

**<sup>1</sup>THE COMPANIES ORDINANCE, 1984  
(XLVII OF 1984)**

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**THE  
COMPANIES ORDINANCE  
(XLVII OF 1984)**

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

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**

**1. Short title, extent and commencement.-** (1) This Ordinance may be called the Companies Ordinance, 1984.

(2) It extends to the whole of Pakistan.

(3) 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.

**2. Definitions.-** (1) In this Ordinance, unless there is anything repugnant in the subject or context, —

(1) "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" mean any two or more companies or undertakings, or a company and an undertaking, interconnected with each other in the following manner, namely: —
- (i) 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 per cent 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 per cent of the voting power in that company or undertaking; or
  - (ii) if the companies or undertakings are under common management or control or one is the subsidiary of another; or
  - (iii) if the undertaking is a modaraba 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 per cent 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 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—

- (i) directorship of a person or persons by virtue of nomination by the Federal Government or a Provincial Government or a financial institution directly or indirectly owned or controlled by such Government; or

- (ii) 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; <sup>1</sup>[or shares registered in the name of a central depository, where such shares are beneficially owned by the central depository];

shall not be taken into account for determining the status of a company, undertaking or person as an associated company, associated undertaking or associated person;

[]<sup>2</sup>

- (4) "Body corporate" or "corporation" includes a company incorporated outside Pakistan, but does not include—

- (i) a corporation sole; or
- (ii) a co-operative society registered under any law relating to the registration of co-operative societies; or
- (iii) 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;

- (5) "book and paper", "book or paper" or "books of accounts" include accounts, deeds, vouchers, registers, writings and documents; [maintained on paper or computer network, floppy, diskette, magnetic cartridge tape, CD-Rom or any other computer readable media.]<sup>3</sup>

- <sup>3</sup> [(5A) "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 <sup>4</sup>[Commission] under section 32A of that Ordinance;]

- (6) "chief executive", in relation to a company means an individual who, subject to the control and directions of the directors, is entrusted with

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<sup>1</sup> Inserted through Central Depository Act.

<sup>2</sup> Clause (3) omitted through Finance Act, 2007 dated June 30, 2007.

<sup>3</sup> Inserted through Finance Act, 2007 dated June 30, 2007.

<sup>3</sup> Inserted through Central Depository Act.

<sup>4</sup> Substituted word 'Authority', wherever appearing by Companies (Amendment) Ordinance, 2002

the 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;

<sup>1</sup>[(6-A)“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);]

(7) "company" means a company formed and registered under this Ordinance or an existing company;

(8) "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

(9) "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;

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(11) "the Court" means the Court having jurisdiction under this Ordinance

(12) "debenture" includes debenture stock, bonds, <sup>2</sup>[term finance certificate] and any other securities, other than a share, of a company, whether constituting a charge of the assets of the company or not;

(13) "director" includes any person occupying the position of a director, by whatever name called:

(14) "document" includes summons, notice, requisition, order, other legal process, voucher and register; [whether issued, sent or kept in pursuance of this Ordinance or any other law for the time being in force, whether maintained in any medium capable of being retrieved by any electronic means or in any other manner.]<sup>4</sup>

<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Subs. by Banking & Financial Services (Amendment of Laws) Ordinance, LVII of 1984.

<sup>4</sup> Inserted through Finance Act, 2007 dated June 30, 2007.

(15) "existing company" means a company formed and registered under any previous Companies Act;

<sup>1</sup>[(15A)“financial institution” includes:–

- (a) a company or an institution whether established under any special enactment and operating within or outside Pakistan which transacts the business of banking or any associated or ancillary business through its branches;
- (b) a modaraba, leasing company, investment bank, venture capital company, financing company, housing finance company, a non-banking finance company; and
- (c) such other institution or company authorised by law to undertake any similar business, as the Federal Government may, by notification in the official Gazette, specify for the purpose;]

(16) "financial year" in relation to any body 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;

(17) "form" means a form set out in any of the schedules as prescribed;

(18) "holding company" means a holding company as defined in section 3;

(19) "listed" in relation to securities, means securities which have been allowed to be traded on a stock exchange;

(20) "listed company", means a company or a body corporate or other body whose securities are listed;

(21) "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

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<sup>1</sup> Substituted by Companies (Amendment) Ordinance, 2002.

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;

- (22) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of the provision of any previous Companies Act or of this Ordinance;
- (23) "modaraba" and "modaraba company" have the same meaning as in the modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980);
- (24) "officer" includes any director, chief executive, managing agent, secretary or other executive of the company, howsoever designated, but, save in sections 205, 220 to 224, 260, 261, 268, 351, 352, 412, 417, 418, 474 and 482, does not include an auditor;
- <sup>1</sup> [(25) "participatory redeemable capital" means such redeemable capital as is entitled to participate in the profit and loss of a company;]
- (26) "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 respect the other provisions of this Ordinance, prescribed by rules or regulations made by the Federal Government [or the Commission as the case may be]<sup>5</sup> after previous publication in the official Gazette;
- (27) "previous Companies Act" includes any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (X of 1866),

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<sup>1</sup> Clause (25), Subs. by the Banking & Financial Services (Amendment of Laws) Ordinance, LVII of 1984

<sup>5</sup> Inserted through Finance Act, 2007 dated June 30, 2007.

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;

- (28) "private company" means a company which, by its articles,
- (i) restricts the right to transfer its shares, if any;
  - (ii) limits the number of its members to fifty not including persons who are in the employment of the company; and
  - (iii) prohibits any invitation to the public to subscribe for the shares, if any, or debentures 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;

- (29) "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 deposits invited by a banking company or a financial institution approved by the Federal Government, whether described as prospectus or otherwise;
- (30) "public company" means a company which is not a private company;

<sup>1</sup>[(30A)"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

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<sup>1</sup> Clause (30-A) Ins. by the Banking & Financial Services (Amendment of Laws) Ordinance, LVII of 1984.

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;]

- [(30B) "register" means the register of members of a company and includes the register of debenture-holders or holders of other securities maintained on paper or computer network, floppy, diskette, magnetic cartridge tape, CD-Rom or any other computer readable media.]<sup>6</sup>
- (31) "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;
- (32) "scheduled bank" has the same meaning as in the State Bank of Pakistan Act, 1956 (XXXIII of 1956);
- (33) "secretary" means any individual appointed to perform the secretarial, administrative or other duties ordinarily performed by the secretary of a company;
- '[(34) "security" means any share, scrip, debenture, participation term certificate, modaraba 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;]
- (35) "share" means share in the share capital of a company;
- (36) "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 at 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 days notice has been given;

<sup>6</sup> Inserted through Finance Act, 2007 dated June 30, 2007.

<sup>1</sup> Clause (34) Subs. by the Banking & Financial Services (Amendment of Laws) Ordinance, LVII of 1984.

- (37) "stock exchange" means a stock exchange registered under the securities and Exchange Ordinance, 1969 (XVII of 1969);
- (38) "subsidiary company" or "subsidiary" means a subsidiary company as defined in section 3;
- (39) "Table A" means Table A in the First Schedule;

□

(2) The expression "commencement of this Ordinance" in any provisions of this Ordinance means the coming into force of that provision by virtue of a notification under sub-section (3) of section 1.

**3. Meaning of "subsidiary" and "holding company".-** (1) For purposes of this Ordinance, a company or body corporate shall be deemed to be a subsidiary of another if—

- (a) that other company or body corporate directly or indirectly controls, beneficially owns or holds more than fifty per cent of its voting securities or otherwise has power to elect and appoint more than fifty per cent 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;

<sup>1</sup>[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.

**4. Ordinance not to apply to certain corporations.-** Nothing in this Ordinance shall apply to—

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<sup>1</sup> Inserted through Central Depository Act.

- (i) a trading corporation owned or controlled by a Province and carrying on business only within that Province; or
- (ii) a co-operative society; or
- (iii) a university.

**5. Application of Ordinance to non-trading companies with purely provincial objects.**- The powers conferred by this Ordinance on the Federal Government or the Commission shall, in relation to companies which are not trading corporations and the objects of which are confined to a single Province, be the powers of the Provincial Government.

**6. Ordinance to override memorandum, articles, etc..-** Save as otherwise expressly provided herein,—

- (a) the provisions of this Ordinance which come into force by virtue of a notification under sub-section (3) of section 1 shall have effect notwithstanding anything contained in the memorandum or articles of a company, or in any contract or agreement executed by it, or in any resolution passed by the company in general meeting or by its directors, whether the same be registered, executed or passed, as the case may be, before or after the coming into force of the said provisions; and
- (b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the aforesaid provisions of this Ordinance, become or be void, as the case may be.

## PART II - JURISDICTION OF COURTS

**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).

**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.

**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.

**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.

**PART III - <sup>1</sup>[CORPORATE LAW AUTHORITY]**

[]

**12. Powers and functions of the Commission.**- (1) The Commission shall exercise and perform such powers and functions as are conferred on it by or under this Ordinance or any other law.

(2) Notwithstanding anything contained in any other law, and without prejudice to the generality of the foregoing provisions, the Federal Government may, by notification in the official Gazette, direct that all or any of the powers and functions conferred on the Federal Government or any of the officer of the Federal Government under any law shall, subject to such limitations, restrictions or conditions, if any, as it may from time to time impose, be exercised or performed by the Commission.

(3) to (7). <sup>3</sup>Omitted.

**13. Reference by the Federal Government or Commission to the Court.**- (1) Without prejudice to the powers, jurisdiction and authority exercisable by the Federal Government or the Commission under this ordinance, the Federal Government or the Commission, as the case may be, may make a reference to the Court, on any question or matter which the Government or the Commission considers to be of special significance requiring orders, determination or action concerning the affairs of a company or any action of any officer thereof.

***Explanation:*** In this sub-section "officer" includes an auditor, liquidator or agent of the company.

(2) Where a reference is made to the Court under sub-section (1), the Court may make such order as it may deem just and equitable under the circumstances.

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<sup>1</sup> Reference to 'Corporate Law Authority' deemed to mean and refer to the 'Securities and Exchange Commission of Pakistan' in terms of provisions of section 43 (a) of SEC Act, 1997.

<sup>3</sup> Omitted through Securities and Exchange of Pakistan Act, 1997.

## PART IV - INCORPORATION OF COMPANIES 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
- <sup>1</sup>[(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.]

### MEMORANDUM OF ASSOCIATION

**15. Mode of forming a company.-** (1) Any <sup>2</sup>[three] or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and complying with the requirements of this Ordinance in respect of registration, form a public company and any <sup>1</sup>[one,] or more persons so associated may in like manner form a private company.

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<sup>1</sup> Inserted through Companies (Amendment) Act, 1999.

<sup>2</sup> Substituted 'seven' by Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Substituted 'two' by Companies (Amendment) Ordinance, 2002.

(2) A company formed under sub-section (1) may be a company with or without limited liability, that is to say,—

- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) an unlimited company.

**16. Memorandum of company limited by shares.-** In the case of a company limited by shares,—

- (a) the memorandum shall state—
  - (i) 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;
  - (ii) 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;
  - (iii) the objects of the company and, except in the case of a trading corporation the territories to which they extend;
  - (iv) that the liability of the members is limited; and
  - (v) 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 of the memorandum shall write opposite to his name the number of shares he takes.

**17. Memorandum of company limited by guarantee.-** In the case of a company limited by guarantee,—

- (a) whether or not the company has a share capital, the memorandum shall state—
  - (i) the name of the company with the parenthesis and words "(Guarantee) Limited" as the last words of its name;
  - (ii) 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;
  - (iii) the objects of the company and except in the case of a trading corporation, the territories to which they extend;
  - (iv) that the liability of the members is limited; and
  - (v) 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
- (b) if the company has a share capital,—
  - (i) 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;
  - (ii) no subscriber of the memorandum shall take less than one share; and
  - (iii) each subscriber shall write opposite to his name the number of shares he takes.

**18. Memorandum of unlimited company.-** In the case of an unlimited company,—

- (a) whether or not the company has a share capital, the memorandum shall state—
  - (i) the name of the company;
  - (ii) 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
  - (iii) the objects of the company, and, except in the case of a trading corporation, the territories to which they extend; and
- (b) if the company has a share capital,—
  - (i) no subscriber of the memorandum shall take less than one share; and
  - (ii) each subscriber shall write opposite to his name the number of shares he takes.

**19. Printing, signature, etc. of memorandum.-** (1) The memorandum shall be—

- (a) Printed:
- (b) divided into paragraphs numbered consecutively;
- <sup>1</sup>[(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]

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<sup>1</sup> Substituted by Companies (Amendment) Ordinance, 2002.

(c) dated.

<sup>2</sup> [(2) 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

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<sup>2</sup> Sec. renumbered as sub-section (1) and sub-section (2) added by the Banking and Financial Services (Amendment of Laws) Ordinance, LXVII of 1984.

(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 conforming 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.

**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.

[]<sup>7</sup>

(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.

**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.

## ARTICLES OF ASSOCIATION

**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.

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<sup>7</sup> Sub-section (2) omitted by Finance Act, 2007 dated June 30, 2007.

(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.

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

(a) printed;

(b) divided into paragraphs numbered consecutively;

<sup>1</sup>[(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.

**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

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<sup>1</sup> Substituted by Companies (Amendment) Ordinance, 2002.

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**

**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 B, C, D and E in the First Schedule or as near thereto as circumstances admit.

### **GENERAL PROVISIONS WITH RESPECT TO REGISTRATION OF MEMORANDUM AND ARTICLES**

**30. Registration of memorandum and articles, etc..-**(1) The memorandum and the articles, if any, shall be filed with the registrar.

(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 thereunder 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 thereunder 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 authorised 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.

**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.

**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.

**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 authorised to be registered and duly registered under this Ordinance.

**34. Effect of alteration in memorandum or articles.-** Notwithstanding anything contained in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing either before or after the alteration is made to be bound thereby.

**35. Copies of memorandum and articles to be given to members. -** (1) Every company shall send to every member, at his request and within fourteen days thereof, on payment of such sum, not exceeding the prescribed amount, as the company may fix, a copy of the memorandum and the articles, if any.

(2) If a company makes default in complying with the requirements of subsection (1), it shall be liable for each offence to a fine not exceeding one hundred rupees.

**36. Alteration of memorandum or articles to be noted in every copy.-** (1) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall conform to the memorandum or articles as so altered.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum or articles which do not conform to the memorandum or articles as so altered it shall be liable to a fine which

may extend to one thousand rupees for each copy so issued and every officer of the company who is knowingly and willfully in default shall be liable to the like penalty.

### **PROVISIONS WITH RESPECT TO NAMES OF COMPANIES**

**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.

(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.

**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.

**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.

**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 alongwith 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:

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

**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 licence 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 licence 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.

(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.

(4) A licence 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 licence is so revoked, the Commission shall give 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.

### **COMPANIES LIMITED BY GUARANTEE**

**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.

### **PROVISIONS RELATING TO CONVERSION OF PUBLIC COMPANY INTO PRIVATE COMPANY AND *VICE VERSA*, AND OTHER MATTERS**

**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.

**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 authorised 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, upto 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.

**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.

## **CARRYING ON BUSINESS WITH LESS THAN THE LEGAL MINIMUM OF MEMBERS**

**47. Liability for carrying on business with less than <sup>1</sup>[three] 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 <sup>2</sup>[other than a single member company], below two, or in the case of any other company, below <sup>3</sup>[three], 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 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 <sup>4</sup>[three] 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.

