exercise of its powers, conduct its proceedings in accordance with the regulations made by the Commission.
4. The Commissioners, including the Chairman, shall be paid such remuneration and allowances as the Commission may, with the approval of the Board, determine.

**Section: 6 the Chairman:-**

1. The Federal Government shall appoint one of the Commissioners to be the Chairman of the Commission, and no Commissioner shall be appointed Chairman for more than two consecutive terms.
2. The Chairman shall be the chief executive officer of the Commission and shall, together with the other Commissioners, be responsible for the day to day administration of the affairs of the Commission and shall, subject to the regulations made by the Commission, be assisted by the other Commissioners in carrying out the functions of the Commission.

**Section: 7 Term of office of the Commissioners:-**

1. Not less than three of the Commissioners (excluding the Chairman) first appointed under this Act, to be selected at random ballot in accordance with such procedure as may be approved by the Board (the "Term A Commissioners") shall hold office for a term of two years, shall retire on the expiration of that term and may be re-appointed for a further term of three years.

The Commissioners, other than the Term A Commissioners (including the Chairman, the "Term B Commissioners") shall hold office for a term of three years, shall retire on the expiration of that term and may be re-appointed for a further term of three years.

2. At the end of each term, (initial or further) or at the end of the cumulative period of five years, in the case of the Term A Commissioners, or six years, in the case of the Term B Commissioners, as provided for under sub-section (1), the relevant number of Commissioners shall cease to hold office and any vacancy thus arising shall in each case be filled by the appointment of the requisite number of qualified persons as Commissioners, each for a term of three years reckoned from the date the vacancy being filled occurred. At the end of each such three-year term, a Commissioner whose term has expired shall retire (unless being eligible for re-appointment he is duly re-appointed).

**Section: 8 Appointment of employees of the Commission:-**

1. The Commission may, from time to time, employ persons to be employees of the Commission who shall be paid such remuneration and allowances and shall hold their employment on such terms and conditions as may be determined by the Commission with the approval of the Board.

2. The employees of the Commission shall hold office during the pleasure of the Commission and shall be liable to disciplinary action in accordance with the procedure laid down by the Commission with the approval of the Board.

**Section: 9 Appointment of advisers and consultants:-**

1. Subject to sub-section (2), the Commission may, employ and pay consultants and agents and technical, professional and other advisers including, without limitation, bankers, stock-brokers, surveyors, values, actuaries, accountants, lawyers and other persons to transact any business or to do any act required to be transacted or done in the exercise of its powers, the performance of its functions or for the better implementation of the purposes of this Act.
2. The decision to employ and the terms of employment of external advisers and consultants shall be made by the Commission in accordance with such policy guidelines as the Commission may, in consultation with the Board, establish from time to time.

**Section: 10 Delegation of the Commission's functions or powers:-**

1. The Commission may, subject to such conditions and limitations as it may deem fit to impose, delegate any of its functions or powers to one or more Commissioners or any officer of the Commission.
2. A delegation under this section shall not prevent the concurrent performance or exercise by the Commission of the functions or powers so delegated.

**Section: 11 The Commission to furnish information:-**

The Commission shall furnish to the Federal Government or the Board such information with respect to the policy it is pursuing or proposes to pursue in the performance of any of its functions under this Act as the Federal Government or the Board may, from time to time, require.

## **PART – III THE BOARD**

**Section: 12 the Securities and Exchange Policy Board:-**

1. The Federal Government shall appoint a Securities and Exchange Policy Board consisting of Members.
2. Of the Members:-
  - a. shall be-
    - i. ex officio the Secretary to the Government of Pakistan, Finance Division;
    - ii. ex officio the Secretary to the Government of Pakistan, Law Division;
    - (iia) ex officio Secretary to the Government of Pakistan, Commerce Division;
    - iii. ex officio the Chairman of the Commission; and
    - iv. a Deputy Governor of the State Bank of Pakistan nominated by the Governor of the State Bank of Pakistan; and
  - b. appointed by the Federal Government from private sector each of whom is well-known for his integrity, expertise and experience in the spheres of commerce and industry (including in particular the securities industry), corporate law, accountancy, financial services, investment [insurance] banking, academia or other related relevant fields of expertise.

3. A Member, not being an ex-officio Member, shall hold office for a term of four years and shall be eligible for re-appointment for one further four-year term but not more:  
**Provided that** a Member shall cease to hold office on attaining the age of sixty-five years.
4. An ex-officio Member shall hold office as Member till such time as he holds the office by virtue of which he is a Member and upon his transfer therefrom or retirement, resignation or removal from office, the person appointed in such Member's place shall be the Member.
5. If an ex-officio Member is absent from Pakistan or is unable to attend a meeting of the Board he may authorize an officer, not below the rank of Additional Secretary, of his Division, to act as Member and such officer, if approved by the Board, may act as Member.
6. If an ex-officio Member is disqualified to be a Member or resigns his office, the Federal Government shall,-
  - a. in case he is a person referred to in sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (2), appoint another Secretary as Member, so long such person holds the post; and
  - b. in case of a Deputy Governor appoint another Deputy Governor as Member.
7. The Federal Government shall designate one of the Members to be the Chairman of the Board who shall, in the event of a tie, have a casting vote.

**Section: 13 Procedure of the Board:-**

1. The Board shall meet as often as may be necessary for the performance of its functions but not less than four times in a calendar year.
2. The quorum for a meeting of the Board shall be four Members, including the Chairman.
3. Subject to the provisions of this Act, the procedure and conduct of business of the Board shall be regulated by the regulations made by the Board.

**Section: 14 Board may invite others to meetings:-**

The Board may invite any person to attend any of its meetings or deliberations (including any of its committees) for the purpose of advising it on any matter under discussion but any person so attending shall have no right to participate in any decision or vote at the said meeting or deliberation.

**Section: 15 Committees of the Board:-**

1. The Board may constitute such number of its committees as it considers necessary or expedient to assist it in the performance of its functions under this Act.
2. A committee constituted under this section shall act in accordance with the regulations made by the Board.
3. Except as otherwise provided in the regulations made by the Board, the meetings of a committee shall be held at such times and places as the chairman of the committee may determine.

4. The Members, other than ex-officio Members, Commissioners or employees, and any other person invited to attend any meeting of the Board or a committee shall be entitled to such compensation and reimbursement of expenses as the Board may from time to time determine by regulations.

### **PART – IV CONFLICT OF INTEREST**

#### **Section: 16 Disclosure of interest by Commissioners and Members:-**

1. For the purpose of this and the next following section, a person shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions under this Act and such interest, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.
2. A Commissioner or a Member having any interest in any matter to be discussed or decided by the Commission or the Board or a committee shall, prior to any discussion of the matter, disclose in writing, respectively, to the Commission, the Board or a committee, as the case may be, the fact of his interest and the nature thereof.
3. A disclosure of interest under sub-section (2) shall be recorded in the minutes of the Commission, the Board, or a committee, as the case may be, prior to any discussion of, or decision on, the matter and, after the disclosure, the Commissioner or, as the case may be, the Member-
  - a. shall not, save, in the case of Commissioners, as provided in sub-sections (7) to (9), take part nor be present in any deliberation or decision of the Commission, the Board or a committee, as the case may be, and
  - b. shall be disregarded for the purpose of constitution of a quorum of the Board, the Commission or a committee, as the case may be.
4. Any Commissioner, Member or the member of a committee who fails to disclose his interest as required by this section shall be guilty of an offence and shall on conviction be liable to imprisonment for a term which may extend to one year, or a fine not exceeding one million rupees, or both.
5. It shall be a valid defense for a person charged with an offence under sub-section (4), if he proves that he was not aware of the facts constituting the offence and that he exercised due care and diligence in discovering those facts which he ought reasonably to have known in the circumstances.
6. Each Commissioner shall give written notice to the Federal Government of all direct or indirect pecuniary interests that he has or acquires in a body corporate carrying on a business in Pakistan. The nature of such interests and the particulars thereof shall be disclosed in the annual report of the Commission made under section 25.
7. If a Commissioner is not the Chairman and the Chairman becomes aware that a Commissioner has the interest, the Chairman shall,-

- a. if the Chairman considers that the Commissioner should not take part, or continue to take part, as the case may require, in determining the matter, direct the Commissioner accordingly, or
  - b. in any other case, cause the Commissioner's interest to be disclosed to the persons concerned in the matter (including any person whose application is pending decision or adjudication by the Commission).
8. The Commissioner in respect of whom a direction has been given under clause (a) of sub-section (7) shall comply with the direction.
  9. If the Commissioner is the Chairman, he shall disclose his interest to the persons concerned in the matter (including any person whose application is pending decision or adjudication by the Commission).
  10. Subject to sub-section (7), the Chairman or the Commissioner who has any interest in any matter referred to in this section shall not take part, or continue to take part, as the case may require, in determining the matter unless everyone concerned in it consents to the Chairman or, as the case may be, the Commissioner so taking part.

**Section: 17 Notification of interest by others:-**

1. Where a person who, in the course of,-
  - a. performing a function, or exercising a power, as a delegate of the Commission,
  - b. performing functions or service as an employee, or
  - c. performing a function or services in any capacity by way of assisting or advising the Commission, the Board, any committee or any delegate of the Commission is required to consider a matter in which he has an interest, such person shall forthwith give to the Commission a written notice stating that he is required to consider the matter and has an interest in it and setting out particulars of the interest.
2. The person referred to in sub-section (1) shall also declare his interest in accordance with the said sub-section whenever it is necessary to avoid the conflict of interest.

**PART – V DISQUALIFICATION, REMOVAL, RESIGNATION AND VACANCIES**

**Section: 18 Disqualification of Members and Commissioners:-**

1. No person shall be appointed or continue as a Member or Commissioner if he-
  - a. has been convicted of an offence involving moral turpitude;
  - b. has been or is adjudged insolvent;
  - c. is incapable of discharging his duties by reasons of physical, physiological or mental unfitness and has been so declared by a registered medical practitioner appointed by the Federal Government;
  - d. being a Member, absents himself from three consecutive meetings of the Board, without leave of the Board and, in the case of a Member ex-officio, or fails to appoint another person to act as member under sub-section (5) of section 12, or

- e. fails to disclose any conflict of interest at or within the time provided for such disclosure by or under this Act or contravenes any of the provisions of this Act pertaining to unauthorized disclosure of information.