## **SERVICE AND AUTHENTICATION OF DOCUMENTS**

**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.

**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.

**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.

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<sup>1</sup> Substituted "seven" by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Inserted by Companies (Amendment) Ordinance, 2002.

<sup>3</sup> Inserted by Companies (Amendment) Ordinance, 2002.

<sup>4</sup> Substituted "seven" by Companies (Amendment) Ordinance, 2002.

(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 authorised 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.

**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.

## **PART V - PROSPECTUS, ALLOTMENT, ISSUE AND TRANSFER OF SHARES AND DEBENTURES, DEPOSITS, ETC.**

### **PROSPECTUS**

**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.

**53. Matters to be stated and reports to be set out in prospectus.-(1)** Every prospectus issued—

- (a) by or on behalf of a company, or
- (b) by or on behalf of any person who has been engaged or interested in the formation of a company;

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.

<sup>1</sup>[(1A) A sufficient number of copies of the prospectus issued under sub-section (1) 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.

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<sup>1</sup> Inserted through Companies (Amendment) Act, 1999

(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 effect 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--

- (i) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
- (ii) 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--

- (a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) 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--
- (a) 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 favour of other persons; or
  - (b) 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.

**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.

**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--

- (a) 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
- (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

**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.

**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 <sup>21</sup><sup>1</sup>[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) <sup>2</sup>[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 authorised 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

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<sup>1</sup> Substituted by Finance Act, 1995.

<sup>2</sup> Substituted by Finance Act, 1995.

- (i) 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
  - (ii) 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.
- (5) The registrar shall not register a prospectus unless the requirements of sections 52, 53, 54 and 55 and this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker, being a member of a stock exchange, of the company, to act in that capacity.
- (6) If a prospectus is issued, published or circulated without complying with, or in contravention of any provision of this section, the company, and every person who is knowingly a party to the issue, publication or circulation of the 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 date of issue, publication or circulation, as the case may be, of the prospectus, until a copy thereof complying with all the requirements of this section has been delivered to the registrar.

**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.

**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 authorised 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:

Provided that where, under section 55, the consent of a person is required to the issue of a prospectus and he has given that consent, or where, under sub-section (5) of section 57, the consent of a person named in a prospectus is required and he has given that consent, he shall not, by reason of having given such consent, be liable under this sub-section as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any, purporting to be made by him as an expert.

- (2) No person shall be liable under sub-section (1), if he proves—
  - (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;

- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent;
- (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that—
  - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
  - (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 55 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and
  - (iii) as regard every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the document:

Provided that this sub-section shall not apply in the case of a person liable, by reason of his having given consent required of him by section 55, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this sub-section would, under sub-section (1), be liable by reason of his having given a consent required of him by section 55, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable, if he proves—

- (a) that, having given his consent under section 55 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration;
  - (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or
  - (c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of shares or debentures believe, that the statement was true.
- (4) Where—
- (a) the prospectus specifies the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
  - (b) the consent of a person is required under section 55 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus:

the directors of the company, excluding those without whose knowledge or consent the prospectus was issued, and every other person who authorised the issue thereof, shall be liable to indemnify the person referred to in clause (a) or clause (b), as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any suit or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this sub-section to have authorised the issue of a prospectus by reason only of his having given the consent

required by section 55 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) Every person who becomes liable to make any payment by virtue of this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the former person was, and the latter person was not, guilty of fraudulent misrepresentation.

(6) For the purposes of this section—

(a) the expression "promoter" means a promoter who was a party to the preparation of prospectus or a portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

(b) the expression "expert" has the same meaning as in section 55.

**60. Criminal liability for mis-statements in prospectus.-** (1) Where a prospectus includes any untrue statement, every person who signed or authorised 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 authorised 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.

**61. Document containing offer of shares or debentures for sale to be deemed prospectus.-** (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all

enactments and rules of law as to the contents, filing and registration of a prospectus and as to liability in respect of statements in and omissions from a prospectus, or otherwise relating to prospectus, shall apply with the modifications, specified in sub-section (3), (4) and (5), and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures, were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the person by whom the offer is made in respect of mis-statement contained in the document or otherwise in respect thereof.

(2) For the purposes of this Ordinance, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown--

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within one year after the allotment or agreement to allot;
- (b) that at the date when the offer was made; the whole of the consideration to be received by the company in respect of the shares or debentures had not been received by it; or
- (c) that an offer of the shares or debentures or of any of them for sale to the public was made in pursuance of an understanding to which the company was directly or indirectly a party or a condition imposed by any authority in relation to the position, business or privileges of the company.

(3) For the purposes of this section, section 53 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus,--

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) For the purposes of this section, section 57 shall have effect as if the persons making the offer were persons named in a prospectus as directors of a company.

(5) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be; and any such director or partner may sign by his agent authorised in writing.

**62. Offer of shares or debentures for sale by certain persons.-** (1) No person who holds more than ten per cent of the shares or debentures of a company shall offer for sale to the public any shares or debenture of the company held by him except with the approval of the Commission.

(2) Any document by which an offer for sale to the public is made by any such person as is referred to in sub-section (1) shall, for all purposes, be deemed to be a prospectus issued by a company, and all enactments and rules of law as to the contents, filing and registration of a prospectus and as to the liability in respect of statements in and omissions from a prospectus, or otherwise relating to a prospectus, shall apply with the modifications specified in sub-sections (3) and (4), and have effect accordingly, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(3) For the purposes of this section, section 57 shall have effect as if the person making the offer were a person named in a prospectus as director of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (2) is signed on behalf of the company or firm by two directors of the company or not less than one-half of the partners in the firm, as the case may be and any such director or partner may sign by his agent authorised in writing.

<sup>1</sup>[(5) A notice, circular, advertisement or other document soliciting bids, offers, proposals or tenders for sale of shares or other securities acquired in the course of normal business or for negotiating sale thereof or expressing an intention to disinvest such shares or other securities issued by a scheduled bank or a financial institution shall not be deemed to be a prospectus or an offer for sale to the public for the purposes of sections 61 and 62.]

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<sup>1</sup> Sub-sec (5) added by the Banking and Financial Services (Amendment of Laws) Ordinance, LVII of 1984.

<sup>1</sup> [62A. **Issue of securities outside Pakistan.**-- No company shall, except with the prior approval of the Commission, issue any security outside Pakistan].

**63. Interpretation of provisions relating to prospectus.**- (1) For the purposes of the foregoing provisions relating to a prospectus, --

- (a) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included; and
- (b) where the omission from a prospectus of any matter is calculated to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

(2) For the purposes of sections 59 and 60 and clause (a) of sub-section (1) of this section, the expression "included", when used in reference to a prospectus, means included in the prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued herewith.

**64. Newspaper advertisement of prospectus.**- Where any prospectus is published as a newspaper advertisement, it shall not be necessary in the advertisement to comply with the requirements of sub-clause (1) of clause 1 of section 1 of Part I of the Second Schedule in so far as the said provisions require the contents of the memorandum or the signatories thereto, or the number of shares subscribed for by them, to be specified.

**65. Construction of references to offering shares or debentures to the public, etc.**- (1) Any reference in this Ordinance or in the articles of a company to offering of shares or debentures to the public, or to invitation to the public to subscribe for shares or debentures, shall, unless otherwise expressly provided in this Ordinance, include a reference to offering of shares or debentures to any section of the public or to invitation to any section of public to subscribe for shares or debentures, as the case may be.

**Explanation:** The term "section of the public" includes existing members or debenture-holders of the company or clients of the persons issuing the prospectus.

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<sup>1</sup> Sec. 62-A added by the Finance Act, 1 of 1995.

(2) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) if the offer or invitation can properly be regarded, in all the circumstances--

- (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or
- (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

(3) Without prejudice to the generality of sub-section (2), a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture-holders of an invitation which can properly be regarded in the manner set forth in that sub-section.

(4) The provisions of this Ordinance relating to private companies shall be construed in accordance with the provisions contained in sub-sections (1) to (3).

**66. Penalty for fraudulently inducing persons to invest money.-** Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into,-

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- (a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting shares or debentures; or
- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or debentures;

shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine which may extend to twenty thousand rupees, or with both.

## ALLOTMENT

**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.

(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.

(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.

**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.

(11) For the purpose of this section, the expression "promoter" has the same meaning as in section 59.

**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 authorised 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 authorises 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 authorised 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.

**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 authorises 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.

**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.

**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 authorises 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.

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(6) This section shall have effect--

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering shares for sale with the following modifications, that is to say,--

(i) reference to sale shall be substituted for reference to allotment;

(ii) the person by whom the offer is made and not the company, shall be liable under sub-section (2) to repay the money received from applicant, and reference to the company's liability under that sub-section shall be construed accordingly; and

(iii) for the reference in sub-section (3) to the company and every officer of the company there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and willfully authorises or permits the default.

**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 <sup>1</sup>[and such

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<sup>1</sup> Substituted " the name, father's name or in the case of a married woman, her husband's or deceased husband's name, address and occupation" by Companies (Amendment) Ordinance, 2002.

- 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 <sup>2</sup>[such particulars which may be prescribed] of each allottee together with a copy of the resolution authorising 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 authorising 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.

***Explanation:--*** Shares shall not be deemed to have been paid for in cash except to the extent that the company shall actually have received cash therefor at the time of, or subsequent to, the agreement to issue the shares, and where shares are issued to a person who has sold or agreed to sell property or rendered or agreed to render services to the company, or to persons nominated by him, the amount of any payment made for the property or services shall be deducted from the amount of any cash payment made for the shares and only the balance, if any, shall be treated as having been paid in cash for such shares, notwithstanding any bill of exchange or cheques or other securities for money.

(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

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<sup>2</sup> Substituted " the name, father's name and in the case of a married woman, her husband's or deceased husband's name, address and occupation" by Companies (Amendment) Ordinance, 2002.

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:

Provided that where default is made by a company in filing a return of allotment in respect of the shares referred to in this sub-section, the scheduled bank or the financial institution to whom shares have been allotted or issued or deemed to have been issued may file a return of allotment in respect of such shares with the registrar together with such documents as may be specified by the Commission in this behalf, and such return of allotment shall be deemed to have been filed by the company itself and the scheduled bank the 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 the return.

## CERTIFICATE OF SHARES AND DEBENTURES

**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:

<sup>1</sup>[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.

**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, alongwith 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.

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<sup>1</sup> Proviso added by the Central Depository Act.

(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**

**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 alongwith 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.

**77. Directors not to refuse transfer 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 <sup>1</sup>[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.

**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 <sup>8</sup>[twenty] thousand rupees and to a further fine not exceeding <sup>9</sup>[one thousand] rupees for every day after the first during which the default continues.

<sup>10</sup>**[78-A. 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,

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<sup>1</sup> Added by the Central Depository Act.

<sup>8</sup> Substituted "two" by Companies (Amendment) Ordinance, 2002.

<sup>9</sup> Substituted " fifty" by Companies (Amendment) Ordinance, 2002

<sup>10</sup> Inserted through Companies (Amendment) Ordinance, 2002.

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.]

**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.

**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 alongwith the relative scrips, the transmission of the said shares shall be registered in favour 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.

**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 AND REDEEMABLE PREFERENCE SHARES**

**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 authorised 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.

**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.

**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 authorised 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, <sup>1</sup>[...], 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 authorising 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.

**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:

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<sup>1</sup> Deleted "not exceeding ten per cent. or a higher rate fixed by the Authority" by Companies (Amendment) Ordinance, 2002.

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.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its authorised share capital.

(4) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

### **FURTHER ISSUE OF CAPITAL**

**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:

<sup>1</sup>[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:]

<sup>2</sup>[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 authorised 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 authorised 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].

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<sup>1</sup> Proviso added by the Finance Act, 1995.

<sup>2</sup> Proviso added by the Finance Act, 1999.

<sup>1</sup>[(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].

<sup>2</sup>[**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 out-standing 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 per cent. 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.]

## REGULATION OF DEPOSITS

**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).

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<sup>1</sup> Sub-section (7) subs. by the Finance Act, 1 of 1995.

<sup>2</sup> section 87 subs. by the Banking and Financial Services (Amendment of Laws) Ordinance, LVII of 1984.

(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.

**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.

## **PART VI - SHARE CAPITAL AND DEBENTURES**

### **NATURE, NUMBERING AND CERTIFICATE OF SHARES**

**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.

### CLASSES AND KINDS OF SHARES

<sup>1</sup>[**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.]

### GENERAL PROVISIONS AS TO SHARE CAPITAL

**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.

**92. Power of company limited by shares to alter its share capital.**- (1) A company limited by shares, if so authorised 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.

<sup>1</sup> [(3A) Notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, where the authorised 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.]

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<sup>1</sup> Existing section 90 substituted with new section 90 by the Finance Act, 1999.

<sup>1</sup> Sub-section 3-A ins. by the Banking and Financial Services (Amendment of Laws) Ordinance, LVII of 1984.

(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.

**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 authorises or permits the default shall be liable to the like penalty.

**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 authorised capital <sup>2</sup>[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:

<sup>1</sup>[Provided that where default is made by a company in filing a notice of increase in the authorised 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

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<sup>2</sup> Words added by the Banking and Financial Services (Amendment of Laws ) Ordinance, LVII of 1984.

<sup>1</sup> Proviso added by the Banking and Financial Services (Amendment of Laws ) Ordinance, LVII of 1984.

day during which the default continues, and every officer of the company who knowingly and willfully authorises 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.

**95. Prohibition of purchase or grant of financial assistance by a company for purchase of its own or its holding company's shares.**- (1) No company shall have power to buy its own shares or the shares of its holding company:

[Provided that a subsidiary shall not be barred-

- (a) from acting as a trustee unless its holding company is beneficially interested under the trust; and
- (b) from dealing in shares of its holding company in the ordinary course of its business, where such subsidiary carries on a bona fide business of brokerage:

Provided further that a subsidiary dealing in shares of its holding company in the ordinary course of its brokerage business, shall not exercise the voting rights attached to such shares.]<sup>11</sup>

(2) No company limited by shares, other than a private company, not being a subsidiary of a public company, shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with purchase made or to be made by any person of any shares in the company or, where the company is a subsidiary, in its holding company:

Provided that nothing in this sub-section shall prevent the company from advancing or securing an advance to any of its salaried employees, including a chief executive who, before his appointment as such, was not a director of the company, but excluding all directors of the company, for purchase of shares of the company or of its subsidiary or holding company, if making or securing of such advance is a part of the contract of service of such employee.

(3) If a company acts in contravention of sub-section (1) or sub-section (2), the company and every officer of the company who is knowingly and willfully in default

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<sup>11</sup> Proviso inserted by Finance Act, 2007 dated June 30, 2007.

shall be liable to a fine which may extend to ten thousand rupees if the default relates to a listed company and to two thousand rupees if the default relates to any other company.

<sup>1</sup>[(4) Nothing in this section shall prevent --

- (a) a company from redeeming any shares or any other redeemable security issued in accordance with the provisions of this Ordinance; and
- (b) a listed company from purchasing its own shares in accordance with the provisions of this Ordinance.]

<sup>2</sup>[**95A. Power of company to purchase its own shares.** (1) Notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, a listed company may, subject to the provisions of this section and the rules framed by the Commission in this behalf, purchase its own shares (hereinafter in this section referred to as “purchase”).

(2) The purchase shall be authorised by a special resolution which shall indicate maximum number of shares to be purchased, the maximum price at which the shares may be purchased; and the period within which the purchase is to be made.

(3) The notice of the meeting in which the special resolution authorising the purchase of shares is proposed to be moved, shall be accompanied by an explanatory statement containing all material facts including the following:-

- (a) justification for the purchase;
- (b) source of funding;
- (c) effect on the financial position of the company; and
- (d) nature and extent of the interest, if any, of every director, whether directly or indirectly.

(4) The purchase shall always be in cash and shall be out of the distributable profits.

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<sup>1</sup> Substituted by the Finance Act, 1999.

<sup>2</sup> Section 95A inserted through Finance Act, 1999.

(5) Where shares are purchased by a company on premium, the account of premium shall be charged to Share Premium Account of the company or in the absence of any balance therein, to the distributable profits of the company.

(6) Where purchase is made at a price lower than the nominal value of shares, the difference shall be credited to the reserve created under sub-section (10).

(7) The company shall have such debt equity and current ratios as may be prescribed.

(8) The majority of the directors including the chief executive, shall at a meeting make a declaration of solvency verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that after having done so, they have formed the opinion that the company shall continue to operate as a going concern and that it is capable of meeting its liabilities on time during the period upto the end of the immediately succeeding financial year.

(9) The purchase shall be made through a tender system and the mode of tender shall be decided by the company in general meeting through a special resolution.

(10) The shares purchased under this section shall not be resold and shall be cancelled forthwith. The amount of the company's paid up share capital shall be diminished by the nominal value of such shares accordingly. The amount by which the company's paid up share capital is thereby diminished on cancellation of the shares purchased shall, after accounting for the credit, if any, pursuant to sub-section (6) of this section, be transferred from the distributable profits to an account to be called "Capital Re-purchase Reserve Account".

(11) The provisions of this Ordinance relating to the reduction of a company's share capital apply as if the Capital Re-purchase Reserve Account were paid-up share capital of the company, except that the reserve account may be applied by the company in paying up its un-issued shares to be allotted to members of the company as fully paid bonus shares.

(12) Where a company has purchased its own shares under this section, it shall maintain a register of shares so purchased and enter therein the following particulars, namely:-

- (i) number of shares purchased;
- (ii) consideration paid for the shares purchased;
- (iii) mode of purchase; and
- (iv) the date of cancellation of such shares.

(13) A return about the purchase of shares under this section containing such particulars relating to purchase as may be prescribed, along with the declaration of solvency made under sub-section (8) shall be filed with the Commission and the registrar within thirty days of the purchase.

(14) If a company makes default in compliance with the provisions of this section, the company shall be liable to a fine which may extend to one million rupees and any officer of the company who is knowingly and wilfully in default shall also be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one million rupees, or with both.

### **REDUCTION OF SHARE CAPITAL**

**96. Reduction of share capital.**- (1) Subject to confirmation by the Court, a company limited by shares, if so authorised 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--

- (i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (ii) 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

- (iii) 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.

**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.

**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”.

**99. Objection by creditors and settlement of list of objecting creditors.-**  
(1) 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.

(2) 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.

**100. Power to dispense with consent of creditor on security being given for his debt.-** 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.

**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.

**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 sub-section (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.

**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 subsection (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 authorises or permits the default shall be liable to the like penalty.

**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 effect the rights of the contributories among themselves.

**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.

**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.

**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 authorised 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

**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 authorise 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).

#### **REGISTRATION OF UNLIMITED COMPANY AS LIMITED**

**109. Registration of unlimited company as limited.-** (1) Subject to the provisions of this section, any company registered as unlimited may register under this Ordinance as limited or any company already registered as a limited company may re-register under this Ordinance, but the registration of an unlimited company as a limited company shall not affect the rights, debts, liabilities, obligations or contracts acquired, incurred or entered into by, to, with or on behalf of, the company before the registration.

(2) On registration in pursuance of sub-section (1), the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the Company; but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Ordinance.

**110. Power of unlimited company to provide for reserve share capital on re-registration.--** An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Ordinance, increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purpose of the company being wound up.

## UNLIMITED LIABILITY OF DIRECTORS

**111. Limited company may have directors with unlimited liability.** - (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 proposer 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.

**112. Special resolution of limited company making liability of directors unlimited.**- (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director.

(2) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum:

Provided that an alteration of the memorandum making the liability of any of the directors unlimited shall not apply, without his consent, to a director who was holding the office from before the date of the alteration, until the expiry of the term for which he was holding office on that date.

## SPECIAL PROVISIONS AS TO DEBENTURES

**113. Right of debenture-holder and shareholder to have copies of trust-deed.**- (1) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures or holder of shares in the company, at his request on payment of such fee as the company may fix not exceeding the amount prescribed.

(2) If a copy is refused or not forwarded as required under sub-section (1), the company shall be liable to a fine not exceeding five hundred rupees, and to a further fine not exceeding fifty rupees for every day after the first during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty, and the registrar may by order compel immediate supply of a copy.

**114. Debentures not to carry voting rights.-** (1) Except as otherwise provided in this Ordinance, no company shall, after the commencement of this Ordinance, issue any debentures carrying voting rights at any meeting of the company:

Provided that debentures convertible into ordinary shares may, at the option of the company, carry voting rights:

Provided further that such voting rights shall not be in excess of the voting rights attaching to ordinary shares of equal paid-up value.

*Explanation.-* Debentures convertible into ordinary shares include debentures with subscription warrants.

(2) Notwithstanding any-thing contained in this Ordinance, or in the memorandum or articles of any company, no debenture-holder having immediately before the commencement of this Ordinance voting rights shall, after such commencement, exercise any such rights at any meeting of the company, except a meeting of debenture-holders themselves.

**115. Perpetual debentures.-** A condition contained in any debenture or any deed for securing any debentures, whether issued or executed before or after the promulgation of this Ordinance, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

**116. Power to re-issue redeemed debentures in certain cases.-** (1) Where either before or after the commencement of this Ordinance a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do, not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns, shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of reissue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to reissue the

debentures either by reissuing the same debentures or by issuing other debentures in their place, and upon such reissue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of reissue they have, either before or after the commencement of this Ordinance, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a reissue for the purposes of this section.

(3) Where a company has, either before or after the commencement of this Ordinance, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit while the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Ordinance, shall be treated as the issue of a new debenture for the purposes of stamp-duty and registration but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty.

(5) Nothing in this section shall prejudice any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

**117. Specific performance of contract to subscribe for debentures.** - A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

**118. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.** - (1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or

possession is taken by or on behalf of these debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part XI relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part XI shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under sub-section (1) shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

**119. Powers and liabilities of trustee.** - (1) The trustee nominated or appointed under the trust-deed for securing an issue of debentures shall, if so empowered by such deed, have the right to sue for all redemption monies and interest in the following cases, namely: -

- (a) where the issuer of the debentures as mortgagor binds himself to repay the debenture loan or pay the accrued interest thereon, or both to repay the loan and pay the interest thereon, in the manner provided on the due date;
- (b) where by any cause other than the wrongful act or default of the issuer the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66 of the Transfer of Property Act, 1882 (Act IV of 1882), and the trustee has given the issuer a reasonable opportunity of providing further security adequate to render the whole security sufficient and the issuer has failed to do so;
- (c) where the trustee is deprived of the whole or part of the security by or in consequence of any wrongful act or default on the part of the issuer; and
- (d) where the trustee is entitled to take possession of the mortgaged property and the issuer fails to deliver the same to him or to secure the possession thereof without disturbance by the issuer or any person claiming under a title superior to that of the issuer.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1) the Court may at its discretion stay the suit and all proceedings therein notwithstanding any contract to the contrary, until the trustee has exhausted all his available remedies against the mortgaged property or what remains of it unless the trustee abandons his security and, if necessary, retransfers the mortgaged property.

(3) Notwithstanding anything contained in sub-sections (1) and (2) or any other law for the time being in force, the trustee or any person acting on his behalf shall, if so authorised by the trust-deed, sell or concur in selling, without intervention of the Court, the mortgaged property or any part thereof in default of payment according to repayment schedule of any redemption amount or in the payment of any accrued interest on the due date by the issuer.

**Explanation.-** "Issuer", in sub-sections (1), (2) and (3), shall mean the company issuing debentures and securing the same by mortgage of its properties or assets, or both its properties and assets, and appointing a trustee under a trust-deed.

(4) Subject to the provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust-deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust-deed conferring on him any power, authority or discretion.

(5) Sub-section (4) shall not invalidate--

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given--
  - (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture-holders present and voting in person or, where proxies are permitted, by proxy, at a meeting summoned for the purpose; and
  - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

- (6) Sub-section (4) shall not operate--
- (a) to invalidate any provision in force immediately before the commencement of this Ordinance, so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under sub-section (7) remains as trustee of the deed in question ; or
- (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(7) While any trustee of a trust-deed remains entitled to the benefit or provision saved by sub-section (6), the benefits of that provision may be given either--

- (a) to all trustees of the deed, present and future; or
- (b) to any named trustees or proposed trustees thereof;

by a resolution passed by a majority of not less than three-fourths in value of the debenture-holders present in person or, where proxies are permitted, by proxy, at a meeting called for the purpose in accordance with the provisions of the deed or, if the deed makes no provisions for calling meetings, at a meeting called for the purpose in any manner approved by the Court.

<sup>1</sup> **[120. Issue of securities and redeemable capital not based on interest.- (1)**

<sup>2</sup>[A company may by public offer or], upon terms and conditions contained in an agreement in writing, issue to one or more scheduled banks, financial institutions or such other persons as are specified for the purpose by the Federal Government by notification in the official Gazette, either severally, jointly or through their syndicate, any instrument in the nature of redeemable capital in any or several forms in consideration of any funds, moneys or accommodations received or to be received by the company, whether in cash or in specie or against any promise, guarantee, undertaking or indemnity issued to or in favour of or for the benefit of the company.]

(2) In particular and without prejudice to the generality of the forgoing provisions, the agreement referred to in sub-section (1) for redeemable capital may provide for, adopt or include, in addition to others, all or any of the following matters, namely:--

<sup>1</sup> Sec. 120 subs. by the Banking & Financial Services (Amend. of Laws) Ordinance., LVII of 1984

<sup>2</sup> Words subs. by the Finance Act, XII of 1994.

- (a) mode and basis of repayment by the company of the amount invested in redeemable capital within a certain period of time;
- (b) arrangement for sharing of profit and loss;
- (c) creation of a special reserve called the "participation reserves by the company in the manner provided in the agreement for the issue of participatory redeemable capital in which all providers of such capital shall participate for interim and final adjustment on the maturity date in accordance with the terms and conditions of such agreements ; and
- (d) in case of net loss on participatory redeemable capital on the date of maturity, the right of holders to convert the outstanding, balance of such capital or part thereof as provided in the agreement into ordinary shares of the company at the break-up price calculated in the prescribed manner.

(3) The terms and conditions for the issue of instruments or certificates of redeemable capital and the rights of their holders shall not be challenged or questioned by the company or any of its shareholders as repugnant to any provision of this Ordinance or any other law or the memorandum or articles or any resolution of the general meeting or directors of the company or any other document.

(4) The provision of this Ordinance <sup>1</sup>[.....] relating to the creation, issue, increase or decrease of the capital shall not apply to the redeemable capital.]

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<sup>1</sup> Words omitted by the Finance Act, 1 of 1995.

**PART VII - REGISTRATION OF MORTGAGES, CHARGES, ETC.**

**121. Certain mortgages and charges to be void if not registered.--** (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 licence under patent on, a trade mark, or on a copyright or a licence under a copyright; or
- (i) a mortgage or charge or other interest based on agreement for the issue of <sup>1</sup>[any instrument in the nature of redeemable capital]; or
- (j) a mortgage or charge or other interest based on a mushrika agreement; or
- (k) a mortgage or charge or other interest based on hire-purchase or leasing agreement for acquisition of fixed assets;

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<sup>1</sup> Word subs. by the Banking and Financial Services (Amendment of Laws) Ordinance, LVII of 1984.

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.

**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.

**123. Particulars in case of series of debentures entitling holders *pari***

***passu.***- 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.

**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.

**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.

**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.

**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.

**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.

**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 effected 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.

**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.

**131. Rectification of register of mortgages.-** (1) The <sup>1</sup>[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 <sup>2</sup>[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 <sup>3</sup>[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 <sup>4</sup>[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.

**132. Registration of payment or satisfaction of mortgages and charges.-**

(1) It shall be the duty of a company to give intimation to the registrar of the payment or satisfaction, in full, of any charge or mortgage created by the company and requiring registration under section 121 and 122 within twenty-one days from the date of the payment or satisfaction, in full, thereof.

(2) The registrar shall on receipt of such intimation cause a notice to be sent to the holder of the charge or mortgage calling upon him to show cause, within a time, not exceeding fourteen days, to be fixed by such notice, why the payment or satisfaction of the charge or mortgage should not be recorded.

(3) The registrar shall, if no cause is shown, order that a memorandum of satisfaction be entered in the register and shall if required furnish the company with a copy thereof.

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<sup>1</sup> Substituted for "Court" by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted for "Court" by Companies (Amendment) Ordinance, 2002

<sup>3</sup> Substituted for "Court" by Companies (Amendment) Ordinance, 2002

<sup>4</sup> Substituted for "Court" by Companies (Amendment) Ordinance, 2002

(4) Where cause is shown, the registrar shall record a note to that effect in the register, and shall inform the company that he has done so.

(5) Nothing in this section shall be deemed to affect the powers of the registrar to make an entry in the register of charges under section 133 otherwise than on receipt of an intimation from the company.

**133. Power of registrar to make entries of satisfaction and release in absence of intimation from company.**- The registrar may, on evidence being given to his satisfaction with respect to any registered charge--

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or
- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

enter in the register of mortgages and charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, notwithstanding the fact that no intimation has been received by him from the company.

**134. Penalties.** - (1) If any company makes default in filing with the registrar for registration the particulars--

- (a) of any mortgage or charge created by the company or any modification thereof; or
- (b) of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 121 or section 122; or
- (c) of the issues of debentures of a series,

requiring registration with the registrar under the foregoing provisions of this Ordinance, then, unless the registration has been effected within the prescribed period on the

application of some other person, the company, and every officer of the company or other person who is knowingly a party to the default, shall—

- (i) be liable to a fine not exceeding one hundred rupees for every day during which the default in filing of the particulars of satisfaction of a mortgage or charge continues; and
- (ii) be liable to a fine not exceeding five hundred rupees for every day during which the default in filing of the particulars of a mortgage or charge or of debentures continues.

(2) Subject as aforesaid, if any company makes a default in complying with any of the requirements of this Ordinance as to the registration with the registrar of any mortgage or charge created by the company, or any modification thereof, the company, and every officer of the company who knowingly and willfully authorises or permits the default, shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees to a further fine not exceeding one hundred rupees for every day after the first during which the default continues.

(3) If any person knowingly and willfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Ordinance without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding two thousand rupees.

**135. Company's register of mortgages.** - (1) Every company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and, except in the case of securities to bearer, the names of the mortgagees or persons entitled thereto.

(2) If any officer of the company knowingly and willfully authorises or permits the omission of any entry required to be made in pursuance of sub-section (1), he shall be liable to a fine not exceeding two thousand rupees.