**Section: 19 Removal, resignation and vacancies:-**

1. Subject to sub-section (2), appointment of any Member or Commissioner may, at any time, be revoked and he may be removed from his office by order of the Federal Government if it is found that such person stands disqualified under section 18.
2. Unless a disqualification referred to in section 18 arises from the judgment or order of a court or tribunal of competent jurisdiction under any relevant provision of applicable law, a Member or Commissioner shall not be removed or his appointment revoked without an enquiry by an impartial person or body of persons constituted in accordance with such procedure, as may be prescribed by rules made by the Federal Government, and such rules shall provide for a reasonable opportunity for him to be heard in his defense.
3. A Member or a Commissioner may at any time resign his office by a written notice addressed to the Federal Government.
4. The office of a Member or Commissioner shall ipso facto be vacated if he dies.

**POWERS AND FUNCTIONS OF THE COMMISSION**

**Section: 20 Powers and functions of the Commission:-**

1. The Commission shall have all such powers as may be necessary to perform its duties and functions under this Act.
2. The Commission may, having regard to its functions and to exercise its powers efficiently, organize itself into divisions, wings or such other sub-divisions as it may consider expedient.
3. The Commission may, from time to time, identify the matters requiring the Board to make policy decisions and may also make recommendations regarding policy to the Board for its consideration.
4. The Commission shall be responsible for the performance of the following functions:
  - a. regulating the issue of securities;
  - b. regulating the business in Stock Exchanges and any other securities markets;
  - c. supervising and monitoring the activities of any central depository and Stock Exchange clearing house;
  - d. registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with the securities markets in any manner;
  - e. proposing regulations for the registration and regulating the working of collective investment schemes, including unit trust schemes;
  - f. promoting and regulating self-regulatory organizations including securities industry and related organizations such as Stock Exchanges and associations of mutual funds, leasing companies and other NBFIs;
  - g. prohibiting fraudulent and unfair trade practices relating to securities markets;
  - h. promoting investors' education and training of intermediaries of securities markets;

- i. conducting investigations in respect of matters related to this Act and the Ordinance and in particular for the purpose of investigating insider trading in securities and prosecuting offenders;
  - j. regulating substantial acquisition of shares and the merger and take-over of companies;
  - k. calling for information from and undertaking inspections, conducting inquiries and audits of the Stock Exchanges and intermediaries and self-regulatory organizations in the securities market;
  - l. considering and suggesting reforms of the law relating to companies and bodies corporate, securities markets, including changes to the constitution, rules and regulations of companies and bodies corporate, Stock Exchanges or clearing houses;
  - m. encouraging the organized development of the capital market and the corporate sector in Pakistan;
  - n. conducting research in respect of any of the matters set out in this sub-section;
  - o. performing such functions and exercising such powers of the Authority, including any powers of the Federal Government delegated to the Authority, (other than the power to make any rules or regulations) under the provisions of the Ordinance, the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980) and under any other law for the time being in force under which any function or power has been conferred on the Authority including, but not limited to, the functions and powers set out in the Schedule to this Act;
  - p. performing such functions and exercising such powers (other than the power to make any rules or regulations) under the Ordinance or any other law for the time being in force as may, after the commencement of this Act, be delegated to it by the Federal Government and exercising any power or performing any functions conferred on it by or under any other law for the time being in force;
  - q. proposing regulations in respect of all or any of the aforesaid matters for the consideration and approval of the Board]; and]
  - r. exercising all powers, discharging all duties and performing all functions assigned to the Commission under, and generally administering, the Law of Insurance;
  - s. ensuring and monitoring compliance by insurers, insurance surveyors and insurance intermediaries of all laws, rules and regulations pertaining to insurance for the time being in force;
  - t. regulating professional organizations connected with the insurance business; and
  - u. encouraging the organized development of the insurance market in Pakistan.]
5. Without prejudice to the provisions of sub-section (4), the approval of the Commission shall be required by-
    - a. all public companies incorporated in Pakistan which intend to issue or offer for sale securities in markets outside Pakistan or to list such securities on a Stock Exchange outside Pakistan, in each case, whether directly or through an intermediary;
    - b. all bodies corporate incorporated outside Pakistan which or persons who intend to issue or offer for sale, securities to the public in Pakistan or to list such securities on a Stock Exchange; and
    - c. all bodies corporate incorporated outside Pakistan which are already listed on a Stock Exchange, for the listing of and quotation for any additional securities.
  6. In performing its functions and exercising its powers, the Commission shall strive-



- a. to maintain facilities and improve the performance of companies and of securities markets, in the interest of commercial certainty, reducing business costs, and efficiency and development of the economy;
  - b. to maintain the confidence of investors in the securities markets by ensuring adequate protection for such investors;
  - c. to achieve uniformity in how it performs those functions and exercise those powers;
  - d. to administer laws effectively but with a minimum of procedural requirements;
  - e. to receive, process, and store, efficiently and quickly, the documents lodged with, and the information given to, it under this Act, the Ordinance or any other law;
  - f. to ensure that the documents, and the information referred to in clause (e) are available as soon as possible for access by the public; [Omitted]
    - (fa) to maintain the confidence of holders of insurance policies by protecting the interests of policy holders and beneficiaries of insurance policies in all matters, including assignment of insurance policies, nomination by policy holders, insurable interest, surrender value of policies of life insurance, and other terms and conditions of contracts of insurance;
    - (fb) to improve existing methods and devise new options for the expeditious settlement of claims and disputes between insurers and policy holders and between insurers and intermediaries;
    - (fc) to promote efficiency in the conduct of insurance business;
    - (fd) to promote the establishment and development of professional and educational organizations connected with insurance business with a view to improving the quality of insurance services in the country;
    - (fe) to promote awareness among consumers with respect to the benefits of insurance and the existence of measures to safeguard the interests of mortgagors, mortgagees and potential policy holders; and
  - g. to take whatever action it can take, and is necessary, in order to enforce and give effect to the Act[, the Ordinance, the Law of Insurance] or any other law.
7. The Commission, and the Commissioner or officer to whom any of the functions or powers have been delegated under section 10 may, for the purposes of a proceeding or enquiry, require anyone-
- a. to produce before, and to allow to be examined and kept by, an officer of the Commission specified in this behalf, any books, accounts or other documents in the custody or under the control of the person so required, being documents relating to any matter the examination of which may be considered necessary by the Commission or such Commissioner or officer; and
  - b. to furnish to an officer of the Commission specified in this behalf such information and documents in his possession relating to any matter as may be necessary for the purposes of the proceeding or enquiry.

#### Section: 21 Functions and powers of the Board:-

- 1. Subject to the provisions of this Act, the Board shall-
  - a. when so asked to do and after consultation with the Commission, advise the Federal Government on all matters relating to-
    - i. the securities industry [and insurance industry];
    - ii. regulation of companies and corporate sector and protection of the interests of investors;

- (iia) regulation of the insurance sector and protection of the interests of insurance policy holders;
  - iii. measures to encourage self-regulation by the Stock Exchanges[, insurers, insurance intermediaries, insurance surveyors] and NBFIs by specifying the standards for such self-regulatory organizations;
  - iv. measures to promote the development of and to regulate the securities market [and the insurance market] and
  - v. other related matters;
  - b. consider and approve (with or without modification) any regulations with respect to implementation of policy decisions, proposed to be made by the Commission under the Act;
  - c. consider and approve (with or without modification) the budget for each financial year of the Commission prepared and submitted to it pursuant to the provisions of sub-section (2) of section 24;
  - d. express its opinion in writing on any policy matter referred to it by the Federal Government or the Commission;
  - e. oversee the performance of the Commission to the extent that the purposes of this Act are achieved;
  - f. exercise all such powers and perform all such functions as are conferred or assigned to it under this Act; and
  - g. specify fees, penalties and other charges chargeable by the Commission for carrying out the purposes of this Act.
2. All policy decisions, including any change in previously established policy, in respect of all and any matters within the jurisdiction of the Commission shall be made only by the Board. The Board may make policy decisions suomotu or adopt such policy recommendations of the Commission, with or without modification, as the Board may deem fit in its sole discretion.

**Section: 22 Supplementary provisions:-**

1. All guidelines, decisions and directives whether of the Board or the Commission shall be in writing expressed by resolutions, orders or in such other form as may be appropriate in the circumstances and shall be authenticated in the manner prescribed by the regulations and where so provided by regulations, also sealed with the seal of the Commission.
2. All policy decisions and directives of the Board and the Commission respectively shall be published in the official Gazette and the Board and the Commission shall make such publications available to the public.
3. The Commission shall, in adjudicating upon the rights of any person whose application on any matter it is required to consider in the exercise of any power or function under this Act, give the reasons for its decision after giving the person concerned a personal hearing, in addition to any written applications or submission which may be required to be made.
4. The Commission when exercising its powers under this Act shall have regard, so far as relevant to the circumstances of the particular case, to-
  - a. the viability of the company or body corporate;

- b. the quality and capability of the management of the company or body corporate;
  - c. the suitability for listing of the company or body corporate on a Stock Exchange where applicable;
  - d. the interest of public investors, existing or potential, in the company or body corporate;
    - (da) the professional competence and capability of persons engaged in the provision of services in the insurance industry;
    - (db) the interest of insurance policy holders, existing or potential, where applicable;
  - e. any policy decision or directives of the Board; and
  - f. the general public interest.
5. Subject to the compliance of the provisions of sub-section (3), section 24A of the General Clauses Act, 1897 ( X of 1897), shall apply to any order made or direction given under this Act.

## PART VII FINANCE

### Section: 23 The Fund:-

1. There is hereby established, for the purposes of this Act, a Fund to be administered and controlled by the Commission.
2. The Fund shall consist of –
  - a. such sums as the Federal Government may from time to time, grant;
  - b. grants of money and sums borrowed or raised by the Commission for the purposes of meeting any of its obligations or discharging any of its duties;
  - c. taxes, fees, penalties or other charges levied under this Act, the Ordinance, the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), [Law of Insurance] and under any other law for the time being administered by the Commission; and
  - d. all other sums or property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to the exercise of its functions and powers.
3. It shall be the duty of the Commission to conserve the Fund by performing its functions and exercising its powers under this Act so as to ensure that the total revenues of the Commission are sufficient to meet all sums properly chargeable to its revenue account.