**136. Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.**- (1) The copies kept at the registered office of the company in pursuance of section 130 of instruments creating any mortgage or charge or modification of the terms and conditions thereof requiring registration under this Ordinance with the registrar, and the register of mortgages and charges kept in

pursuance of section 135 shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding the amount prescribed for each inspection, as the company may fix.

(2) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding five hundred rupees and a further fine not exceeding fifty rupees for every day after the first during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty, the registrar may by order compel an immediate inspection of the copies or register.

## RECEIVERS AND MANAGERS

**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 subsection (1), he shall be liable to a fine not exceeding two hundred rupees for every day during which the default continues.

**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 authorises 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.

**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.

**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.

**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.

**PART VIII - MANAGEMENT AND ADMINISTRATION**  
**REGISTERED OFFICE, PUBLICATION OF NAME, ETC.**

**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 authorises or permits the default shall be liable to the like penalty.

**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;

- (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.

**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 authorises 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 authorises 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 authorises the issue of any bill-head, letter paper, document, notice or other official publication of the company, or signs or authorises 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 authorises 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.

**145. Publication of authorised 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 authorised 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.

#### **COMMENCEMENT OF BUSINESS BY A PUBLIC COMPANY**

**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.

### **REGISTER OF MEMBERS AND DEBENTURE-HOLDERS**

**147. Register of members and index.-** (1) Every company shall keep in one or more books a register of its members and enter therein the following particulars, namely:-

- (i) the name in full, father's name (in the case of a married woman or widow, the name of her husband or deceased husband), nationality, address, and the occupation, if any, of each member, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;
- (ii) the date at which each person was entered in the register as a member;
- (iii) the date at which any person ceased to be a member and the reason for ceasing to be a member.

(2) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date at which any alteration is made in the register of members, make the necessary alteration in the index.

(3) The index shall, in respect of each member, contain a sufficient indication to enable the entries relating to that member in the register to be readily found.

(4) If default is made in complying with the requirements of sub-section (1) or unnecessary delay takes place in entering in the register of members the name and particulars of any person who has become or ceased to be a member of a company, as the case may be, the company shall be liable to a fine not exceeding two hundred rupees for every day during which the default continues and every officer of the company who knowingly and willfully authorises or permits the default or causes unnecessary delay in entering in the register the name and particulars of any person who has become or ceased to be a member of a company, as the case may be, shall be liable to the like penalty.

(5) If default is made in complying with the requirements of sub-section (2) or sub-section (3), the company and every officer of the company who knowingly and willfully authorises or permits the default shall be liable to a fine not exceeding two thousand rupees.

**148. Trusts not to be entered on register.-** No notice of any trust, expressed, implied or constructive, shall be entered on the register of members, or be receivable by the registrar.

**149. Register and index of debenture-holders.-** (1) Every company shall keep in one or more books a register of the holders of its debentures and enter therein the following particulars, namely:--

- (a) the name in full, father's name (in the case of a married woman or widow, the name of her husband or deceased husband), nationality, address and the occupation, if any, of each debenture-holder;
- (b) the debentures held by each holder, distinguishing each debenture by its number and the amount paid or agreed to be considered as paid on the debentures held by each holder;
- (c) the date at which each person was entered in the register as a debenture-holder; and
- (d) the date at which any person ceased to be a debenture-holder.

(2) Every company having more than fifty debenture-holders shall unless the register of debenture-holders is in such a form as to constitute in itself an index, keep an index of the names of the debenture-holders of the company and shall, within fourteen days after the date at which any alteration is made in the register of debenture-holders make the necessary alteration in the index.

(3) The index shall, in respect of each debenture-holder, contain a sufficient indication to enable the entries relating to that holder, in the register to be readily found.

(4) If default is made in complying with sub-sections (1), (2) or (3), the company and every officer of the company shall be liable to a fine as provided in sub-section (4) or sub-section (5), as the case may be, of section 147.

(5) This section shall not apply with respect to debentures which, *ex facie*, are payable to the bearer thereof.

**150. Inspection of registers.--** (1) The register of members commencing from the date of the registration of the company and the index referred to in section 147, the register of debenture-holders and the index referred to in section 149 and the registers referred to in sub-section (4) of section 156 shall be kept at the registered office of the company and, except when closed under the provisions of this Ordinance, shall during business hours, subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of members or debenture-holders *gratis* and to the inspection of any other person on payment of such amount not exceeding the prescribed amount as the company may fix; and any such member, debenture-holder or other person may make extracts therefrom.

(2) Any member or debenture-holder or other person may require a certified copy of the registers and index thereof mentioned in sub-section (1) or of any part thereof, on payment of such amount not exceeding the prescribed amount as the company may fix, and the company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non-working days and days on which the transfer books of the company are closed, commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under sub-section (1) is refused, or if any copy required under sub-section (2) is not sent within the specified period, the company and every officer of the company who is in default shall be liable, in respect of each offence, to a fine not exceeding five hundred rupees and to a further fine not exceeding fifty rupees for every day after the first during which the refusal or default continues; and the

registrar may by an order compel an immediate inspection of the register and index or direct that copies required shall be sent to the persons requiring them.

**151. Power to close register.--** A company may, on giving not less than seven days' previous notice by advertisement in some newspaper having circulation in the Province, or part of Pakistan not forming part of a Province, in which the registered office of the company is situate and, in the case of a listed company, also in a newspaper having circulation in the Province, or other part as aforesaid, in which the stock exchange on which the company is listed is situate, close the register of members or debenture-holders, as the case may be, for any time or times not exceeding in the whole forty five days in a year and not exceeding thirty days at a time.

**152. Power of Court to rectify register. - (1) If--**

- (a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members or register of debenture-holders of a company; or
- (b) default is made or unnecessary delay takes place in entering on the register of members or register of debenture-holders the fact of the person having become or ceased to be a member or debenture-holder;

the person aggrieved, or any member or debenture-holder of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application or may order rectification of the register on payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under sub-section (1) the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or debenture-holders or alleged members or debenture-holders, or between members or alleged members, or debenture-holders or alleged debenture-holders, on the one hand and the company on the other hand; and generally may decide any question which it is necessary or expedient to decide for rectification of the register.

(4) An appeal from a decision on an application under sub-section (1), or on an issue raised in any such application and tried separately, shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908),--

- (a) if the decision is that of a civil court subordinate to a High Court, to the High Court; and
- (b) if the decision is that of a Company Bench consisting of a single Judge, to a Bench consisting of two or more Judges of the High Court.

**153. Punishment for fraudulent entries in and omission from register.**

- Anyone who fraudulently or without sufficient cause enters in, or omits from the register of members or the register of debenture-holders the name or other particulars of any person shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

**154. Notice to registrar of rectification of register.** -

When it makes an order for rectification of the register of members in respect of a company which is required by this Ordinance to file a list of its members with the registrar, the Court shall cause a copy of the order to be forwarded to the company and shall, by its order, direct the company to file notice of the rectification with the registrar within fifteen days from the receipt of the order.

**155. Register to be evidence.** -

The registers referred to in sections 76, 147, 149 and 156 shall be *prima facie* evidence of any matter which by this Ordinance is directed or authorised to be inserted therein.

**156. Annual list of members, etc..** -

(1) Every company having a capital shall, once in each year, prepare and file with the registrar a return containing the particulars specified in Form A of the Third Schedule as on the date of the annual general meeting or, where no such meeting is held or if held is not concluded, on the last day of the calendar year.

(2) A company not having a share capital shall in each year prepare and file with the registrar a return containing the particulars specified in Form B of the Third Schedule as on the date of the annual general meeting or, where no such meeting is held or if held is not concluded, on the last day of the calendar year.

(3) The return referred to in sub-section (1) or sub-section (2) shall be filed with the registrar--

- (a) in the case of a listed company, within forty-five days; and
- (b) in the case of any other company, within thirty days;

from the date of the annual general meeting held in the year or, when no such meeting is held or if held is not concluded, from the last day of the calendar year to which it relates:

Provided that, in the case of a listed company, the registrar may for special reasons extend the period of filing of such return by a period not exceeding fifteen days.

(4) All the particulars required to be submitted under sub-section (1) and sub-section (2) shall have been previously entered in one or more registers kept by the company for the purpose.

(5) If a company makes default in complying with any requirement of this section, the company and every officer of the company who knowingly and willfully authorises or permits the default shall be liable--

- (a) in the case of a listed company, 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; and
- (b) in the case of any other company, to a fine not exceeding two thousand rupees and to a further fine not exceeding fifty rupees for every day after the first during which the default continues.

## MEETINGS AND PROCEEDINGS

**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.

<sup>1</sup>[(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.]

**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 <sup>1</sup>[four]<sup>2</sup> 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 <sup>2</sup>[thirty] 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:

<sup>1</sup> Inserted through Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Substituted 'six' by Companies (Amendment) Ordinance, 2002.

<sup>12</sup> Substituted "three" with "four" through Finance Act, 2008 dated June 27, 2008. Earlier "four" was substituted with "three" through Finance Act, 2007 dated June 30, 2007.

<sup>2</sup> Substituted 'ninety days' by Companies (Amendment) Ordinance, 2002.

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 situate.

(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 <sup>3</sup>[fifty]<sup>13</sup> thousand rupees and not exceeding <sup>4</sup>[five hundred]<sup>14</sup> 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 <sup>5</sup>[one hundred]<sup>15</sup> thousand rupees and to a further fine not exceeding <sup>6</sup>[five] hundred rupees for every day after the first during which the default continues.

**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.

<sup>3</sup> Substituted 'ten' with 'twenty' by Companies (Amendment) Ordinance, 2002.

<sup>13</sup> Substitutes "twenty" with "fifty" through Finance Act, 2008 dated June 27, 2008.

<sup>4</sup> Substituted 'twenty' with 'fifty' by Companies (Amendment) Ordinance, 2002.

<sup>14</sup> Substitute "fifty" with "five hundred" through Finance Act, 2008 dated June 27, 2008.

<sup>5</sup> Substituted 'five' with 'ten' by Companies (Amendment) Ordinance, 2002.

<sup>15</sup> Substituted "ten" with "one hundred" through Finance Act, 2008 dated June 27, 2008.

<sup>6</sup> Substituted 'two hundred' by Companies (Amendment) Ordinance, 2002.

(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.

**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 alongwith 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 <sup>1</sup>[listed] company, unless the articles provide for a larger number, not less than <sup>2</sup>[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 <sup>3</sup>[any other company], unless the articles provide for a larger number, two 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; and
  - <sup>4</sup>(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.

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<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted 'three' by Companies (Amendment) Ordinance, 2002.

<sup>3</sup> Substituted 'a private company' by Companies (Amendment) Ordinance, 2002.

<sup>4</sup> Inserted by Companies (Amendment) Ordinance, 2002.

(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 <sup>1</sup>[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 <sup>1</sup>[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.

<sup>2</sup>**[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.

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<sup>1</sup> Substituted 'twenty' by Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Substituted 'five' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> section 161 (8) deleted and inserted as 160-A through Companies (Amendment) Ordinance, 2002.

Provided that the petition shall be made within thirty days of the impugned meeting.]

**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 authorised in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised 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.

<sup>1</sup>[(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.

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<sup>1</sup> Deleted through Companies (Amendment) Ordinance, 2002.

**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, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised 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 authorise 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 authorised shall be entitled to exercise the same powers as are available to the company which he represents.

**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.

**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.

**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.

**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 favour of or against such resolution.

**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.

**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.

**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.

**170. Power of <sup>1</sup>[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 <sup>2</sup>[Commission] may, notwithstanding anything contained in this Ordinance or in the article of the company, either of <sup>3</sup>[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 <sup>4</sup>[Commission] may think fit, and give such ancillary or consequential directions as the <sup>5</sup>[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 <sup>1</sup>[Commission] directs the same to be recovered from any officer of the company which he is hereby authorised to do.

**171. Penalty for default in complying with the directions of the <sup>2</sup>[Commission] for holding the meeting.** - If default is made in complying with any directions of the <sup>3</sup>[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.

**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.

<sup>1</sup> Substituted 'registrar' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted 'registrar' by Companies (Amendment) Ordinance, 2002.

<sup>3</sup> Substituted 'his' by Companies (Amendment) Ordinance, 2002.

<sup>4</sup> Substituted 'registrar' by Companies (Amendment) Ordinance, 2002.

<sup>5</sup> Substituted 'registrar' by Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Substituted 'registrar' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted 'registrar' by Companies (Amendment) Ordinance, 2002.

<sup>3</sup> Substituted 'registrar' by Companies (Amendment) Ordinance, 2002.

(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.

**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. <sup>1</sup>[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

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<sup>1</sup> Inserted through Companies (Amendment) Ordinance, 2002.

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

<sup>1</sup>[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.

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<sup>1</sup> Substituted the following by Companies (Amendment) Ordinance, 2002:-

“174. Minimum number of directors.- Notwithstanding anything contained in any other law for the time being in force, every private company shall have not less than two directors and every public company not less than seven 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.]

**175. Only natural persons to be directors.-** Only a natural person shall be a director and no director shall be the variable representative of a body corporate.

**176. First directors and their term.-** (1) In default of and subject to any provisions in the articles of a company and section 174, 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.

**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.

**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.

<sup>1</sup>[(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.]

**[178A. Fresh election of directors on request of substantial acquirer;** (1) Notwithstanding anything contained in this ordinance, where a person acquires 12.5% or more voting shares in a listed company in his own name, he may apply to the Commission for requiring the company to hold fresh election of directors in accordance with the procedure laid down in section 178 in the forthcoming annual general meeting of the company.

- (2) The Commission may, if it deems appropriate in the interest of the company, its minority shareholders or the capital markets generally, direct the company to hold the election of directors in the manner provided under section 178 and the company shall comply with such direction.
- (3) The person on whose request fresh elections of directors is held shall not sell or otherwise dispose of the shares acquired by him for at least one year from the date of election of directors held under sub-section(2).]<sup>16</sup>

**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.

**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.

**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:

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<sup>1</sup> Inserted through Companies (Amendment) Ordinance, 2002.

<sup>16</sup> Section 178A inserted by Finance Act, 2007 dated June 30, 2007.

Provided that a resolution for removing a director shall not be deemed to have been passed unless the number of votes cast <sup>1</sup>[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.

**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.

**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 <sup>2</sup>[...] 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 <sup>3</sup>[...] such corporation or company has made investment or otherwise extended credit facilities;
- (b) directors nominated by the Federal Government or a Provincial Government [or the Commission]<sup>17</sup> 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:

<sup>1</sup> Substituted 'in favour of such a resolution is not less than' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Deleted 'by the Pakistan Industrial Credit and Investment Corporation Limited or' by Companies (Amendment) Ordinance, 2002.

<sup>3</sup> Deleted 'the said Corporation or' by Companies (Amendment) Ordinance, 2002.

<sup>17</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

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.

<sup>1</sup>**[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 alongwith 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.

**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.

**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

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<sup>1</sup> Substituted through Companies (Amendment) Ordinance, 2002.

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.

**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 behaviour 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 <sup>1</sup>[;]

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

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<sup>1</sup> Substituted “.” by Companies (Amendment) Ordinance, 2002.

(iv) a person representing a creditor; <sup>18</sup>

- <sup>1</sup>[(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;
- (j) is <sup>19</sup> engaged in the business of brokerage, or is a spouse of such [person or is a sponsor, director or officer of a corporate brokerage house]<sup>20</sup>:

Provided that clauses (i) and (j) shall be applicable only in case of a listed company.]

[Provided further that the prohibition contained in clause (j) shall not apply where the company is a stock exchange.]<sup>21</sup>

**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

<sup>18</sup> The word “and” omitted through Finance Act, 2008 dated June 27, 2008.

<sup>1</sup> Inserted through Companies (Amendment) Ordinance, 2002.

<sup>19</sup> The words “member of a Stock Exchange” omitted through Finance Act, 2008 dated June 27, 2008.

<sup>20</sup> Substituted word “member” with “person or is a sponsor, director or officer of a corporate brokerage house” through Finance Act, 2008 dated June 27, 2008.

<sup>21</sup> New proviso inserted through Finance Act, 2008 dated June 27, 2008.

- (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 sub-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.

**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.

**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.

**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.

**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 <sup>1</sup>[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.

**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:

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<sup>1</sup> Substituted 'twice in a year' by Companies (Amendment) Ordinance, 2002.

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 favour or in which he is acquitted, or in connection with any application under section 488 in which relief is granted to him.

**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) any body 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) any body 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; or
- (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 sub-section (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 <sup>1</sup>[with mark up 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 sub-section (5) or shall incur the liability referred to in sub-section (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.

**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;

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<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

- (c) to issue debentures or <sup>1</sup>[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 authorise 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; <sup>2</sup>[...]
- <sup>3</sup>[(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];

Provided that the acceptance by a banking company in the ordinary course of its business of deposit of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or placing of moneys on 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 money or, as the case may be, a making of loan by a banking company with the meaning of this section;

- <sup>1</sup>[(k) to undertake obligations under leasing contracts exceeding one million rupees;
- (l) to declare interim dividend; and

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<sup>1</sup> Substituted words "participation term certificates" by Banking and Financial Services (Amendment of Laws) Ordinance, 1984.

<sup>2</sup> Deleted 'and' by Companies (Amendment) Ordinance, 2002.

<sup>3</sup> Substituted through Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Inserted through Companies (Amendment) Ordinance, 2002.

- (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 favour of a company may be released, extinguished or relinquished.]

(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 authorisation, 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 <sup>1</sup>[one hundred thousand] rupees and shall be individually and severally liable for losses or damages arising out of such action.

**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.

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<sup>1</sup> Substituted 'five thousand' by Companies (Amendment) Ordinance, 2002.

- (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.

<sup>2</sup>[**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

**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.

**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

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<sup>2</sup> Inserted through Finance Act, 1999.

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.

**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.

**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.

**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.

**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.

**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.

<sup>1</sup>**[204-A. Certain companies to have secretaries [and share registrars]<sup>22</sup>.**

(1) 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.

[(2) Listed companies shall have independent share registrar possessing such qualifications and performing such functions as maybe specified by the Commission.]<sup>23</sup>

**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 <sup>2</sup>[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 filed with the registrar shall be a period of fourteen days from the date of incorporation of the company and the period

<sup>1</sup> Inserted through Companies (Amendment) Ordinance, 2002.

<sup>22</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>23</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>2</sup> Substituted by Companies (Amendment) Ordinance, 2002 as under--

'the following particulars, that is to say-

- (a) in the case of an individual, his present name in full, any former name, or surname in full, his father's name, in the case of a married woman or a widow, the name of her husband, his usual residential address, nationality and, if that nationality is not the nationality of the origin, his nationality of the origin and his business occupation, if any, and if he holds any other directorship or other office the particulars of such directorship or office;
- (b) in the case of a corporation, its corporate name and registered or principal office, and full name, address and nationality of each of its directors; and
- (c) in the case of a firm, the full name, address and nationality of each partner, and the date on which each became a partner.'

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 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.

#### **BAR ON APPOINTMENT OF MANAGING AGENTS, SOLE PURCHASE AND SALE AGENTS, ETC.**

**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 subsection (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; <sup>24</sup>
- (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<sup>25</sup>
- [(d) an agreement or contract with an NBFC licensed to undertake asset management services in relation to an investment company registered with the Commission; and**
- (e) an agreement or contract with an NBFC licensed as a venture capital company in relation to a fund registered with the Commission.]<sup>26</sup>**

(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.

<sup>24</sup> The word "and" omitted through Finance Act, 2008 dated June 27, 2008.

<sup>25</sup> Full stop substituted with semicolon through Finance Act, 2008 dated June 27, 2008.

<sup>26</sup> New clauses (d) and (e) inserted through Finance Act, 2008 dated June 27, 2008.

### TERMS OF APPOINTMENT OF MANAGING AGENT

**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.

### MISCELLANEOUS PROVISIONS REGARDING INVESTMENTS, CONTRACTS OFFICERS AND SHAREHOLDING, TRADING AND INTERESTS

<sup>1</sup>[**208. Investments in Associated companies and undertaking.** - (1) [Subject to sub-section (2A) a]<sup>27</sup> 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.

[(2A) The Commission may-

(a) by notification in the official Gazette, specify the class of companies or undertakings to which the restriction provided in sub-section (1) shall not apply; and

(b) through regulations made thereunder, specify such conditions and restrictions on the nature, period, amount of investment and terms and conditions attached thereto, and other ancillary matters, [ ]<sup>28</sup>[companies]<sup>29</sup> as it deems fit.]<sup>30</sup>

<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

<sup>27</sup> Substituted for “A” by Finance Act, 2007 dated June 30, 2007.

<sup>28</sup> The words “applicable to such class of” omitted through Finance Act, 2008 dated June 27, 2008.

<sup>29</sup> The word “companies” should have been omitted.

<sup>30</sup> Sub-section (2A) inserted through Finance Act, 2007.

(3) If default is made in complying with the requirements of this section[, or regulations,]<sup>31</sup> every director of a company who is knowingly and wilfully in default shall be liable to fine which may extend to [ten]<sup>32</sup> 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.

**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

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<sup>31</sup> Inserted through Finance Act, 2007.

<sup>32</sup> Substituted “one” through Finance Act, 2007 dated June 30, 2007.

- (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; <sup>1</sup>[..]

- (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, <sup>2</sup>[or]
- (d) <sup>3</sup>[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

<sup>1</sup> The word “or” omitted by Central Depositories Ordinance (XIII of 1997). Sched.(e)(ii).

<sup>2</sup> The word “or” added by *ibid.* Sched.(e)(ii)

<sup>3</sup> Inserted by Central Depository Act.

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.

**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.

**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.

**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.

**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, authorise 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.

**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.

**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.

**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.

**217. Declaring a director to be lacking fiduciary behaviour.-** The Court may declare a director to be lacking fiduciary behaviour 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.

**218. Disclosure to members of directors' interest in contract appointing chief executive, managing agent or secretary.-** (1) Where a company—

- (a) appoints, or enters into a contract for the appointment of, a chief executive, managing agent, whole-time director or secretary of the company, in which appointment or contract any director of the company is in any way, whether directly or indirectly, concerned or interested;
- or
- (b) varies any such contract already in existence;

the company shall make out and attach to the report referred to in section 236 an abstract of the terms of the appointment or contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such appointment or contract or variation.

(2) Where a company appoints or enters into a contract for the appointment of a chief executive of the company, or varies any such contract already in existence, the company shall send an abstract of the terms of the appointment or contract or variation to every member of the company within twenty-one days from the date of the appointment or of entering into the contract or varying of the contract, as the case may be, and if any other director of the company is concerned or interested in the appointment or contract or variation, a memorandum clearly specifying the nature of the concern or interest of such other director in the appointment of contract or variation shall also be sent to every member of the company with the abstract.

(3) Where a director becomes concerned or interested as aforesaid in any such contract as is referred to in sub-section (1) or sub-section (2) after it is made, the abstract and the memorandum, if any, referred to therein shall be sent to every member of the company within twenty-one days from the date of which the director becomes so concerned or interested.

(4) All contracts entered into by a company for the appointment of a managing agent, chief executive or secretary shall be kept at the registered office of the company; and shall be open to the inspection of any member of the company at such office; and extracts may be taken therefrom and certified copies thereof may be required by any such member, to the same extent, in the same manner and on payment of the same fee, as in the case of the register of members of the company; and the provisions of section 150 shall apply accordingly.

(5) The provisions of this section shall apply in relation to any resolution of the directors of a company appointing a managing agent, a secretary or a chief executive or other whole-time director, or varying any previous contract or resolution of the company relating to the appointment of a managing agent, a secretary or a chief executive or other whole-time director, as they apply in relation to any contract for the like purpose.

(6) If default is made in complying with any of the provisions of the section, 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.

**219. Register of contracts, arrangements and appointments in which directors, etc., are interested.** - (1) Every company shall keep a register in which shall be entered separately particulars of all contracts, arrangements or appointments to which section 214 or section 215 or section 216, or section 218 applies, including the following particulars to the extent they are applicable in each case, namely: —

- (a) the date of the contract, arrangement or appointment;
- (b) the names of the parties thereto;
- (c) the principal terms and conditions thereof;
- (d) the date on which it was placed before the directors;
- (e) the names of the directors voting for and against the contract, arrangement or appointment and the names of those remaining neutral;
- (f) the name of the director or officer concerned or interested in the contract, arrangement or appointment and the extent or nature of his interest therein.

(2) Particulars of every such contract, arrangement and appointment shall be entered in the relevant register aforesaid—

- (a) in the case of a contract, arrangement, or appointment requiring the directors' approval, within seven days of the meeting of the directors at which the contract, arrangement or appointment is approved; and
- (b) in the case of any other contract, arrangement or appointment, within seven days of the receipt at the registered office of the company of the particulars of such other contract, arrangement or appointment or within thirty days of the date of such other contract, arrangement or appointment, whichever is later; and the register shall be placed before the next meeting of the directors and shall then be signed by all the directors present at the meeting.

(3) The register aforesaid shall also specify, in relation to each director of the company, the names of the firms and bodies corporate of which notice has been given by him under sub-section (3) of section 214.

(4) Nothing in sub-section (1), sub-section (2) or sub-section (3) shall apply—

- (a) to any contract or arrangement for the sale, purchase or supply of any goods, materials or services, if the value of such goods and materials or the cost of such services does not exceed two thousand rupees in the aggregate in any year; or
- (b) to any contract or arrangement by a banking company for the collection of bills in the ordinary course of its business.

(5) The register referred to in sub-section (1) shall be kept at the registered office of the company and shall be open to inspection by and extracts may be taken therefrom and certified copies thereof required by any member of the company in the same manner and on payment of the same fee as in the case of register of members kept under section 150.

(6) If default is made in complying with the provisions of this section, the company and every director of the company who is knowingly and wilfully in default shall, in respect of each default, be liable to a fine which may extend to five thousand rupees and to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

**220. Register of directors' shareholdings, etc.** - (1) Every listed company shall keep a register showing as respects each director, chief executive, managing agent,

chief accountant, secretary or auditor of the company, and every other person holding not less than ten per cent of the beneficial interest in the company, the number, description and amount of any shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him, or of which he has a right to become holder, whether on payment or not.

(2) Where any shares or debentures have to be recorded in the said register or to be omitted therefrom or any particulars changed in relation to any director or other person as aforesaid by reason of a transaction entered into after the commencement of this Ordinance and while he occupies that position or holds such interest, the register shall also show the date of, and the price or other consideration for, the transaction:

Provided that, where there is an interval between the agreement for any such transaction and the completion thereof, the date so shown shall be that of the agreement.

(3) The nature and extent of any position or interest or right in or over any shares or debentures recorded in relation to a director or other person in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the registered office of the company and shall be open to inspection during business hours as follows, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day are allowed for inspection, —

- (a) during the period beginning fourteen days before the date of the annual general meeting of the company and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and
- (b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Commission.

(6) Without prejudice to the rights conferred by sub-section (5), the Commission and the registrar may at any time require a certified copy of the said register or any part thereof.

(7) The said register shall also be produced at the commencement of the annual general meeting of the company and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(8) If default is made in complying with sub-section (7), 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 one thousand rupees, and if default is made in complying with sub-section (1) or sub-section (2), or if any inspection required under this section is refused or and copy required thereunder is not sent within a reasonable time, 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 ten thousand rupees.

(9) Without prejudice to the provisions of sub-section (8), the registrar may, in the case of any refusal to allow inspection of register or supply of a copy thereof under sub-section (5) or sub-section (6), direct immediate inspection of such register or supply of a copy thereof.

**221. Duty of directors, etc., to make disclosure of shareholdings, etc. - (1)** Every director, officer and such other person as is referred to in sub-section (1) of section 220 shall give notice to the company of such matters relating to himself as may be necessary for the purpose of enabling the company to comply with the provisions of section 220.

(2) The notice referred to in sub-section (1) shall be given in writing within fifteen days of each requisition or change of interest or right, as the case may be, referred to in sub-section (1) of section 220 or date of agreement referred to in sub-section (2) of that section.

(3) Any person who knowingly and wilfully fails to comply with sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

**222. Submission of statements of beneficial owners of listed securities. - (1)** Every director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company who is or has been the beneficial owner of any of its equity securities, and every person who is directly or indirectly the beneficial owner of more than ten per cent of such securities, shall submit to the registrar and the Commission a return in the prescribed form containing the prescribed particulars pertaining to the beneficial ownership of such securities and notify in the prescribed form the particulars of any change in the interest aforesaid.

(2) The period within which the said return is to be submitted to the registrar and the Commission shall be —

(a) where the person occupies the position or office specified in sub-section (1), or is a person whose interest as beneficial owner of securities requiring submission of the return as stated in the said sub-section subsists on the commencement of this Ordinance, within thirty days from such commencement;

- (b) in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be;
- (c) where there is any change in the position or interest as aforesaid including a change in the beneficial ownership of any equity, security, within fifteen days of such change; or
- (d) where the Commission by an order so requires, within such period as may be specified in such order.

**223. Prohibition of short-selling.** - No director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company, and no person who is directly or indirectly the beneficial owner of not less than ten per cent of the listed equity securities of such company, shall practise directly or indirectly short-selling such securities.

**224. Trading by director, officers and principal shareholders.** - (1) Where any director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company or any person who is directly or indirectly the beneficial owner of more than ten per cent of its listed equity securities makes any gain by the purchase and sale, or the sale and purchase, of any such security, within a period of less than six months, such director, chief executive, managing agent, chief accountant, secretary or auditor or person who is beneficial owner shall make a report and tender the amount of such gain to the company and simultaneously send an intimation to this effect to the registrar and the Commission:

Provided that nothing in this sub-section shall apply to a security acquired in good faith in satisfaction of debt previously contracted.

(2) Where a director, chief executive, managing agent, chief accountant, secretary, auditor or person who is beneficial owner as aforesaid fails or neglects to tender, or the company fails to recover, any such gain as is mentioned in sub-section (1) within a period of six months after its accrual, or within sixty days of a demand therefor, whichever is later, such gain shall vest in the <sup>1</sup>[Commission] and unless such gain is deposited in the prescribed account, the Commission may direct recovery of the same as an arrear of land revenue.

(3) For the purposes of sections 220 to 224, the term “auditor of the company” shall, where such auditor is a firm, include all partners of such firm.

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<sup>1</sup> Substituted 'Federal Government' by Companies (Amendment) Ordinance, 2002.