### Section: 24 Expenditure to be charged on the Fund:-

1. The Fund shall be expended for the purpose of –
  - a. paying any expenditure lawfully incurred by the Commission, including the remuneration of Commissioners and employees appointed and employed by the Commission, including provident fund contributions, superannuating allowances or gratuities and legal fees and costs and other fees and costs;
  - b. paying any other expenses, costs or expenditure properly incurred or accepted by the Commission in the performance of its functions or the exercise of its powers under this Act;
  - c. purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other work and undertakings in the performance of its functions or the exercise of its powers under this Act;

- d. repaying any financial accommodation received or moneys borrowed under this Act and the profit, return, mark-up or interest due thereon (howsoever called); and
  - e. generally, paying any expenses for carrying into effect the provisions of this Act.
2. Within ninety days of its establishment, the Commission shall prepare and submit to the Board for its approval, a budget for the period up to and including the end of the then current financial year and thereafter it shall, not later than thirty days [before the expiry] of each financial year, submit to the Board for approval a budget for the next financial year.
3. No expenditure shall be made for which provision has not been made in any approved budget except if made from any previously approved contingency funds, unless further approval is sought and obtained from the Board.
4. The Commission shall act as the secretariat of the Board and provide all the necessary facilities to enable the Board to exercise its powers and perform its functions under this Act and the necessary and proper expenses in that connection shall form part of the budget of the Commission.

**Section: 25 Annual report and accounts**

1. Within ninety days from the end of each financial year, the Commission shall, in consultation with the Board, cause a report to be prepared on the activities of the Commission (including investigations and enquiries made by the Commission under this Act or the Ordinance [or the Law of Insurance] during that financial year and release to the public and simultaneously send a copy of the report to the Federal Government.
2. The Commission shall cause proper accounts to be kept and shall as soon as practicable after the end of each financial year cause to be prepared for that financial year a statement of accounts of the Commission which shall include a balance sheet and an account of income and expenditure.
3. The Commission shall cause the statement of accounts to be audited by auditors, appointed by the Commission with the approval of the Federal Government, who shall be a firm of chartered accountants. Any casual vacancy in the office of auditor appointed under this section may be filled in by the Commission.
4. The auditors shall make a report to the Federal Government, upon the annual balance sheet and accounts, and in any such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the affairs of the Commission and, in case they have called for any explanation or information from the Commission, whether it has been given and whether it is satisfactory.
5. The Federal Government may if it deems fit also require the accounts of the Commission for any financial year to be audited by the Auditor General of Pakistan.
6. The Board shall, within one hundred and twenty days of the end of each financial year, together with the annual report of the Commission under sub-section (2), send a copy of the statement of accounts of the Commission certified by the auditors and a copy of the auditors' report to the Federal

Government which shall cause them to be published in the official Gazette and laid before both Houses of the Majlis-e-Shoora (Parliament) within two months of their receipt.

**Section: 26 Power to obtain finance, borrow money and receive grants:-**

1. The Commission may, from time to time, and with the approval of the Federal Government, obtain finance or borrow money from sources within Pakistan or from abroad, as the case may be, with such rate of return, profit, mark-up or interest payable thereon, as the case may be, and for such period and upon such terms as to the time and method of repayment and otherwise, in respect of any sums required by the Commission for meeting any of its obligations or performing any of its functions.
2. The Commission may also accept [Omitted] with the approval of the Federal Government, grants from entities both domestic and international, including multilateral agencies.

**Section: 27 Investment:-**

1. Subject to sub-section (2), the Commission may, in so far as its moneys are not required to be expended under this Act, invest in such manner as set out in section 20 of the Trusts Act, 1882 (11 of 1882).
2. The Commission shall not invest its money in listed securities or any derivative thereof whether listed or not.

**Section: 28 Bank Accounts:-**

The Commission may, with the approval of the Board, open and maintain its accounts in rupees or in any foreign currency at such scheduled banks as it may from time to time determine.]

**PART VIII ENFORCEMENT AND INVESTIGATION**

**Section: 29 Investigation and proceedings by the Commission:-**

1. The Commission may suomotu conduct investigations in respect of any matter that is an offence under this Act.
2. The Commission may appoint such number of investigating officers to be known as investigating officers of the Commission as it considers necessary for the purposes of carrying out investigation of any offence or inspection under this Act, the Ordinance or any other law in respect of which it has been empowered to exercise the powers of the Authority and such investigating officer shall have all the powers given to any person for the purposes of carrying out investigation of any offence under this Act, the Ordinance and any other law.

**Section: 30 Powers of the investigating officers of the Commission:-**

1. An investigating officer carrying out an investigation or inspection may, only after the written order of the Commission signed by any two Commissioners, enter any place or building –
  - a. to inspect and make copies of or take extracts from any book, minute book, register or document; and
  - b. where he has reason to believe that an offence has been committed under this Act or the Ordinance or any other law in respect of which the Commission has power to make

investigation or inspection, to search for, seize, take possession of and detain any object, article, material, thing, accounts book or other document, including any travel or other personal document which may be used as evidence.

2. When an order has been made under sub-section (1) an investigating officer of the Commission may, by notice in writing, require any person to produce before him such books, registers or documents as are in the custody or under the control of that person.
3. A person who –
  - a. fails deliberately to produce any such books, registers or documents as are required by the Commission or an investigating officer; or
  - b. obstructs or hinders an investigating officer while exercising any of the powers under this section; shall be guilty of an offence and shall be liable on conviction to a fine which may extend to one million rupees or to imprisonment for a term not exceeding one month, or to both.
4. Any accounts, book or other document seized and taken possession of by the investigating officer of the Commission under sub-section (1) may be inspected by any person if such person is entitled to inspect such accounts, book or document under this Act, and if so authorized to do in writing by the Commission.
5. Sub-section (1) shall not be construed as limiting or affecting any similar powers conferred on any person under any other law.
6. Any person aggrieved by the conduct of an investigating officer may lodge a complaint in respect thereof to the Commission.
7. The Commission shall, within fifteen days of receipt of the complaint under sub-section (6) commence a hearing to determine the veracity of such complaint in accordance with such procedure as may be prescribed by rules made by the Federal Government.

**Section: 31 Forcible entry:-**

1. For the purpose of exercising his powers under sub-sections (1) and (2) of section 30, an investigating officer of the Commission may enter any place or building by force, if necessary.
2. Notwithstanding anything contained in sub-section (1), no investigating officer of the Commission shall enter any premises by the use of force without a written order of the Commission signed by any two Commissioners.
3. If, on enquiry conducted in accordance with the rules it is found that the exercise by an investigating officer of his power under sub-section (2) was vexatious, excessive or with mala fide intent such officer shall be dismissed from service, and shall be guilty of an offence punishable with fine which may extend to five hundred thousand rupees and imprisonment for a term not exceeding one year.
4. Whenever a criminal court imposes a fine under sub-section (3) it shall, when passing judgment, order that a sum equal to the whole or any part of the fine recovered, be paid to the person on whose

complaint the investigating officer was convicted, and in case the fine is not recovered the sum shall be paid out of the Fund.

5. Any sum paid under sub-section (4) shall be without prejudice to the right of the aggrieved person to avail any other remedies available to him under the law but at the time of awarding compensation in any subsequent proceedings relating to the same matter the court shall take into account any sum recovered from the convict and paid to the aggrieved person.

**Section: 32 Power to call for examination:-**

1. For the purpose of sub-section (1) of section 29, the Commission may by notice in writing require any person acquainted with the facts and circumstances of the case to appear before an investigating officer authorized by it in this regard. Such person shall be examined orally and any statement made by such person during the course of the examination shall be reduced into writing.
2. Such person shall be bound to answer all questions relating to such case put to him by the investigating officer, as the case may be, and to state the truth, whether or not the statement is made wholly or partly in answer to questions.
3. Subject to sub-section (4), a statement made by any person under this section shall be taken down in writing and signed by the person making it or affixed with his signature and thumb print, as the case may be, after it has been read to him and after he had been given an opportunity to make any correction he may wish.
4. Where the person examined refuses to sign and affix his thumb print on the statement, the investigating officer of the Commission shall endorse thereon under his hand the fact of such refusal and the reason therefor, if any, stated by the person examined.
5. Any person who:-
  - a. fails to appear before an investigating officer of the Commission as required under sub-section (1);
  - b. refuses to answer any question put to him by an investigating officer of the Commission as required under sub-section (2); or
  - c. knowingly furnishes to an investigating officer of the Commission information or statement that is false or misleading in any material particular;
  - d. wilfully refuses to obey or disregards any lawful order of the Commission; shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding one year, or to both.

**Section: 33 Appeal to the Appellate Bench of the Commission:-**

1. An appeal shall lie to an Appellate Bench of the Commission in respect of an order of the Commission made by one Commissioner. The person aggrieved by such order may within thirty days of the passing of the order prefer an appeal to the Appellate Bench of the Commission.
2. The Commission shall constitute an Appellate Bench of the Commission comprising not less than two Commissioners to hear appeals under sub-section (1).

3. If any Commissioner who is included in the Appellate Bench has participated or been concerned in the decision being appealed against the Chairman shall nominate another Commissioner to sit in the Bench to hear that appeal.
4. The form in which an appeal is to be filed and the fees to be paid therefor and other related matters shall be prescribed by rules.

**Section: 34 Appeal to the Court:-**

1. An appeal shall lie to the Court referred to in Part II of the Ordinance in respect of an order of the Commission comprising two or more Commissioners or the Appellate Bench.
2. The appeal under sub-section (1) shall be filed within sixty days of the date of the decision and shall be accompanied by a fee of one hundred rupees.

**PART IX CONFIDENTIALITY OF INFORMATION**

**Section: 35 Obligation of confidentiality:-**

1. Subject to this section, any person who is or was at any time –
  - a. acting as a Member of the Board, or
  - b. engaged as a Commissioner or employee of the Commission, or
  - c. authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission or to render services to the Commission in the capacity of a consultant or adviser;
 shall not, except to the extent necessary to perform his official duties, or in performance or exercise of such a function or power, either directly or indirectly, make a record of, or disclose to any person, any information that is or was acquired by him because of having been so appointed, engaged or authorized, or make use of any such information, for any purpose other than the performance of his official duties or the performance or exercise of that function or power.
2. Any person who contravenes sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding one year or, to both.
3. The Commission shall take all reasonable measures to protect from unauthorized use or disclosure the information given to it in confidence in or in connection with the performance of its functions or the exercise of its powers.
4. For the purpose of sub-section (1) the disclosure of information as required or permitted by any law for the time being in force in Pakistan or any other jurisdiction shall be taken to be authorized use and disclosure of the information.
5. For the purposes of sub-section (1), the disclosure of information by a person for the purposes of –
  - a. performing his functions as –
    - i. a Commissioner or employee of the Commission, or
    - ii. a person who is acting as a Commissioner or employee or who is authorized to perform or exercise a function or power of, or on behalf of, the Commission, or





13. Nothing in any of sub-sections (4), (5), (7) and (8) shall limit:
- a. anything else in any of those sub-sections; or
  - b. what may otherwise constitute, for the purposes of sub-section (1), authorized use or disclosure of information.