**Explanation.**- (a) For the purposes of this section and section 222, beneficial ownership of securities of any person shall be deemed to include the securities beneficially owned, held or controlled by him or his spouse or by any of his dependent lineal ascendants or descendants not being himself or herself a person who is required to furnish a return under section 222, and

- (i) in the case where such person is a partner in a firm, shall be deemed to include the securities beneficially held by such firm; and
- (ii) in the case where such person is a shareholder in a private company, shall be deemed to include the securities beneficially held by such company:

Provided that for the purposes of sub-section (1) the gain which is required to be tendered to the company by such person shall be an amount bearing to the total amount of the gain made, as the case may be, by the firm or private company the same proportion as his relative interest bears to the total interest in such firm or private company.

- (b) For the purposes of this Explanation, “control”, in relation to securities means the power to exercise a controlling influence over the voting power attached thereto.

(4) Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues.

**225. Contracts by agents of company in which company is undisclosed principal.**- (1) Every officer or other agent of a company, other than a private company, not being the subsidiary company of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of contract, and specify therein the person with whom it has been made.

(2) Every such officer or other agent shall forthwith deliver the memorandum aforesaid to the company and send copies to the directors and such memorandum shall be filed in the office of the company and laid before the directors at their next meeting.

(3) If any such officer or other agent makes default in complying with the requirements of this section —

- (a) the contract shall, at the option of the company be void as against the company; and
- (b) such officer or other agent shall be liable to a fine not exceeding two thousand rupees.

**226. Securities and deposits, etc.-** No company, and no officer or agent of a company, shall receive or utilise any money received as security or deposit, except in accordance with a contract in writing; and all moneys so received shall be kept or deposited by the company or the officer or agent concerned, as the case may be, in a special account with a scheduled bank:

Provided that this section shall not apply where the money received is in the nature of an advance payment for goods to be delivered or sold to an agent, dealer or sub-agent in accordance with a contract in writing.

**227. Employees' provident funds and securities.-** (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such funds, whether by the company or by the employees, or received or accruing by way of interest, profit or otherwise from the date of contribution, receipt or accrual, as the case may be, shall either—

- (a) be deposited—
  - (i) in a National Savings Scheme;
  - (ii) in a special account to be opened by the company for the purpose in a scheduled bank; or
  - (iii) where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in itself or in any other scheduled bank; or
- (b) be invested in Government securities; or
- <sup>1</sup>[(c) in bonds, redeemable capital, debt securities or instruments issued by Pakistan Water and Power Development Authority and in listed

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<sup>1</sup> Clause (c) ins. by the Finance Act, XII of 1994.

securities subject to the conditions as may be prescribed by the Commission].

(3) Where a trust has been created by a company with respect to any provident fund referred to in sub-section (2), the company shall be bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees within fifteen days from the date of collection, and thereupon, the obligations laid on the company by that sub-section shall devolve on the trustees and shall be discharged by them instead of the company.

**228. Right to see bank receipts for money or securities.-** Any person depositing any money or security or making any contribution under section 227 shall be entitled, on request made in this behalf to the company or the person concerned or to the trustees referred to in sub-section (3) of section 227, as the case may be, to see the receipt of the bank or other body for any such money, deposit or security as is referred to in that section.

**229. Penalty for contravention of section 226, 227 or 228.-** Whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 shall be punished with a fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the depositor of security or the employee on account of such contravention.

## ACCOUNTS

**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 utilisation of material or labour 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 summarised 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 authorised 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 <sup>1</sup>[twenty] thousand rupees nor more than <sup>2</sup>[fifty] thousand rupees, and with a further fine which may extend to <sup>3</sup>[five] thousand rupees for every day after the first during which the default continues; and

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<sup>1</sup> Substituted ' ten' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted ' twenty' by Companies (Amendment) Ordinance, 2002.

<sup>3</sup> Substituted ' two' by Companies (Amendment) Ordinance, 2002.

- (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 <sup>4</sup>[ten thousand] rupees.

**Explanatio.-:** 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.

**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 authorised 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 authorised by the Commission, such officer shall make a report to the Commission.

(6) Any officer authorised 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.

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<sup>4</sup> Substituted ' five' by Companies (Amendment) Ordinance, 2002.

**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.

**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 case of the first account for the period since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than <sup>1</sup>[four] months:

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 period for a term not exceeding <sup>2</sup>[one] month.

(2) The period to which the accounts aforesaid relate shall not exceed twelve months except where special permission has been granted in that behalf by the registrar.

(3) The balance-sheet and the profit and loss account or income and expenditure account shall be audited by the auditor of the company, in the manner hereinafter provided, and the auditor's report shall be attached thereto.

(4) Every company shall [in the form and manner specified by the Commission]<sup>33</sup> send a copy of such balance-sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditor's report and the director's report to [ ]<sup>34</sup> every member of the company at least twenty-one days before the meeting at which it is to be laid before the members of the company, and shall keep a copy at the registered office of the company for the inspection of the members of the company during a period of at least twenty-one days before that meeting.

<sup>1</sup> Substituted "three" by "four" through Finance Act, 2008 dated June 27, 2008. Earlier Finance Act, 2007 substituted "four" by "three". In 2002 'six' was substituted with "four" by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substitutes for "two" through Finance Act, 2007 dated June 30, 2007. Earlier "two" was substituted for 'three' by Companies (Amendment) Ordinance, 2002.

<sup>33</sup> The words inserted through Finance Act, 2008 dated June 27, 2008.

<sup>34</sup> The words "the registered address of" omitted through Finance Act, 2008 dated June 27, 2008.

(5) A listed company shall, simultaneously with the despatch of the balance-sheet and profit and loss account together with the reports referred to in sub-section (4), send five copies each of such balance-sheet and profit and loss account and other documents to the Commission, the stock exchange and the registrar.

(6) The provisions of sub-section (7) of section 230 shall apply to any person who is a party to the default in complying with any of the provisions of this section.

**234. Contents of balance-sheet.** - (1) Every balance-sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account or income and expenditure account of a company shall give a true and fair view of the profit and loss of the company for the financial year so, however, that every item of expenditure fairly chargeable against the year's income shall be brought into account and, in case where any item of expenditure which may in fairness be distributed over several years has been incurred in any one financial year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the financial year.

(2) The balance-sheet and profit and loss account or the income and expenditure account shall,—

- (i) in the case of a listed company, <sup>1</sup>[and a private and non-listed public company which is subsidiary of a listed company] comply with the requirements of the Fourth Schedule so far as applicable thereto; and
- (ii) in the case of any other company, comply with the requirements of the Fifth Schedule so far as applicable thereto:

Provided that, except to the extent, otherwise notified in the official Gazette by the Commission, this sub-section shall not apply to an insurance or banking company or to any other class of companies for which the requirements of balance-sheet and profit and loss account are specified in the law regulating such class of companies.

(3) Subject to the provisions of this Ordinance <sup>1</sup>[...]—

- (i) such International Accounting Standards and other standards shall be followed in regard to the accounts and preparation of the balance-sheet and profit and loss account as are notified for the purpose in the official Gazette by the Commission; and

<sup>2</sup>[(ii) in the case of a listed company,—

<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Deleted ", in the case of a listed company" by the Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted following clause by Companies (Amendment) Ordinance, 2002:-

(a) a statement of changes in equity and cash flow statement shall form part of the balance-sheet and profit and loss account; and]

<sup>3</sup>[(b)] accounting policies shall be stated and, where there is any change in such policies, the auditor shall report whether he agrees with the change.

**Explanation.-** “International Accounting Standards” shall be understood in the terms in which it is understood in the accounting circles.

(4) The Federal Government may, of its own motion or upon application by a company, modify, in relation to that company, the requirements of the Fourth Schedule or the Fifth Schedule for the purpose of adapting them to the circumstances of the company.

(5) The Federal Government shall have power from time to time to grant exemption to any company or any class of companies if it is in the public interest so to do, from compliance with all or any of the requirements of the Fourth Schedule or the Fifth Schedule.

(6) The provisions of sub-section (7) of section 230 shall apply to any person who is a party to the default in complying with any of the provisions of this section.

**[234A. Special Audit.-**(1)The Commission may on its own motion, or upon an application made by members holding not less than 20% voting rights in a company, order a special audit of the company and appoint an auditor to carry out detailed scrutiny of the affairs of the company.

(2) The Commission may during the course of the special audit, pass such interim orders and directions as maybe deemed appropriate by the Commission.

(3) On receipt of the special audit report, the commission may issue such directions for immediate compliance to the company and its management as the Commission deems fit.

(4) In case where the special audit has been ordered by the Commission on an application made by the member of the company, one half of the expenses of the special audit shall be borne and paid in advance by such members, and the other half shall be borne by the company.

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(ii) a statement of changes in financial position or statement of sources and application of funds shall form part of the balance-sheet and profit and loss account; and"

<sup>3</sup> Renumbered clause (iii) as clause (b) by Companies (Amendment) Ordinance, 2002.

- (5) In case where the special audit has been ordered by the Commission on its own motion, the expenses of the special audit shall be payable by the company.
- (6) Where the expenses of the special audit are payable by the company, such expenses in the first instance may be defrayed by the Commission, and the company shall be liable to reimburse the Commission in respect of such expenses
- (7) The amount of expenses liable to be paid by the company, the members or any other persons, as the case may be, shall be recoverable as arrears of land revenue.
- (8) The provisions of section 255 shall apply *mutatis mutandis* to the auditor appointed to carry out the special audit of the company under sub-section (1).<sup>35</sup>

**235. Treatment of surplus arising out of revaluation of fixed assets.- (1)**

Where a company revalues its fixed assets, the increase in, or sums added by writing up of, the value of such assets as appearing in the books of accounts of the company shall be transferred to an account to be called "Surplus on Revaluation of Fixed Assets Accounts" and shown in the balance-sheet of the company after Capital and Reserves.

(2) Except and to the extent actually realised on disposal of the assets which are revalued, the surplus on revaluation of fixed assets shall not be applied to set-off or reduce any deficit or loss, whether past, current or future, or in any manner applies, adjusted or treated so as to add to the income, profit or surplus of the company, or utilised directly or indirectly by way of dividend or bonus:

Provided that the surplus on revaluation of fixed assets may be applied by the company in setting-off or in diminution of any deficit arising from the revaluation of any other fixed assets of the company:

<sup>1</sup>[Provided further that incremental depreciation arising out of revaluation of fixed assets may be charged to Surplus on revaluation of fixed assets account.]

(3) The requirements of sub-sections (1) and (2) shall also apply to any account representing any increase in or addition to the value of any asset as a result of any revaluation of any fixed assets done before the commencement of this Ordinance, howsoever described, to the extent of the amount thereof appearing in the books of account of the company on such commencement.

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<sup>35</sup> Section 234A inserted by Finance Act, 2007 dated June 30, 2007.

<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

<sup>2</sup>[(4) After revaluation as aforesaid, depreciation on the assets so revalued shall be provided with reference to the value assigned to such assets before revaluation and surplus on revaluation may be amortized according to life of the assets.]

(5) If default is made in complying with any requirements of this section, the directors of the company who are knowingly and wilfully in default shall be punishable with fine not exceeding twenty thousand rupees and shall also be jointly and severally liable to the company for any loss sustained by the company on account of such default.

**236. Director's report.** - (1) The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically in the balance-sheet or to a Reserve Fund, General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.

(2) In the case of a public company or a private company which is a subsidiary of a public company, the directors report shall, in addition to the matters specified in sub-section (1),-

- (a) disclose any material changes and commitments affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance-sheet relates and the date of the report;
- (b) so far as is material for the appreciation of the state of the company's affairs by its members, deal with any changes that have occurred during the financial year concerning the nature of the business of the company or of its subsidiaries, or in the classes of business in which the company has interest, whether as a member of another company or otherwise, unless the Commission exempts any company from making such disclosure on the ground that such disclosures would be prejudicial to the business of the company;
- (c) contain the fullest information and explanation in regard to any reservation, observation, qualification or adverse remarks contained in the auditor's report;
- (d) circulate with it information about the pattern of holding of the shares in the form prescribed;
- (e) state the name and country of incorporation of its holding company, if any, where such holding company is established outside Pakistan [; and]
- <sup>1</sup>[(f) state the earning per share;

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<sup>2</sup> Substituted by Companies (Amendment) Ordinance, 2002.

(g) give reasons for incurring loss and a reasonable indication of future prospects of profit, if any; and

(h) contain information about defaults in payment of debts, if any, and reasons thereof.]

(3) The report referred to in sub-section (1) shall be signed by the chairman of the directors or the chief executive of the company on behalf of the directors if authorised in that behalf by the directors and, when not so authorised, shall be signed by the chief executive and such number of directors as are required to sign the balance-sheet and profit and loss account under section 241.

(4) If a company fails to comply with any of the requirements of this section, every director, including the chief executive, of the company who has knowingly by this act or omission been the cause of any default by the company in complying with the requirements of this section 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 <sup>1</sup>[twenty] thousand rupees nor more than <sup>2</sup>[fifty] thousand rupees, and with a further fine which may extend to <sup>3</sup>[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 with imprisonment for a term which may extend to six months and with fine which may extend to <sup>4</sup>[ten] thousand rupees.

<sup>5</sup>[(5) The directors of a holding company required to prepare consolidated financial statements under section 237 shall make out and attach to consolidated financial statements, a report with respect to the state of group's affairs and all provisions of sub-section (2), (3) and (4) shall apply to such report as if for the word "company" appearing in these sub-sections the word "holding company" were substituted.]

<sup>6</sup>[237. *Consolidated financial statements.* - (1) There shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries, at the end of the financial year at which the holding company's financial statements are made out, consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirement

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<sup>1</sup> Inserted by Companies (Amendment) Act, 1999.

<sup>2</sup> Substituted 'ten' by Companies (Amendment) Ordinance, 2002.

<sup>3</sup> Substituted 'twenty' by Companies (Amendment) Ordinance, 2002.

<sup>4</sup> Substituted 'two' by Companies (Amendment) Ordinance, 2002.

<sup>5</sup> Substituted 'five' by Companies (Amendment) Ordinance, 2002.

<sup>6</sup> Inserted by Companies (Amendment) Ordinance, 2002.

<sup>6</sup> Substituted by Companies (Amendment) Ordinance, 2002.

of the Fourth Schedule and an International Accounting Standards notified under subsection (3) of section 234.

(2) Where the financial year of a subsidiary precedes the day on which the holding company's financial year ends by more than three months, such subsidiary shall make an interim closing, on the day on which the holding company's financial year ends, and prepare financial statements for consolidation purposes.

(3) Every auditor of a holding company appointed under section 252 shall also report on consolidated financial statements and exercise all such powers and duties as are vested in him under section 255.

(4) All interim financial statements of a subsidiary as required under subsection (3) shall be reviewed by the auditors of that subsidiary appointed under section 252 who shall report on such financial statements in the prescribed form.

(5) There shall be disclosed in the consolidated financial statements-

(a) any qualifications contained in the auditors' reports on the accounts of subsidiaries for the financial year ending with or during the financial year of the holding company; and

(b) any note or saving contained in such accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far the matter which is the subject of the qualification or note is not covered by the holding company's own accounts and is material from the point of view of its members.

(6) Every consolidated financial statements shall be signed by the same persons by whom the individual balance sheet and the profit and loss account or income and expenditure account of the holding company are required to be signed, under section 241.