**Section: 36 Permitted disclosure:-**

- a. Nothing in section 35 shall preclude a person from:
  - a. Producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act, the Ordinance or any other law for the time being in force.
  - b. disclosing to a court in the course of any proceedings referred to in clause (a) any matter or thing, that came under his notice in the performance of official duties or in the performance of a function or the exercise of a power referred to in that section; or
  - c. producing a document or disclosing information to a person to whom, in the opinion of the Commission, it is in the public interest that the document be produced or the information be disclosed; or
  - d. producing a document or disclosing information that is required or permitted by any law for the time being in force in Pakistan or any other jurisdiction to be produced or disclosed, as the case may be; or
  - e. producing a document or disclosing information to the Commission.

**PART X COGNIZANCE AND PROSECUTION OF OFFENCES**

**Section: 37 Cognizance of offences:-**

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act No. V of 1898) no court other than the court of session shall have jurisdiction to try any offence under this Act.

**Section: 38 Conduct of prosecution:-**

1. No prosecution for any offence under this Act against any person shall be instituted except with the consent in writing of the Commission signed by any two Commissioners.
2. Prosecution of any offence under this Act shall be conducted by any officer of the Commission authorized in writing by the Commission.

**PART XI RULES AND REGULATIONS**

**Section: 39 Power to make rules:-**

1. Subject to sub-section (2), the Federal Government may, by notification in the official Gazette, make rules for all or any of the matters in respect of which it is required to make rules to carry out the purposes of this Act.
2. The power to make rules conferred by this section shall be subject to the condition of previous publication and before making any rules the draft thereof shall be published in the official Gazette for

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eliciting public opinion thereon within a period of not less than [thirty] days from the date of publication.

**Section: 40 Power to make regulations:-**

1. Subject to sub-section (2),-
  - i. the Board [Omitted] on the recommendation of the Commission and in consultation with the Federal Government; and
  - ii. the Commission [in consultation with] the Board, may make such regulations as may be required to carry out the purposes of this Act.
  
2. The power to make regulations conferred by this section shall be subject to the condition of previous publication and before making any regulations the draft thereof shall be published in two newspapers of wide circulation for eliciting public opinion thereon within a period of not less than [thirty] days from the date of publication.

## As to Establishment & Regulation of Non- Banking Finance Companies

### Section: 282A Application of this Part:-

1. The provisions of this Part shall apply to-
  - a. non-banking finance companies (NBFCs) which include companies licensed by the Commission to carry out any one or more of the following forms of business, namely-
    - i. Investment Finance Services;
    - ii. Leasing;
    - iii. Housing Finance Services;
    - iv. Venture Capital Investment;
    - v. Discounting Services;
    - vi. Investment Advisory Services;
    - vii. Asset Management Services; and
    - viii. any other form of business which the Federal Government may, by notification in the official Gazette specify from time to time; and
  - b. such other company or class of companies or corporate body as the Federal Government may, by notification in the official Gazette specify for the purpose.

### Section: 282B Power to make Rules:-

The Federal Government may make rules for establishment and regulation of NBFCs and such rules may, inter alia, in addition to anything already provided in this Ordinance, provide for conditions relating to qualifications of directors, chief executive, chairman, auditors, for licensing, capital and audit requirements; and any other matter which the Commission may deem fit for the effective regulation of NBFCs and companies established under the rules framed hereunder.

### Section: 282C Incorporation of NBFC:-

1. A NBFC shall not be incorporated without prior approval of the Commission.
2. Notwithstanding anything contained in any other provision of this Ordinance, a NBFC shall not carry on business unless it holds a license issued in that behalf by the Commission; and any such license may be issued subject to such conditions, as the Commission may deem fit to impose.
3. Every company in existence which is engaged in any one or more forms of business as specified in section 282 A, before the expiry of six months from coming into force of this section and every other company before commencing any form of business as specified in section 282 A, shall apply in writing to the Commission for grant of a license under this section. The Commission, if it is satisfied that the company has fulfilled the conditions prescribed by the Commission in respect of the business for which the license is being sought, may grant licenses to such company for one or more of the forms of business specified in section 282 A.
4. A NBFC shall not commence or carry on business unless it has such minimum paid up capital as may be prescribed by the Commission from time to time in respect of each form of business as specified in section 282 A.

### Section: 282D Power to issue directions:-

1. Notwithstanding anything contained in any other provision of this Ordinance, where the Commission is satisfied that it is necessary and expedient so to do –

- a. in the public interest; or
  - b. to prevent the affairs of any NBFC being conducted in a manner detrimental to the interests of shareholders or persons whose interests are likely to be affected or in a manner prejudicial to the interests of the NBFC; or
  - c. to secure the proper management of any NBFC generally, issue directions to NBFCs generally or to any NBFC in particular to carry out such changes as are necessary to rectify the situation and the NBFCs shall be bound to comply with such directions.
2. The Commission may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or canceling any direction may impose such conditions as it thinks fit.

**Section: 282E Power to remove:-**

1. Notwithstanding anything contained in any other provision of this Ordinance, where the Commission is satisfied that –
  - a. continued association of any chairman or director or chief executive or any other officer of a NBFC, is or is likely to be detrimental to the interests of NBFC or its shareholders or persons whose interest is likely to be affected; or
  - b. the public interest so demands; or
  - c. to prevent the affairs of a NBFC being conducted in a manner detrimental to the interest of its shareholders or in a manner prejudicial to the interests of NBFC; or
  - d. to secure a proper management of the NBFC, it is necessary so to do, the Commission may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any chairman or director or chief executive or other officer of the NBFC.
2. No order under sub-section (1) shall be made unless the chairman or director or chief executive or other officer has been given a reasonable opportunity of making a representation and of being heard: **Provided that** if, in the opinion of the Commission, any delay would be detrimental to the public interest or the interest of its shareholders, the Commission may, at the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, by order direct that—
  - i. the chairman or, director or chief executive or other officer shall not, with effect from the date of the order-
    - a. act as such chairman or director or chief executive or other officer of the NBFC; or
    - b. in any way, whether directly, or indirectly, be concerned with, or take part in the management of the NBFC;
  - ii. any person authorized by the Commission in this behalf shall act as such chairman or director or chief executive of the NBFC till another person is elected in a general meeting or a board meeting, as may be directed by the Commission, to fill in the vacancy.
3. Where any order under sub-section (1) is made in respect of a chairman or director or chief executive or other officer of a NBFC, he shall cease to be a chairman or a director or chief executive or other officer of the NBFC and shall not in any way, whether directly or indirectly, be concerned with, or take

part in, the management of the NBFC or any other NBFC for such period not exceeding three years as may be specified in the order.

4. Any person appointed as chairman or director or chief executive under sub-section (2) shall—
  - a. hold office during the pleasure of the Commission subject to such conditions as may be specified in the order of his appointment and, subject thereto, for such period, not exceeding three years as the Commission may specify; and
  - b. not incur any obligation or liability for anything which is done or intended to be done in his capacity as such chairman or director or chief executive.
5. No person removed from office under sub-section (1) shall be entitled to claim any compensation for the loss or termination of office.

**Section: 282F Power to supersede Board of Directors:-**

- a. Notwithstanding anything contained in any other provision of this Ordinance, where the Commission is satisfied that the association of the Board of Directors of any NBFC is or is likely to be detrimental to the interest of the NBFC or its shareholders or is otherwise undesirable; or for all or any of the reasons specified in section 282 E; it is necessary so to do, the Commission may, for reason to be recorded in writing, by order, supersede the Board of Directors of a NBFC with effect from such date and for such period as may be specified in the order.
- b. The period of supersession specified in an order under sub-section (1) may from time to time be extended by the Commission so, however, that the total period of supersession does not exceed three years.
- c. All powers and duties of the Board of Directors; shall, during the period of supersession, be exercised and performed by such person as the Commission may from time to time appoint in this behalf.
- d. The provisions of sub-sections (2), (3), (4) and (5) of section 282 E shall, with necessary modifications apply to an order made under sub-section (1) or (3) of this section.

**Section: 282G Power to require to furnish information, etc.:-**

1. The Commission may, at any time, by notice in writing, require NBFCs generally, or any NBFC in particular to furnish it within the time specified therein or such further time as the Commission may allow, with any statement or information of document relating to the business or affairs of such NBFC or NBFCs (including any business or affairs with which such NBFC or NBFCs is or are concerned) and, without prejudice to the generality of the foregoing power, may call for information, at such intervals as the Commission may deem necessary.
2. No NBFC, director, officer, employee or agent or auditor thereof shall, in any document, prospectus, report, return, accounts, information or explanation required to be furnished in pursuance of this part or the rules made thereunder, or in any application made under this Part or the rules, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect or omit any material fact therefrom.

**Section: 282H Special Audit:-**

1. Notwithstanding anything contained in any other provision of this Ordinance, the Commission shall monitor the general financial condition of a NBFC, and, at its discretion, may order special audit and appoint an auditor to carry out detailed scrutiny of the affairs of NBFC, provided that the Commission may, during the pendency of the scrutiny, pass such interim orders and directions as may be deemed appropriate by the Commission.
2. On receipt of the special audit report, the Commission may direct a NBFC to do or to abstain from doing certain acts and issue directives for immediate compliance which shall forthwith be complied with, or take such other action under this Ordinance as it deems fit.

**Section: 282I Inquiry by the Commission:-**

1. The Commission may cause an enquiry or inspection to be made by any person appointed in this behalf into the affairs of a NBFC licensed under this Ordinance or of any of its directors, managers or other officers.
2. Where an enquiry or inspection under sub-section (1) has been ordered, every director, manager or other officer of the NBFC to which or to whose director, manager or other officer the enquiry or inspection relates and every other person who has had any dealing with such NBFC, its director, partner, manager or officer shall furnish such information in his custody or power or within his knowledge relating to, or having bearing on the subject-matter of the enquiry or inspection as the person conducting the enquiry or inspection may by notice in writing require.
3. The person conducting an enquiry or inspection under sub-section (1) may call for, inspect and seize books of account and documents in possession of any such NBFC or any of its directors, managers or other officers.

**Section: 282J Penalty for failure, refusal to comply with, or contravention of any provision of this Part:-**

1. Notwithstanding anything contained in any other provision of this Ordinance, if a NBFC or its officers (including auditors) fails or refuses to comply with, or contravenes any provision contained in this Part or of any of the provisions of the rules made under section 282 B or any direction or order passed by the Commission under the provisions contained in this Part or knowingly and willfully authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under this Ordinance, be also punishable with fine the amount of which shall not exceed five million rupees:  
**Provided that** if the failure, refusal, default, contravention is committed by NBFC, every director, manager, or other officer responsible for the conduct of its affairs shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.
2. Without prejudice to the provisions of sub-section (1), in case of contravention of any provision of this Ordinance or rules made or non-compliance of any direction given or order passed thereunder by the Commission, the Commission may cancel any one or more of the licences in respect of the various forms of business of the NBFC, after issuing a show cause notice and giving

such NBFC an opportunity of being heard or pass any other order which may be deemed appropriate by the Commission.

3. Upon cancellation of all the licences, the functions and carrying on the business of NBFC shall cease and the Commission may move the Court for winding up of the NBFC.
4. No appeal shall be made in respect of an order made under the provisions of section 282 of this Ordinance and under rules made thereunder; provided a challan form evidencing deposit of twenty-five per cent of the penalty amount is filed with the Commission at the time of filing the appeal which amount, however, shall be refunded in case the appeal is decided in favour of the appellants.
5. Notwithstanding anything to the contrary contained in this Ordinance, if an officer (which expression includes auditors) of a NBFC fails to make payment, within six months of the order imposing penalty on him, the Commission may, by an order in writing, disqualify him from holding any office in any company or NBFC for such period as may be specified in the order.

**Section: 282K Penalty for making false statement, etc.:-**

1. Notwithstanding anything contained in any other provision of this Ordinance, if any person, being the chairman, director, chief executive, by whatever name called or official liquidator or any officer of a NBFC in any document, prospectus, report, return, accounts, information or explanation required to be furnished in pursuance of this Ordinance or the rules made thereunder, willfully makes a statement which is false in any material particular knowing it to be false, or willfully omits to make a material statement, mismanages the affairs of the NBFC or misuses his position for gaining direct or indirect benefit for himself or any of his family members, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which shall be not less than one hundred thousand rupees, and shall be ordered by the Court trying the offence, to deliver up or refund within a time to be fixed by the Court any property acquired or gained by him in his own name or in the name of his family members by so mismanaging the affairs of the NBFC or misusing his position or, in default, to suffer imprisonment for a term which may extend to three years.
2. Any officer, director or chief executive of a NBFC who is either directly or indirectly owned, controlled or managed by the Federal Government or a Provincial Government who extends, or aides in extending, a loan, advance, or any financial facility to a borrower or customer on the verbal instruction of a holder of a public office without reducing the terms of the instructions into writing and drawing them to the attention of his superior officer, or the board of directors, shall be guilty of an offence punishable with imprisonment of either description which may extend to one year, or with fine, or with both, in addition to such other action which may be taken against him in accordance with law.
3. If any company which is not a NBFC, or a company which does not hold a license under section 282 C or the license granted to which has been cancelled, or any individual or association or body of individuals, transacts the business specified in section

Section: 282A the chief executive, by whatever name called, of the company and every director, manager, and other officer of the company, and the individual and every member of the association or body of individuals, shall be deemed to be guilty of such contravention and shall be punishable with imprisonment of either



description for a term which may extend to seven years and with fine the amount of which shall not exceed one million and shall be ordered by the Court trying the offence to pay the fine within a time to be fixed by the Court or in default to suffer further imprisonment for a term which may extend to five years.

**Explanation:-** For the purposes of this section a director or chief executive or other officer shall be deemed to have acted knowingly if he has departed from established NBFC business practices and procedures or circumvented the regulations or directions/ restrictions laid down by the Commission from time to time.

## Code of Corporate Governance

### What is “Code of Corporate Governance?”

The phrase “code of corporate governance” is sum total of three words: (1) “Code” (2) “Corporate” (3) “Governance” respectively means “a complete system of promulgated positive laws”, incorporated companies & the activity of governing. Thus the phrase “Code of Corporate Governance” means a complete system of officially promulgated positive laws that control the activity of governing incorporated companies”

### What is the importance of code of corporate governance?

Good governance instills investor confidence. The investment decisions taken by the local and international investors are impacted by the governance practices. As markets compete to attract the capital from world over, companies are gauged by the investors using various factors that demonstrate sustainable track record. In order for our companies to compete globally, they have to follow enhanced corporate governance standards. This is a major factor towards making capital markets transparent, protecting rights of minority shareholders and attracting and retaining foreign investment. The importance of corporate governance lies in its contribution both to business prosperity and to accountability. The Securities and Exchange Commission of Pakistan (SECP) thus endeavors to raise the corporate governance standards in the country. The first major effort was made in March 2002, when the Code of Corporate Governance (Code) was issued by SECP. It was subsequently made part of the listing regulations of the three stock exchanges and became applicable to all public listed companies.

The revisions in the Code are indicative of the fact that governance standards are dynamic and need to be reviewed to keep the governance framework relevant and effective. Therefore, in order to keep pace with the constantly evolving corporate sector and financial markets and the resultant governance benchmarks, the process of revising the Code was initiated. The objective was to further improve and raise the standards of corporate governance in the country while at the same time taking into consideration the global developments in corporate governance.

Key to corporate governance lies in the change in mindset. It is the joint responsibility of all concerned and not just the regulators prerogative. It should be viewed as a means towards achieving value creation and sustainability and only then can one reap the benefits of sustained economic growth and development at a macro level.

### NOTE:

The Code of Corporate Governance (Code) is the part of Listing Regulations of the Stock

Exchanges; the numbering of clauses has therefore been kept accordingly.

## XI. Code of Corporate Governance 2012

**35. All listed companies shall ensure compliance with the following Code of Corporate Governance (CCG).**

- i. The board of directors is encouraged to have a balance of executive and non-executive directors, including independent directors and those representing minority interests with the requisite skills, competence, knowledge and experience so that the board as a group includes core competencies and diversity, including gender, considered relevant in the context of the company's operations.

For this purpose listed companies shall take the following steps:

- a. the minority shareholders as a class are facilitated to contest election of directors by proxy solicitation, for which purpose the listed companies shall:
- annex with the notice issued under Section 178 (4) of the Ordinance, a statement by a candidate from among the minority shareholders who seeks to contest election to the board of directors, such statement shall include a profile of the candidate(s);
  - provide information regarding members and shareholding structure to the candidate(s) representing minority shareholders; and
  - on a request by the candidate(s) representing minority shareholders and at the cost of the company, annex to the notice issued under Section 178 (4) of the Ordinance an additional copy of proxy form duly filled in by such candidate(s);
- b. The board of directors of each listed company shall have at least one and preferably one third of the total members of the board as independent directors. The board shall state in the annual report the names of the nonexecutive, executive and independent director(s).

**Explanation:** For the purpose of this clause, the expression "independent director" means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the listed company, its associated companies, subsidiaries, holding company or directors. The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest.

**Provided that** without prejudice to the generality of this explanation no director shall be considered independent if one or more of the following circumstances exist:

- He/she has been an employee of the company, any of its subsidiaries or holding company within the last three years;
- He/she is or has been the CEO of subsidiaries, associated company, associated undertaking or holding company in the last three years;
- He/she has, or has had within the last three years, a material business relationship with the company either directly, or indirectly as a partner, major shareholder or director of a body that has such a relationship with the company:

**Explanation:** The major shareholder means a person who, individually or in concert with his family or as part of a group, holds 10% or more shares having voting rights in the paid-up capital of the company;

- He/she has received remuneration in the three years preceding his/her appointment as a director or receives additional remuneration, excluding retirement benefits from the company apart from a director's fee or has participated in the company's share option or a performance-related pay scheme;
- He/she is a close relative of the company's promoters, directors or major shareholders:

**Explanation:** close relative means spouse(s), lineal ascendants and descendants and siblings;

- He/she holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- He/she has served on the board for more than three consecutive terms from the date of his first appointment provided that such person shall be deemed “independent director” after a lapse of one term.

Any person nominated as a director under Sections 182 and 183 of the Ordinance shall not be taken to be an "independent director" for the abovementioned purposes.

The director representing an institutional investor shall be selected by such investor through a resolution of its board of directors, either specifically or generally, and the policy with regard to selection of such person for election on the board of directors of the investee company shall be annexed to the Directors' Report of the investor company.

- c. Professional indemnity insurance cover in respect of independent directors shall be encouraged.
- d. Executive directors, i.e., paid executives of the company from among senior management, shall not be more than one third of the elected directors, including the Chief Executive:  
**Provided that** nothing contained in this clause shall supersede any law for the time being in force or regulation made by any regulator regarding the composition of the board.

### Maximum number of directorships to be held by a director

- ii. No person shall be elected or nominated as a director of more than seven listed companies simultaneously:

Provided that this limit shall not include the directorships in the listed subsidiaries of a listed holding company.

### Filling up a casual vacancy

- iii. Any casual vacancy on the board of directors of a listed company shall be filled up by the directors at the earliest but not later than 90 days thereof.

### Responsibilities, powers and functions of board of directors

- iv. The board of directors of a listed company shall exercise its powers and carry out its fiduciary duties with a sense of objective judgment and independence in the best interests of the listed company.
- v. The board of directors of a listed company shall ensure that:
  - a. Professional standards and corporate values are put in place that promote integrity for the board, senior management and other employees in the form of a Code of Conduct, defining therein acceptable and unacceptable behaviors. The board shall take appropriate steps to disseminate Code of Conduct throughout the company along with supporting policies and procedures and these shall be put on the company’s website;
  - b. Adequate systems and controls are in place for identification and redress of grievances arising from unethical practices.