(7) All provisions of sections 233, 242, 243, 244 and 245 shall apply to a holding company required to prepare consolidated financial statements under this section as if for the word "company" appearing in these sections, the words "holding company" were substituted.

(8) The Commission may, on an application or with the consent of the directors of a holding company, direct that in relation to any subsidiary, the provisions of this section shall not apply only to such extent as may be specified in the direction.

(9) If a holding company fails to comply with any requirement of this section, every officer of the holding company shall be punishable with fine which may extend to fifty thousand rupees in respect of each offense unless he shows that he took all

reasonable steps for securing compliance by the holding company of such requirements and that the non-compliance or default on his part was not willful and intentional.]

**238. Financial year of holding company and subsidiary.** - (1) The directors of a holding company shall ensure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries coincides with the company's own financial year.

(2) Where it appears to the Commission desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may and with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Commission may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calendar years.

**239. Rights of holding company's representatives and members.** - (1) A holding company may, by resolution, authorise representatives named in the resolution to inspect the books of account kept by any of its subsidiaries; and the books of account of any such subsidiary shall be open to inspection by those representatives at any time during business hours.

(2) The rights conferred by section 265 upon members of a company may be exercised, in respect of any subsidiary, by members of the holding company as if they also were members of the subsidiary.

**240. Balance sheet of modaraba company to include modaraba accounts, etc.** - (1) There shall be attached to the balance-sheet of a modaraba company, the annual accounts and other reports circulated in pursuance of the provisions of section 14 of the Modaraba Companies and the Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), made out-

- (a) as at the end of the financial year of the modaraba company where such financial year coincides with the financial year of the modaraba company; and
- (b) as at the end of the financial year of the modaraba last before that of the modaraba company, where the financial year of the modaraba company does not coincide with that of the modaraba company.

(2) The provisions of sub-section (1) of section 237 shall apply to any person who is a party to default in complying with any of the provisions of this section.

**241. Authentication of balance-sheet.** - (1) Save as provided by sub-section (2), the balance-sheet and profit and loss account or income and expenditure account shall be approved by the directors and shall be signed by the chief executive and at least one director.

(2) when the chief executive is for the time being not in Pakistan, then the balance-sheet and profit and loss account or income and expenditure account of the company shall be signed by not less than two directors for the time being in Pakistan, but in such a case there shall be subjoined to the balance-sheet and profit and loss account or income and expenditure account a statement signed by such directors explaining the reasons for non-compliance with the provisions of sub-section (1).

(3) If a company makes default in complying with the requirement of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding five thousand rupees.

**242. Copy of balance-sheet to be forwarded to the registrar.** - (1) Without prejudice to the provisions of sub-section (5) of section 233, after the balance-sheet and profit and loss account or the income and expenditure account, as the case may be, have been laid before the company at the annual general meeting, such number of copies thereof alongwith the reports and documents required to be annexed to the same, not being less than <sup>1</sup>[three] in the case of a listed company or <sup>2</sup>[two] in the case of any other company, as may be prescribed, signed by the chief executive, directors, chairman of directors or the auditors of the company, as the case may be, in the manner provided by sections 236, 241 and 257, shall be filed with the registrar within thirty days from the date of such meeting.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet and profit and loss account or the income and expenditure account or defers consideration thereof or is adjourned, a statement of that fact and of the reasons therefor shall be annexed to the said documents and also to the copies thereof required to be filed with the registrar.

(3) Nothing in this section shall apply to a private company [having paid up capital of less than 7.5 million rupees.]<sup>36</sup>

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable,-

(a) if the default relates to a listed company, to a fine which may extend to ten thousand rupees and to a further fine which may extend to two

<sup>1</sup> Substituted 'five' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted 'three' by Companies (Amendment) Ordinance, 2002.

<sup>36</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

hundred 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 to a further fine which may extend to fifty rupees for every day after the first during which the default continues.

**243. Right of member of company to copies of the balance-sheet, etc., and the auditor's report.** - Save as otherwise provided in this Ordinance, a member of a company shall be entitled to be furnished with copies of the balance-sheet and the profit and loss account or the income and expenditure account, the director's report and the auditor's report on payment of such sum as the company may fix not exceeding the maximum amount prescribed.

**244. Penalty for improper issue, circulation or publication of balance-sheet or profit and loss account.** - If any copy of a balance-sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (i) the profit and loss account or income and expenditure account, (ii) any accounts, reports, notes or statements referred therein, (iii) the auditor's report, and (iv) the directors report, the company, and every officer of the company who is knowingly and wilfully in default shall be punishable with fine which may extend to five thousand rupees.

**245. <sup>1</sup>[Quarterly] accounts of listed companies.**- (1) Every listed company shall—

- (a) within <sup>2</sup>[one month] of the close of <sup>3</sup>[first, second and third quarter] of its year of account, prepare and transmit to the members and the stock exchange in which the shares of the company are listed a profit and loss account for, and balance-sheet as at the end of that <sup>4</sup>[quarter], whether audited or otherwise; and
- (b) simultaneously with the transmission of the <sup>5</sup>[quarterly] profit and loss account and balance-sheet to the members and the stock exchange, file with the registrar and the Commission such number of copies thereof, not being less than three, as may be prescribed.

(2) The provisions of sub-sections (1) and (2) of section 241 shall apply to the half-yearly accounts.

<sup>1</sup> Substituted 'Half' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted 'two months' by Companies (Amendment) Ordinance, 2002.

<sup>3</sup> Substituted 'the first half' by Companies (Amendment) Ordinance, 2002.

<sup>4</sup> Substituted 'half-year' by Companies (Amendment) Ordinance, 2002.

<sup>5</sup> Substituted 'half-yearly' by Companies (Amendment) Ordinance, 2002.

<sup>6</sup>[(3) 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 be liable to a fine of not exceeding one hundred thousand rupees and to a further fine of one thousand rupees for every day during which the default continues.]

**246. Power of Commission to require submission of additional statements of accounts and reports.** - (1) [Notwithstanding anything contained in any other provision of this Ordinance the]<sup>37</sup> Commission may, by general or special order, require companies generally, or any class of companies or any particular company, to prepare and send to the members, the registrar, any authority, a stock exchange and any other person such periodical statements of accounts, information or other reports, [audited by an auditor,]<sup>38</sup> in such form and manner and within such time, as may be specified in the order.

(2) In the event of a default in complying with the order of the Commission issued under sub-section (1), the company, and every officer of the company who knowingly and wilfully authorises or permits the default, shall be liable to a fine not [exceeding one million rupees and to a further fine]<sup>39</sup> which may extend to [ten]<sup>40</sup> thousand rupees for every day during which the default continues.

**247. Rights of debenture-holders, etc., as to receipt and inspection of report, etc.** - The holders of debentures, including the trustees for holders of debentures, of a company shall have the same right to receive and obtain on payment copies of the balance-sheets and profit and loss accounts or the income and expenditure account of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

## **DIVIDENDS AND MANNER AND TIME OF PAYMENT THEREOF**

**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 undertaking 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:

<sup>6</sup> Substituted by Companies (Amendment) Act, 1999

<sup>37</sup> Substitute for "The" through Finance Act, 2007 dated June 30, 2007.

<sup>38</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>39</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>40</sup> Substituted for "one" by Finance Act, 2007 dated June 30, 2007.

[Provided that no dividend shall be declared or paid out of unrealized gain on investment property credited to profit and loss account.]<sup>41</sup>

**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.

**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.

**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 [such time as the Commission may, from time to time, by notification in the official Gazette, specify]<sup>42</sup>.

*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—

<sup>41</sup> Proviso inserted through Finance Act, 2007 dated June 30, 2007.

<sup>42</sup> The words “forty-five days of the declaration in the case of a listed company and within thirty days in the case of any other company” substituted with “such time as the Commission may, from time to time, by notification in the official Gazette, specify” through Finance Act, 2008 dated June 27, 2008.

- (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.

## AUDIT

**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:

<sup>1</sup>[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:

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<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

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:

<sup>2</sup>[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, <sup>1</sup>[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.

**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.

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<sup>2</sup> Inserted by Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Substituted 'Authority' by Companies (Amendment) Ordinance, 2002.

(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.

**254. Qualification and disqualification of auditors.** - <sup>1</sup>[(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; <sup>1</sup>[...]
- (e) a body corporate;
- <sup>2</sup>[(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.

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<sup>1</sup> Substituted by Companies Ordinance (Amendment) Act, 1999.

<sup>1</sup> Omitted 'and' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Inserted by Companies (Amendment) Ordinance, 2002.

[(3A) For the purposes of clause (d) of sub-section (3) a person who owes-

(a) a sum of money not exceeding five hundred thousand rupees to a credit card issuer; or

(b) a sum to a utility company in form of unpaid dues for a period not exceeding ninety days ;

Shall not be deemed to be indebted to the company.]<sup>43</sup>

(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.

**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

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<sup>43</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

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 ; and
- (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 alongwith the factual position to the best of the auditor's information.

(5) The Commission 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.

**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.

**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 practising 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.

(2) The report of auditors shall be dated and indicate the place at which it is signed.

**258. Audit of cost accounts.** - 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.

**259. Penalty for non-compliance with provisions by companies.**- If default is made by a company in complying with any of the provisions of sections 252 to 254 or 256 to 258, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to <sup>1</sup>[fifty thousand rupees and in the case of continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues].

**260. Penalty for non-compliance with provisions by auditors.**- (1) If any auditor's report is made, or any document of the company is signed or authenticated otherwise than in conformity with the requirements of section 157, section 255 or section 257 or is otherwise untrue or fails to bring out material facts about the affairs of the company or matters to which it purports to relate, the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the document, and in the case of a firm all partners of the firm, shall, if the default is wilful, be punishable with fine which may extend to <sup>2</sup>[one hundred] thousand rupees.

(2) If the auditor's report to which sub-section (1) applies is made with the intent to profit such auditor or any other person or to put another person to a disadvantage or loss or for a material consideration, the auditor shall, in addition to the penalty provided by that sub-section, be punishable with imprisonment for a term which may extend to <sup>1</sup>[one year] and with fine which may extend to <sup>2</sup>[one hundred] thousand rupees.

#### **POWER OF REGISTRAR TO CALL FOR INFORMATION, ETC.**

**261. Power of registrar to call for information or explanation.**- (1) Where, on perusal of any document which is submitted to him under this Ordinance, or any notice, advertisement or other communication, or otherwise, the registrar is of opinion

<sup>1</sup> Substituted "two thousand rupees" by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted "two" by Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Substituted "six months" by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted "two" by Companies (Amendment) Ordinance, 2002.

that any information, explanation or document is necessary with respect to any matter, he may, by a written order, call upon the company and any of its present or past directors, officers or auditors to furnish such information or explanation in writing, or such document, within such time not being less than fourteen days as he may specify in the order:

Provided that a director, officer or auditor who ceased to hold office more than six years before the date of the order of the registrar shall not be compelled to furnish information or explanation or document under this sub-section.

(2) On the receipt of an order under sub-section (1) it shall be the duty of the company and all persons who are or have been directors, officers or auditors of the company to furnish such information, explanation or documents to the best of their power.

(3) If no information or explanation is furnished within the time specified or if the information or explanation furnished is, in the opinion of the registrar, inadequate, the registrar may if he deems fit, by written order, call on the company and any such person as is referred to in sub-section (1) or (2) to produce before him for his inspection such books and papers as he considers necessary within such time as he may specify in the order; and it shall be the duty of the company and of such persons to produce such books and papers.

(4) If any such company or any such person as is referred to in sub-section (1), (2) or (3) refuses or makes default in furnishing any such information or in producing any such books or papers the company shall be liable in respect of each offence to a fine which may extend to twenty thousand rupees and to a further fine which may extend to five hundred rupees for every day after the first during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits, or is a party to, the default shall be punishable with imprisonment of either description for a term which may extend to one year, and shall also be liable to fine and the authority trying the offence may, on the application of the registrar and upon notice to the company, make an order directing the company to produce such books or papers as in its opinion may reasonably be required by the registrar for his investigation.

(5) On receipt of such information or explanation or production of any books and papers, the registrar may annex the same or any copy thereof or extract therefrom to the original document submitted to him; and any document so annexed shall be subject to the provisions as to inspection and the taking of extracts and furnishing of copies to which the original document is subject.

(6) If the information or explanation or book or papers required by the registrar under sub-section (1) is not furnished within the specified time, or if after perusal of such information or explanation or books or papers the registrar is of opinion that the document in question or the information or explanation or book or paper discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair

statement of the matter to which it purports to relate, the registrar shall without prejudice to any other provisions, and whether or not action under sub-section (3) or sub-section (4) has been taken, report in writing the circumstances of the case to the Commission.

**262. Seizure of documents by registrar.** - (1) Where, upon information in his possession or otherwise, the registrar has reasonable ground to believe that books and papers of, or relating to, any company or any chief executive or officer of such company or any associate of such person may be destroyed, mutilated, altered, falsified or secreted, the registrar may, after obtaining permission of the Magistrate of the first class or the Court, search and seize such books and papers.

(2) For the purposes of sub-section (1), the registrar may, after he has obtained the permission of the Magistrate or Court under that sub-section, also authorise any officer subordinate to him, not inferior in rank to an assistant registrar,—

- (a) to enter, with such assistance as may be required, the place where such books and papers are kept;
- (b) to search that place in the manner specified in the order; and
- (c) to seize such books and papers as he considers necessary.

(3) The registrar shall return the books and papers seized under this section as soon as may be and in any case not later than the thirtieth day after such seizure, to the company or, as the case may be, to the chief executive or any other person from whose custody or power they were seized:

Provided that the Commission may, after providing to the company an opportunity to show cause against the order proposed to be made by it, allow the registrar to retain any books and papers for a further period not exceeding thirty days:

Provided further that the registrar may, before returning books and papers as aforesaid, take copies of, or extracts from them or put such marks of identification thereon as he considers necessary.

(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to searches or seizures made under that Code.

## **INVESTIGATION AND RELATED MATTERS**

**263. Investigation of affairs of company on application by members or report by registrar.** - 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.

**264. Application by members to be supported by evidence and power to call for security.** - 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.

**265. Investigation of company's affairs in other cases.**- 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 of 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.

**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).

**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 any body 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.

**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.

**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.

**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 offence 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.

**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 actions; 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.

**272. Effect of Court's order.-** 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.

**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.

**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.

**275. Application for winding up of company or an order under section 290.** - 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 authorised 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.

**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 any body 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.

**277. Expenses of investigation.** - (1) When an investigation is ordered to be made under section 263 or section 265, the expenses of and incidental to the investigation shall in the first instance be defrayed by the Commission; but the following persons shall, to the extent mentioned below, be liable to reimburse the Commission in respect of such expenses, namely: -

- (a) any person who is convicted on a prosecution instituted in pursuance of section 270 or is ordered to pay damages or restore any property as a result of proceedings under section 276 may in the same proceedings be ordered to pay the said expenses to such extent as may be specified by the Commission or the Court convicting such person or ordering him to pay such damages or restore such property, as the case may be;
- (b) any company or body corporate in whose name proceedings are brought as aforesaid shall be liable, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings;
- (c) where the investigation was ordered by the Commission under clause (c) of section 263 or under section 265, the company or body corporate dealt with by the report shall be liable except so far as the Commission otherwise directs; and
- (d) where the investigation was ordered under section 263 on an application of the members, the members making the application and the company or body corporate dealt with by the report shall be liable to such extent, if any, as the Commission may direct.