- c. a vision and/or mission statement and overall corporate strategy for the listed company is prepared and adopted. It shall further ensure that significant policies have been formulated;

**Explanation:** The significant policies for this purpose may include:

- governance, risk management and compliance issues; "Holding company" means a holding company as defined in Section 3 of the Companies Ordinance, 1984.
- human resource management including preparation of a succession plan;
- procurement of goods and services;
- investors' relations including but not limited to general investor awareness, complaints and communication, etc.;
- marketing;
- determination of terms of credit and discount to customers;
- write-off of bad/doubtful debts, advances and receivables;
- capital expenditure, planning and control;
- investments and disinvestment of funds;
- borrowing of moneys;
- determination and delegation of financial powers;
- transactions or contracts with associated companies and related parties;
- the corporate social responsibility (CSR) initiatives and other philanthropic activities including donations, charities, contributions and other payments of a similar nature;
- health, safety and environment; and
- The whistleblower policy.

A complete record of particulars of the significant policies along with the dates on which they were approved or amended by the board of directors shall be maintained.

- d. a system of sound internal control is established, which is effectively implemented and maintained at all levels within the company;
- e. within two years of coming into force of this Code, a mechanism is put in place for an annual evaluation of the board's own performance;
- f. the decisions on the following material transactions or significant matters are documented by a resolution passed at a meeting of the board:
- investment and disinvestment of funds where the maturity period of such investments is six months or more, except in the case of banking companies, non-banking finance companies and insurance companies;
  - determination of the nature of loans and advances made by the listed company and fixing a monetary limit thereof.
- g. the board of directors shall define the level of materiality, keeping in view the specific circumstances of the company and the recommendations of any technical or executive subcommittee of the board that may be set up for the purpose.

- vi. The Chairman and the Chief Executive Officer (CEO), by whatever name called, shall not be the same person except where provided for under any other law. The Chairman shall be elected from among the non-executive directors of the listed company.

The Chairman shall be responsible for leadership of the board and shall ensure that the board plays an effective role in fulfilling all its responsibilities. The Board of Directors shall clearly define the respective roles and responsibilities of the Chairman and CEO.

**Provided that** the provisions of this clause, clauses (i)(b), (i)(d) and (ii) shall take effect when the board is reconstituted on the expiry of its current term after coming into force of this Code.

### Meetings of the board

- vii. All written notices, including the agenda, of meetings shall be circulated at least seven days prior to the meetings, except in the case of emergency meetings, where the notice period may be reduced or waived.
- viii. The Chairman shall ensure that the minutes of meetings of the board of directors are appropriately recorded. The Company Secretary shall be secretary to the board.

In the event that a director of a listed company is of the view that his dissenting note has not been satisfactorily recorded in the minutes of a meeting of the Board of Directors, he may refer the matter to the Company Secretary. The director may require the note to be appended to the minutes, failing which he may file an objection with the Securities and Exchange Commission of Pakistan (SECP) in the form of a statement to that effect. The objection may be filed with the SECP within 30 days of the date of confirmation of the minutes of the meeting. Significant issues to be placed for decision of Board of Directors.

### Significant issues to be placed for decision of Board of Directors

- ix. In order to strengthen and formalize corporate decision-making process, significant issues shall be placed for the information, consideration and decision of the board of directors of listed companies and/or its committees.

### The significant issues for this purpose may include:

- The CEO shall immediately bring before the board, as soon as it is foreseen that the company will not be in a position of meeting its obligations on any loans (including penalties on late payments and other dues, to a creditor, bank or financial institution or default in payment of public deposit), TFCs or any other debt instrument. Full details of the company's failure to meet obligations shall be provided in the company's quarterly and annual financial statements.
- annual business plan, cash flow projections, forecasts and strategic plan;
- budgets including capital, manpower and overhead budgets, along with variance analyses;
- matters recommended and/or reported by the committees of the board;
- quarterly operating results of the listed company as a whole and in terms of its operating divisions or business segments;
- internal audit reports, including cases of fraud, bribery, corruption, or irregularities of a material nature;
- management letter issued by the external auditors;

- details of joint venture or collaboration agreements or agreements with distributors, agents, etc.;
- promulgation or amendment to a law, rule or regulation, enforcement of an accounting standard and such other matters as may affect the listed company;
- status and implications of any law suit or proceedings of material nature, filed by or against the listed company;
- any show cause, demand or prosecution notice received from revenue or regulatory authorities;
- failure to recover material amounts of loans, advances, and deposits made by the listed company, including trade debts and inter-corporate finances;
- any significant accidents, dangerous occurrences and instances of pollution and environmental problems involving the listed company;
- significant public or product liability claims made or likely to be made against the listed company, including any adverse judgment or order made on the conduct of the listed company or of another company that may bear negatively on the listed company;
- Report on governance, risk management and compliance issues. Risks considered shall include reputational risk and shall address risk analysis, risk management and risk communication;
- disputes with labor and their proposed solutions, any agreement with the labor union or collective bargaining agent and any charter of demands on the listed company;
- whistleblower protection mechanism;
- report on CSR activities; and
- Payment for goodwill, brand equity or intellectual property.

**x. Related party transactions**

- a. The details of all related party transactions shall be placed before the Audit Committee of the company and upon recommendations of the Audit Committee the same shall be placed before the board for review and approval.
- b. The related party transactions which are not executed at arm's length price shall also be placed separately at each board meeting along with necessary justification for consideration and approval of the board on recommendation of the Audit Committee of the listed company.

Arm's length price (=The price at which a willing buyer and a willing unrelated seller would freely agree to transact or a trade between related parties that is conducted as if they were unrelated, so that there is no conflict of interest in the transaction.)

- c. The board of directors of a company shall approve the pricing methods for related party transactions that were made on the terms equivalent to those that prevail in arm's length transaction, only if such terms can be substantiated.
- d. Every company shall maintain a party wise record of transactions, in each financial year, entered into with related parties in that year along with all relevant documents and explanations. The record of related party transactions shall include the following particulars in respect of each transaction:
  - i. Name of related party;
  - ii. Nature of relationship with related party;
  - iii. Nature of transaction;
  - iv. Amount of transaction; and

- v. Terms and conditions of transaction, including the amount of consideration received or given.

### Directors' Training Program

- xi. All listed companies shall make appropriate arrangements to carry out orientation courses for their directors to acquaint them with this code, applicable laws, their duties and responsibilities to enable them to effectively manage the affairs of the listed companies for and on behalf of shareholders.

It shall be mandatory for all the directors of the listed companies to have certification under any directors' training program offered by institutions—local or foreign—that meet the criteria specified by the SECP:

**Provided that** from June 30, 2012 to June 30, 2016 every year, a minimum of one director on the board shall acquire the said certification under this program each year and thereafter all directors shall obtain it:

**Provided further that** individuals with a minimum of 14 years of education and 15 years of experience on the board of a listed company—local and/or foreign—shall be exempted from the directors' training program.

### Chief Financial Officer (CFO), Company Secretary and Head of Internal Audit

#### Appointment and removal

- xii. The appointment, remuneration and terms and conditions of employment of the Chief Financial Officer (CFO), the Company Secretary and the Head of Internal Audit of listed companies shall be determined by the board of directors.

The removal of the CFO and Company Secretary of listed companies shall be made with the approval of the board of directors.

The removal of Head of Internal Audit shall be made with the approval of the board only upon recommendation of the Chairman of the Audit Committee:

**Explanation:** For this purpose the term removal shall include non-renewal of contracts of the CFO, Company Secretary and Head of Internal Audit.

#### Qualifications of CFO and Head of Internal Audit

- xiii. No person shall be appointed as the CFO of a listed company unless he/she has at least five years of experience of handling financial or corporate affairs of a listed company or a bank or a financial institution and is:
- a. a member of a recognized body of professional accountants; or
  - b. Has a postgraduate degree in finance from a recognized university or equivalent.

**Provided that** individuals serving as CFO of a listed company for the last five years at the time of coming into effect of this Code shall be exempted from the above qualification requirement.



- xiv. No person shall be appointed as the Head of Internal Audit of a listed company unless he/she has 5 years of relevant audit experience and is:
- a member of a recognized body of professional accountants; or
  - a Certified Internal Auditor; or
  - a Certified Fraud Examiner; or
  - a Certified Internal Control Auditor

**Provided that** individuals serving as Head of Internal Audit of a listed company for the last five years at the time of coming into effect of this Code shall be exempted from the above qualification requirement.

#### **Requirement to attend board meetings**

- xv. The CFO and Company Secretary of a listed company or in their absence, the nominee, appointed by the board, shall attend all meetings of the Board of Directors.

**Provided that** the CFO and Company Secretary shall not attend such part of a meeting of the Board of Directors, which involves consideration of an agenda item relating to the CFO and Company Secretary respectively.

#### **Corporate and financial reporting framework**

- xvi. The directors of listed companies shall annex statements to the following effect with the Directors' Report, prepared under Section 236 of the Ordinance:
- The financial statements, prepared by the management of the listed company, present its state of affairs fairly, the result of its operations, cash flows and changes in equity;
  - Proper books of account of the listed company have been maintained;
  - Appropriate accounting policies have been consistently applied in preparation of financial statements and accounting estimates are based on reasonable and prudent judgment;
  - International Financial Reporting Standards, as applicable in Pakistan, have been followed in preparation of financial statements and any departures therefrom has been adequately disclosed and explained;
  - The system of internal control is sound in design and has been effectively implemented and monitored; and
  - There are no significant doubts upon the listed company's ability to continue as a going concern:

**Provided that** where necessary the following information shall also be annexed to the Directors' Reports of listed companies:

- If the listed company is not considered to be a going concern, the fact along with the reasons shall be disclosed;
- Significant deviations from last year in operating results of the listed company shall be highlighted and reasons thereof shall be explained;
- Key operating and financial data of last six years shall be summarized;
- If the listed company has neither declared dividend nor issued bonus shares for any year, the reasons thereof shall be given;
- Where any statutory payment on account of taxes, duties, levies and charges is outstanding, the amount together with a brief description and reasons for the same shall be disclosed;

- f. Significant plans and decisions, such as corporate restructuring, business expansion and discontinuance of operations, shall be outlined along with future prospects, risks and uncertainties surrounding the listed company;
- g. A statement as to the value of investments of provident, gratuity and pension funds, based on their respective audited accounts, shall be included;
- h. The number of board and committees' meetings held during the year and attendance by each director shall be disclosed;
- i. The details of training programs attended by directors;
- j. The pattern of shareholding shall be reported to disclose the aggregate number of shares (along with name wise details where stated below) held by:
  - i. associated companies, undertakings and related parties (name wise details);
  - ii. mutual funds (name wise details);
  - iii. directors and their spouse(s) and minor children (name wise details);
  - iv. executives;
  - v. public sector companies and corporations;
  - vi. banks, development finance institutions, non-banking finance companies, insurance companies, takaful, modarabas and pension funds; and
  - vii. Shareholders holding five percent or more voting rights in the listed company (name wise details). Explanation: For the purpose of this sub-clause, the expression "executive" means an employee of a listed company other than the CEO and directors.
- k. The directors' report shall cover, loans, TFCs, sukuks or any other debt instruments in which the company is in default or likely to default. There shall be a clear presentation with details as to the aggregate amount of the debt overdue or likely to become overdue and the reasons for the default/emerging default situation and the measures taken by the company to address and settle such default situation.
- l. All trades in the shares of the listed company, carried out by its directors, executives and their spouses and minor children shall also be disclosed. Explanation: For the purpose of this sub-clause and clause xxiii the expression "executive" means the CEO, COO, CFO, Head of Internal Audit and Company Secretary by whatever name called, and other employees of the company for whom the board of directors will set the threshold to be reviewed on an annual basis and disclosed in the annual report.

### Directors' remuneration

- xvii. There shall be a formal and transparent procedure for fixing the remuneration packages of individual directors. No director shall be involved in deciding his/her own remuneration.
  - a. Directors' remuneration packages shall encourage value creation within the company. These shall be subject to prior approval of shareholders/board as required by company's Articles of Association. Levels of remuneration shall be appropriate to attract and retain the directors needed to govern the company successfully.

Subject to the provisions of the Ordinance and the company's Articles of Association, the shareholders/board shall determine the remuneration for nonexecutive directors. However, it shall not be at a level that could be perceived to compromise their independence.

- b. The company's Annual Report shall contain details of the aggregate remuneration separately of executive and non-executive directors, including salary/fee, benefits and performance-linked incentives etc.

### Frequency of financial reporting

xviii. The quarterly unaudited financial statements of listed companies shall be published and circulated along with directors' review on the affairs of the listed company.

xix. All listed companies shall ensure that second quarterly financial statements are subjected to a limited scope review by the statutory auditors in such manner and according to such terms and conditions as may be determined by the Institute of Chartered Accountants of Pakistan (ICAP) and approved by the SECP.

xx. Every listed company shall immediately disseminate to the SECP and the stock exchange on which its shares are listed all material information relating to the business and other affairs of the listed company that will affect the market price of its shares. The mode of dissemination of information shall be prescribed by the stock exchange on which shares of the company are listed.

This information may include but shall not be restricted to any material change in the nature of business of the company; information regarding any joint ventures, merger or acquisition or any material contract entered into or lost; purchase or sale of significant assets; franchise, brand name, goodwill, royalty, financial plan, etc.; any unforeseen or undisclosed impairment of assets due to technological obsolescence, etc; delay or loss of production due to strike, fire, natural calamities, major breakdown, etc; issue or redemption of any securities; a major change in borrowings including projected gains to accrue to the company; any default in repayment or rescheduling of loans; and change in directors, Chairman or CEO of the listed company;

**Explanation:** Such information shall be disseminated to the above-mentioned entities as soon as any decision about above referred matters or any other significant issue is taken by the board or a significant matter requiring disclosure has come into the knowledge of company's management.

### Responsibility for financial reporting and corporate compliance

xxi. No listed company shall circulate its financial statements unless the CEO and the CFO present the financial statements, duly endorsed under their respective signatures, for consideration and approval of the Board of Directors.

It shall be mandatory for the CEO and CFO to have the second quarterly and annual accounts (both separate and consolidated where applicable) initialed by the external auditors before presenting it to the audit committee and the Board of Directors for approval.

xxii. The Company Secretary of a listed company shall furnish a Secretarial Compliance Certificate, on the prescribed form (Appendix A), along with annual return filed with the registrar concerned certifying that the secretarial and corporate requirements of the Ordinance have been complied with.

### Disclosure of interest by a director holding company's shares

**xxiii.** Where any director, CEO or executive of a listed company or their spouses sell, buy or transact, whether directly or indirectly, in shares of the listed company of which he is a director, CEO or executive, as the case may be, he shall immediately notify in writing to the Company Secretary of such transaction. Such director, CEO or executive, as the case may be, shall also deliver a written record of the price, number of shares, form of share certificates, i.e., whether physical or electronic within the Central Depository System, and nature of transaction to the Company Secretary within four days of effecting the transaction. The notice of the director, CEO or executive, as the case may be, shall be presented by the Company Secretary at the meeting of the board of directors immediately subsequent to such transaction. In the event of default by a director, CEO or executive to give a written notice or deliver a written record, the Company Secretary shall place the matter before the board of directors in its immediate next meeting;

**Provided that** each listed company shall determine a closed period prior to the announcement of interim/ final results and any business decision, which may materially affect the market price of its shares. No director, CEO or executive shall, directly or indirectly, deal in the shares of the listed company in any manner during the closed period.

The closed period shall start from the day when any document/statement, which forms the basis of price sensitive information, is sent to the board of directors and terminate after the information is made public.

Every listed company shall advise its directors about the closed period at the time of circulating agenda and working papers for the board meetings, along with sending intimation of the same to the stock exchanges.

## Committees of the board

### Composition

- xxiv.** The board of directors of every listed company shall establish an Audit Committee, at least of three members comprising of non-executive directors. The chairman of the committee shall be an independent director, who shall not be the chairman of the board. The board shall satisfy itself such that at least one member of the audit committee has relevant financial skills/expertise and experience.
- xxv.** There shall also be a Human Resource and Remuneration (HR&R) Committee at least of three members comprising a majority of non-executive directors, including preferably an independent director. The CEO may be included as a member of the committee but not as the chairman of committee. The CEO if member of HR&R Committee shall not participate in the proceedings of the committee on matters that directly relate to his performance and compensation.

The committee shall be responsible for:

- i.** recommending human resource management policies to the board;
- ii.** recommending to the board the selection, evaluation, compensation (including retirement benefits) and succession planning of the CEO;
- iii.** recommending to the board the selection, evaluation, compensation (including retirement benefits) of COO, CFO, Company Secretary and Head of Internal Audit; and

- iv. Consideration and approval on recommendations of CEO on such matters for key management positions who report directly to CEO or COO.
- v.
- xxvi. The names of members of the committees of the board shall be disclosed in each Annual Report of the listed company.

### Audit Committee

#### Frequency of meetings, attendance, terms of reference and reporting procedures

- xxvii. The Audit Committee of a listed company shall meet at least once every quarter of the financial year. These meetings shall be held prior to the approval of interim results of the listed company by its Board of Directors and before and after completion of external audit. A meeting of the Audit Committee shall also be held, if requested by the external auditors or the Head of Internal Audit.

#### Attendance at meetings

- xxviii. The CFO, the Head of Internal Audit and external auditors represented by engagement partner or in his absence any other partner designated by the audit firm shall attend meetings of the Audit Committee at which issues relating to accounts and audit are discussed:

**Provided that** at least once a year, the Audit Committee shall meet the external auditors without the CFO and the Head of Internal Audit being present:

**Provided further that** at least once a year, the Audit Committee shall meet the head of internal audit and other members of the internal audit function without the CFO and the external auditors being present:

**Provided further that** the chairman of the Audit Committee and engagement partner of external auditor or in his absence any other partner designated by the audit firm shall be present at the AGM for necessary feedback to the shareholders.

#### Terms of reference

- xxix. The Board of Directors of every listed company shall determine the terms of reference of the Audit Committee. The Board shall provide adequate resources and authority to enable the Audit Committee carry out its responsibilities effectively. The Audit Committee shall, inter alia, recommend to the Board of Directors the appointment of external auditors, their removal, audit fees, the provision by the external auditors of any service to the listed company in addition to audit of its financial statements. The Board of Directors shall give due consideration to the recommendations of the Audit Committee in all these matters and where it acts otherwise, it shall record the reasons thereof.

The terms of reference of the Audit Committee shall also include the following:

- a. determination of appropriate measures to safeguard the listed company's assets;
- b. review of quarterly, half-yearly and annual financial statements of the listed company, prior to their approval by the Board of Directors, focusing on:
  - a. major judgmental areas;
  - b. significant adjustments resulting from the audit;

- c. the going concern assumption;
  - d. any changes in accounting policies and practices;
  - e. compliance with applicable accounting standards;
  - f. compliance with listing regulations and other statutory and regulatory requirements; and
  - g. significant related party transactions.
- c. review of preliminary announcements of results prior to publication;
  - d. facilitating the external audit and discussion with external auditors of major observations arising from interim and final audits and any matter that the auditors may wish to highlight (in the absence of management, where necessary);
  - e. review of management letter issued by external auditors and management's response thereto;
  - f. ensuring coordination between the internal and external auditors of the listed company;
  - g. review of the scope and extent of internal audit and ensuring that the internal audit function has adequate resources and is appropriately placed within the listed company;
  - h. consideration of major findings of internal investigations of activities characterized by fraud, corruption and abuse of power and management's response thereto;
  - i. ascertaining that the internal control systems including financial and operational controls, accounting systems for timely and appropriate recording of purchases and sales, receipts and payments, assets and liabilities and the reporting structure are adequate and effective;
  - j. review of the listed company's statement on internal control systems prior to endorsement by the Board of Directors and internal audit reports;
  - k. instituting special projects, value for money studies or other investigations on any matter specified by the Board of Directors, in consultation with the CEO and to consider remittance of any matter to the external auditors or to any other external body;
  - l. determination of compliance with relevant statutory requirements;
  - m. monitoring compliance with the best practices of corporate governance and identification of significant violations thereof; and
  - n. consideration of any other issue or matter as may be assigned by the Board of Directors.

### Reporting procedure

**xxx.** The Audit Committee of a listed company shall appoint a secretary of the committee who shall either be the Company Secretary or Head of Internal Audit. However, CFO shall not be appointed as the secretary to the Audit Committee. The secretary shall circulate minutes of meetings of the Audit Committee to all members, directors, Head of internal Audit and the CFO prior to the next meeting of the board and where this is not practicable, the Chairman of the Audit Committee shall communicate a synopsis of the proceedings to the board and the minutes shall be circulated immediately after the meeting of the board.

### Internal audit

**xxxi.** There shall be an internal audit function in every listed company. The Head of internal Audit shall functionally report to the Audit Committee and administratively to the CEO.

A director cannot be appointed, in any capacity, in the internal audit function, to ensure independence of the internal audit function.

The internal audit function may be outsourced by a listed company to a professional services firm or be performed by the internal audit staff of holding company. However, due care shall be exercised to

ensure that suitably qualified and experienced persons, who are conversant with the company's policies and procedures, are engaged in the internal audit. In the event of outsourcing the internal audit function, company shall appoint or designate a fulltime employee other than CFO, as Head of Internal Audit, to act as coordinator between firm providing internal audit services and the board:

**Provided that** while outsourcing the function, the company must not appoint its existing external auditors as internal auditors.

**xxxii.** All listed companies shall ensure that internal audit reports are provided for the review of external auditors. The auditors shall discuss any major findings in relation to the reports with the Audit Committee, which shall report matters of significance to the

#### **External auditors**

**xxxiii.** No listed company shall appoint as external auditors a firm of auditors which has not been given a satisfactory rating under the Quality Control Review program of the Institute of Chartered Accountants of Pakistan.

**xxxiv.** No listed company shall appoint as external auditors a firm of auditors which or a partner of which is non-compliant with the International Federation of Accountants' (IFAC) Guidelines on Code of Ethics, as adopted by the Institute of Chartered Accountants of Pakistan.

**xxxv.** The Board of Directors of a listed company shall recommend appointment of external auditors for a year, as suggested by the Audit Committee. The recommendations of the Audit Committee for appointment of an auditor or otherwise shall be included in the Directors' Report. In case of a recommendation for appointment of an auditor other than the retiring auditor the reasons for the same shall be included in the Directors' Report.

**xxxvi.** No listed company shall appoint its auditors to provide services in addition to audit except in accordance with the regulations and shall require the auditors to observe applicable IFAC guidelines in this regard and shall ensure that the auditors do not perform management functions or make management decisions, responsibility for which remains with the Board of Directors and management of the listed company.

**xxxvii.**

**a.** All listed companies in the financial sector shall change their external auditors every five years. Financial sector, for this purpose, means banks, non-banking financial companies (NBFC's), modarabas and insurance/takaful companies; provided that all inter related companies/institutions, engaged in business of providing financial services shall appoint the same firm of auditors to conduct the audit of their accounts and

**b.** All listed companies other than those in the financial sector shall, at a minimum, rotate the engagement partner after every five years.

**xxxviii.** No listed company shall appoint a person as an external auditor or a person involved in the audit of a listed company who is a close relative, i.e., spouse, parents, dependents and non-dependent children, of the CEO, the CFO, an internal auditor or a director of the listed company.

- xxxix.** Every listed company shall require external auditors to furnish a Management Letter to its board of directors within 45 days of the date of audit report:  
Provided that any matter deemed significant by the external auditor shall be communicated in writing to the board prior to the approval of the audited accounts by the board.

#### COMPLIANCE WITH THE CODE OF CORPORATE GOVERNANCE

- xi.** All listed companies shall publish and circulate a statement (in the form as specified in Appendix “B”) along with their annual reports to set out the status of their compliance with the requirements set out above. The statement shall be specific and deemed to be supported by the necessary evidence held by the company making the said statement.
- xli.** All listed companies shall ensure that the statement of compliance with the best practices of corporate governance is reviewed and certified by statutory auditors, where such compliance can be objectively verified, before its publication. Statutory auditors of listed company shall ensure that any non-compliance with the CCG requirements is highlighted in their review report.
- xlii.** Where the SECP is satisfied that it is not practicable to comply with any of the best practices of corporate governance in a particular case, it may, for reasons to be recorded, relax the same subject to such conditions as it may deem fit.



**Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980****ORDINANCE XXXI OF 1980**

AN

**ORDINANCE**

to provide for matters relating to registration of Modaraba companies and the floatation, management and regulation of Modarabas.

WHEREAS it is expedient to provide for matters relating to registration of Modaraba companies and the floatation, management and regulation of Modarabas and for matters connected therewith or ancillary thereto:

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

**PRELIMINARY****Section: 1 Short title, extent and commencement:-**

1. This Ordinance shall be called the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980.
2. It extends to the whole of Pakistan.
3. It shall come into force at once.

**Section: 2 Definition:-**

1. In this Ordinance, unless there is anything repugnant in the subject or context,-
  - a. "**Modaraba**" means a business in which a person participates with his money and another with his efforts or skill or both his efforts and skill and shall include Unit Trusts and Mutual Funds by whatever name called;
  - b. "**Modaraba Certificate**" means a certificate of definite denomination issued to the subscriber of the Modaraba acknowledging receipt of money subscribed by him;
  - c. "**Modaraba Company**" means a company engaged in the business of floating and managing modaraba;
  - d. "**Modaraba Fund**" means a fund raised through floatation of Modaraba;
  - e. "**Prescribed**" means prescribed by rules;
  - f. "**Registrar**" means the Registrar appointed under section 3;
  - g. "**rules**" means rules made under this Ordinance; and
  - h. "**Tribunal**" means a Tribunal constituted under section 24.

**Section: 3 Appointment of Registrar:-**

The Federal Government may, by notification in the official gazette, appoint a person to be the Registrar for the purpose of this Ordinance.

**Section: 4 No company to operate without registration:-**

No Modaraba company shall operate without registration with the Registrar.

**Section: 5 Eligibility for registration:-**

1. A company shall be eligible for registration as a Modaraba company if it fulfills the following conditions, namely:-
  - a. that it is registered under the Companies Act, 1913 (VII of 1913), or is a body corporate formed under any law in force and owned or controlled, whether directly or through a company or corporation, by the Federal Government or a Provincial Government;
  - b. that, being a company solely engaged in the flotation and management of Modaraba, it has a paid up capital of not less than 3[two and a half million rupees];
  - c. that none of its directors, officers or employees has been convicted of fraud or breach of trust or of an offence involving moral turpitude;
  - d. that none of its directors, officers or employees has been adjudged an insolvent or has suspended payment or has compounded with his creditors;
  - e. that its promoters are, in the opinion of the Registrar, persons of means and integrity and have knowledge of matters which the company may have to deal with as a Modaraba company; and
  - f. That, being a company also engaged in business other than floatation and management of Modaraba, it has a paid up capital of such amount and of such nature as may be prescribed.

**Section: 6 Application for registration:-**

1. A company which is eligible for registration as a Modaraba company may make an application for registration to the Registrar in such form and with such documents as may be prescribed.
2. The Registrar, if he is satisfied after such enquiry and after obtaining such further information as he may consider necessary that the applicant is eligible for registration and that it is in the public interest so to do, may grant registration to such company on such conditions as he may deem fit.
3. In particular and without prejudice to the generality of the powers conferred by subsection (2), such conditions may include:-
  - i. investments to be made;
  - ii. information and returns to be furnished to the Registrar;
  - iii. business to be undertaken; and
  - iv. Restriction on transfer of shares by promoters, sponsors or persons holding controlling interest.

**Section: 7 Types of Modaraba:-**

1. Modaraba may be of two descriptions:-
  - i. Multipurpose Modaraba.-That is to say a Modaraba having more than one specific purpose or objective.
  - ii. Specific purpose Modaraba.-That is to say a Modaraba having one specific purpose or objective.
2. A Modaraba may be either for a fixed period or for an indefinite period.

**Section: 9 Religious Board:-**

The Federal Government shall, for the purpose of this Ordinance, constitute a Religious Board which shall consist of such members and shall have such functions, terms and conditions as may be prescribed.

**Section: 12 Modaraba to be a legal person:-**

1. A Modaraba shall sue and be sued in its own name through the Modaraba company.
2. The assets and liabilities of each Modaraba shall be separate and distinct from those of another Modaraba as also from those of the Modaraba Company.

## Secretarial Practices

**Drafting a notice of Extra Ordinary General Meeting:**

Notice is hereby given that an Extraordinary General Meeting of ABC Limited shall be held on Friday, the 20th, July 2013 at the registered office of the company at 9:00 am to transact the following business:

1. To confirm the minutes of the 24th Annual General Meeting of the company held on 31 January 2013.
2. Election of directors:

To elect seven directors of the company as fixed by the Board of directors in accordance with the Section 178 (1) of the Companies Ordinance 1984, for the term of next three years. The retiring directors eligible for reelection are:

- i. Mr. AA
- ii. Mr. BB
- iii. Mr. CC
- iv. Mr. DD
- v. Mr. EE
- vi. Mr. FF
- vii. Mr. GG

Other business:

3. To transact any other business with the permission of the Chair.

By Order of the Board  
For ABC Ltd.

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Mr. XYZ  
Company Secretary

**Drafting a notice of annual General Meeting:**

Notice is hereby given that the 23rd Annual General meeting of shareholders of ABC Limited will be held on Friday, the 25th day of July 2013 at registered office of the company at 9:00 am for the purpose of transacting the following business:

1. To confirm the minutes of the last Extra Ordinary General Meeting held on 23rd March 2013.
2. To receive, consider and adopt the Annual Accounts for the year ended on 31.12.2012.
3. To approve cash dividend.
4. To appoint Mr.A as director in place of Mr. CC.
5. To appoint auditors and to fix their remuneration.

The retiring auditors, Messers ABC Accountants offers themselves for reappointment.

By order of the Board  
ABC Limited

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Company Secretary

**Drafting a notice of First interim cash dividend:**

All the shareholders are hereby notified that the Board of directors of the company at their meeting held on July 23, 2013 has approved First Interim cash Dividend for the half year ended June 30, 2013 at the rate of 35% per ordinary share of Rs. 10 each.

By Order of the Board  
XYZ

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Company Secretary

**Drafting a letter for availability of name of a proposed company:**

Date. 01.02.2011

The Deputy Registrar,  
Securities & Exchange Commission  
of Pakistan-Egerton Road, Lahore

Subject: Availability of Name

Worthy Sir,

Our client is interested in incorporating a Private Limited Company in the name “NEXUS ENGINEERING (PVT) LTD. Kindly confirm whether this name is available or not?

The major object of the Company will be “To carry on Civil; Mechanical; Electrical engineering business”.

Yours Faithfully  
XYZ