(2) The amount of expenses which any company, body corporate or person is liable under this section to reimburse to the Commission shall be recoverable from that company, body corporate or person as an arrear of land revenue.

(3) For the purposes of this section, any costs or expenses incurred by the Commission in or in connection with proceeding brought by the Commission under section 276 shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to reimburse the Commission imposed by clauses (a) and (b) of sub-section (1) shall, subject to satisfaction of the right of the Commission to reimbursement, be a liability also to indemnify all persons against liability under clause (c) of that sub-section.

(5) Any such liability imposed by clause (a) of sub-section (1) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under clause (b) of that sub-section.

(6) Any person liable under clause (a) or clause (b) or clause (c) of sub-section (1) shall be entitled to contribute from any other person liable under the same clause according to the amount of their respective liabilities thereunder.

(7) In so far as the expenses to be defrayed by the Commission under this section are not recovered thereunder, they shall be borne by the Federal Government.

**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.

**279. Imposition of restrictions on shares and debentures and prohibition of transfer of shares or debentures in certain cases.** - (1) Where it appears to the Commission in connection with any investigation that there is good reason to find out the relevant facts about any shares, whether issued or to be issued, and the Commission is of opinion that such facts cannot be found out unless the restrictions specified in sub-section (2) are imposed, the Commission may, by order, direct that the shares shall be subject to the restrictions imposed by sub-section (2) for such period not exceeding one year as may be specified in the order:

Provided that, before making an order under this sub-section, the Commission shall provide an opportunity of showing cause against the proposed action to the company and the persons likely to be affected by the restriction.

(2) So long as any shares are directed to be subject to the restrictions imposed by this sub-section,-

- (a) any transfer of those shares shall be void;
- (b) where those shares are to be issued, they shall not be issued; and any issue thereof or any transfer of the right to be issued therewith, shall be void;
- (c) no voting right shall be exercisable in respect of those shares;
- (d) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and any issue of such shares or any transfer of the right to be issued therewith, shall be void;

- (e) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of dividend, capital or otherwise; and
- (f) no change other than a change by operation of law shall be made in the directors, chief executive or the managing agent.

(3) Where a transfer of shares in a company has taken place and as a result thereof a change in the directors of the company is likely to take place and the Commission is of opinion that any such change would be prejudicial to the public interest, the Commission may, by order, direct that-

- (i) the voting rights in respect of those shares shall not be exercisable for such period not exceeding one year as may be specified in the order; and
- (ii) no resolution passed or action taken to effect a change in the directors before the date of the order shall have effect unless confirmed by the Commission.

(4) Where the Commission has reasonable ground to believe that a transfer of shares in a company is likely to take place as a result of which a change in the directors of the company will follow and the Commission is of opinion that any such change would be prejudicial to the public interest, the Commission may, by order, prohibit any transfer of shares in the company during such period not exceeding one year as may be specified in the order.

(5) The Commission may, by order, at any time, vary or rescind any order made by it under sub-section (1) or sub-section (3) or sub-section (4).

(6) Where the Commission makes an order under sub-section (1) or sub-section (3) or sub-section (4) or sub-section (5) or refuses to rescind any such order, any person aggrieved thereby may apply to the Court and the Court may, if it thinks fit, by order, vacate any such order of the Commission:

Provided that no order, whether interim or final, shall be made by the Court without giving the Commission an opportunity of being heard.

(7) Any order of the Commission rescinding an order under sub-section (1), or any order of the Court vacating any such order, which is expressed to be made with a view to permitting a transfer of any shares, may continue the restrictions mentioned in clauses (d) and (e) of sub-section (2), either in whole or in part, so far as they relate to any right acquired, or offer made, before the transfer.

(8) Any order made by the Commission under sub-section (5) shall be served on the company within fourteen days of the making of the order.

- (9) Any person who-
- (a) exercises or purports to exercise any right to dispose of any shares or of any right to be issued with any such shares, when to his knowledge he is not entitled to do so by reason of any of the restrictions applicable to the case under sub-section (1); or
  - (b) votes in respect of any shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof, when to his knowledge he is not entitled to do so by reason of any of the restrictions applicable to the case under sub-section (2) or by reason of any order made under sub-section (3); or
  - (c) transfers any shares in contravention of any order made under sub-section (4); or
  - (d) being the holder of any shares in respect of which an order under sub-section (2) or sub-section (3) has been made, fails to give notice of the fact of their being subject to any such order to any person whom he does not know to be aware of that fact but whom he knows to be otherwise entitled to vote in respect of those shares, whether as holder or a proxy;

shall be punishable with imprisonment or a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

(10) Where shares in any company are issued in contravention of any restrictions applicable to the case under sub-section (2), the company, and every officer of the company who is knowingly and wilfully in default, shall be liable to a fine not exceeding five thousand rupees.

(11) A prosecution shall not be instituted under this section except by or with the consent of, the Commission.

(12) This section shall also apply in relation to debentures as it applies in relation to shares.

**280. Saving for legal advisers and bankers.** - Nothing in sections 262 to 270 or 275 to 279 shall require the disclosure to the registrar or to the Commission or to an inspector appointed by the Commission-

- (a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by the bankers of any company, body corporate, or other person, referred to in the sections aforesaid, as such bankers, of any information as to be the affairs of any of their customers other than such company, body corporate, or person.

**281. Enquiries and investigation not to be affected by winding up, etc.-**

An inspection, enquiry or investigation may be initiated or proceeded with under sections 231, 261, 262, 263, 265 and 267 and any consequential action taken in accordance with any provisions of this Ordinance notwithstanding that-

- (a) the company has passed a resolution for winding up;
- (b) a petition has been submitted to the Court for winding up of the company; or
- (c) any other civil or criminal proceedings have been initiated against the company or its officers under any provision of this Ordinance.

**282. Application of sections 261 to 281 to liquidators and foreign companies.-** The provisions of sections 261 to 281 shall apply *mutatis mutandis* to companies in the course of winding up, their liquidators and foreign companies.

**<sup>1</sup>[PART VIII A. - NON-BANKING FINANCE COMPANIES****PROVISIONS AS TO ESTABLISHMENT AND REGULATION OF NON-BANKING FINANCE COMPANIES**

**282A. Application of this Part.-** 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

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<sup>1</sup> Inserted by Companies (Second Amendment) Ordinance, 2002.

- (viii) any other form of business which the Federal Government may, by notification in the official Gazette specify from time to time; and
- (b) [notified entities which include]<sup>44</sup> such other company or class of companies or corporate body [or trust or any other entity or person]<sup>45</sup> as the Federal Government may, by notification in the official Gazette specify for the purpose under this clause.

**282B. Power to make [Rules and regulations and issue directives, circulars, codes, guidelines, etc.]<sup>46</sup>** (1) The Federal Government may make rules for establishment and regulation of NBFCs [and notified entities and their business and activities]<sup>47</sup> and such rules may, *inter alia*, in addition to anything already provided in this Ordinance, provide for and any other matter which the Commission may deem fit for the effective regulation of NBFCs and the notified entities.

[(2) The Commission may make regulations, for the establishment and regulation NBFCs and notified entities and their business and activities and such regulations may provide for any matter which the Commission deems fit for the effective regulation of NBFCs, and notified entities and their business and activities.

(3) The Commission may issue such directives, circulars, codes, notifications, and guidelines as are necessary to carry out the purposes of Part VIIIA and the rules and regulations made thereunder.]<sup>48</sup>

**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 licence issued in that behalf by the Commission; and any such licence may be issued subject to such conditions, [and payment of such fees]<sup>49</sup> 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 [clause (a) of]<sup>50</sup> section 282 A, shall apply in writing to the Commission for grant of a licence under this section. The Commission, if it is satisfied that the company has fulfilled the conditions prescribed by the Commission in respect of

<sup>44</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>45</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>46</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>47</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>48</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>49</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>50</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

the business for which the licence is being sought, may grant licences to such company for one or more of the forms of business specified in clause (a) of section 282 A.

(4) A NBFC shall not commence or carry on business unless it has such minimum [equity]<sup>51</sup> as may be prescribed by the Commission from time to time in respect of each form of business as specified in [clause (a) of]<sup>52</sup> section 282 A.

[(5) Notwithstanding anything in this Ordinance, the provisions of this Part VIIIA and the rules and regulations made thereunder shall continue to apply to any NBFC whose licence has expired, or any NBFC or notified entity whose licence or registration has been cancelled or suspended, or to any existing company or entity carrying on a business specified in clause (a) of section 282A or notified under clause (b) of section 282A which has not applied for a fresh licence or registration, or whose application for a fresh licence or registration has not been decided by the Commission.]<sup>53</sup>

**[282CA. Registration of notified entities.**—(1) Any entity notified by the Federal Government under clause (b) of section 282A shall not operate without prior registration with the Commission.

(2) Notwithstanding anything contained in this Ordinance or any other law, the Commission may register the notified entity on such terms and conditions and payment of such fee, as the Commission may deem fit to impose from time to time.

(3) Every entity notified by the Federal Government under clause (b) of section 282A which is in existence before the commencement of this provision, and every other entity notified by the Federal Government under the aforesaid section shall within a period of six months apply in writing to the Commission for registration under this section, and the Commission after being satisfied that the applicant has fulfilled the conditions specified by the Commission may register the notified entity.]<sup>54</sup>

**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 [or notified entity from]<sup>55</sup> being conducted in a manner detrimental to the interests of shareholders [or unit or certificate holders as the

<sup>51</sup> Substituted for “paid up capital” by Finance Act, 2007 dated June 30, 2007.

<sup>52</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>53</sup> Sub-section (5) inserted by Finance Act, 2007 dated June 30, 2007.

<sup>54</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>55</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

case may be,]<sup>56</sup> or persons whose interests are likely to be affected or in a manner prejudicial to the interests of the NBFC [or notified entity]<sup>57</sup>; or

(c) to secure the proper management of any NBFC [or notified entity]<sup>58</sup> generally, [it may]<sup>59</sup> issue directions to NBFCs [or notified entities]<sup>60</sup> generally or to any NBFC [or notified entity]<sup>61</sup> in particular [to do or desist from doing such acts as the Commission may deem fit and]<sup>62</sup> to carry out such changes as are necessary to rectify the situation and the NBFCs [or notified entities]<sup>63</sup> 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.

**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 [by whatever name called]<sup>64</sup> or any other officer [or person responsible for the affairs]<sup>65</sup> of a NBFC [or a notified entity], is or is likely to be detrimental to the interests of NBFC [or a notified entity]<sup>66</sup> or its shareholders [or the notified entity]<sup>67</sup> 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 [or a notified entity]<sup>68</sup> being conducted in a manner detrimental to the interest of its shareholders [or unit or certificate holders, as the case may be, or the participants]<sup>69</sup> or in a manner prejudicial to the interests of NBFC [or a notified entity]<sup>70</sup>; or

(d) to secure a proper management of the NBFC [or a notified entity,]<sup>71</sup>

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,

<sup>56</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>57</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>58</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>59</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>60</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>61</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>62</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>63</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>64</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>65</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>66</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>67</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>68</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>69</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>70</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>71</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

any chairman or director or chief executive [by whatever name called]<sup>72</sup> or other officer [or person responsible for the affairs] of the NBFC [or a notified entity].<sup>73</sup>

(2) No order under sub-section (1) shall be made unless the chairman or director or chief executive or other officer [or person responsible for the affairs]<sup>74</sup> 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 [or unit holders as the case may be]<sup>75</sup>, 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 [by whatever name called]<sup>76</sup> or other officer [or person responsible for the affairs]<sup>77</sup> shall not, with effect from the date of the order-

(a) act as such chairman or director or chief executive or other officer [or person responsible for the affairs]<sup>78</sup> of the NBFC [or a notified entity]<sup>79</sup>; or

(b) in any way, whether directly, or indirectly, be concerned with, or take part in the management of the NBFC or a notified entity ;

(ii) any person authorized by the Commission in this behalf shall act as such chairman or director or chief executive of the NBFC [or a notified entity]<sup>80</sup> 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 [by whatever name called]<sup>81</sup> or other officer [or person responsible for the affairs]<sup>82</sup> of a NBFC [or a notified entity]<sup>83</sup>, he shall cease to be a chairman or a director or chief executive or other officer of the NBFC [or a notified entity]<sup>84</sup> and shall not in any way, whether directly or indirectly, be concerned with, or take part in, the management of the NBFC [or a notified entity]<sup>85</sup> or any other NBFC [or

<sup>72</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>73</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>74</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>75</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>76</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>77</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>78</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>79</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>80</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>81</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>82</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>83</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>84</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>85</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

a notified entity]<sup>86</sup> 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.

**282F. Power to supersede Board of Directors.-** (1) 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 [or a notified entity]<sup>87</sup> is or is likely to be detrimental to the interest of the NBFC [or a notified entity]<sup>88</sup> 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 [or a notified entity]<sup>89</sup> with effect from such date and for such period as may be specified in the order.

(2) 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.

(3) 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.

(4) 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.

**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 [or a

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<sup>86</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>87</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>88</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>89</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

notified entity]<sup>90</sup> 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 a notified entity]<sup>91</sup> or NBFCs (including any business or affairs with which such NBFC [or a notified entity]<sup>92</sup> 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 [or a notified entity]<sup>93</sup>, 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 [or regulations]<sup>94</sup> made thereunder, or in any application made under this Part or the rules [or regulations]<sup>95</sup>, 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.

**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 [or a notified entity]<sup>96</sup>, and, at its discretion, may order special audit and appoint an auditor to carry out detailed scrutiny of the affairs of NBFC [or a notified entity]<sup>97</sup>, 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 [or a notified entity]<sup>98</sup> 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.

**282I. Enquiry 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 [ ]<sup>99</sup> or [of any notified entity or]<sup>100</sup> of any of its directors, managers or other officers [or persons responsible for its affairs.]<sup>101</sup>

(2) [Notwithstanding anything contained in any other law for the time being in force where,]<sup>102</sup> an enquiry or inspection under sub-section (1) has been ordered, every director, manager or other officer of the NBFC [or the notified entity]<sup>103</sup> to which or to

<sup>90</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>91</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>92</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>93</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>94</sup> Inserted by Finance Act, 2008 dated June 27, 2008.

<sup>95</sup> Inserted by Finance Act, 2008 dated June 27, 2008.

<sup>96</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>97</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>98</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>99</sup> The words "licenced under this Ordinance" omitted by Finance Act, 2007 dated June 30, 2007.

<sup>100</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>101</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>102</sup> Substituted "where" through Finance Act, 2007 dated June 30, 2007.

<sup>103</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

whose director, manager or other officer the enquiry or inspection relates and every other person who has had any dealing with such NBFC [or the notified entity]<sup>104</sup>, 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 the notified entity]<sup>105</sup> or any of its directors, managers or other officers.

**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 the notified entity]<sup>106</sup> 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 [or regulations]<sup>107</sup> made under section 282 B [or regulation, circular or directive or]<sup>108</sup> 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 [fifty]<sup>109</sup> million rupees:

Provided that if the failure, refusal, default, contravention is committed by NBFC [or the notified entity]<sup>110</sup>, every director, manager, or other officer [or person responsible for the conduct of its affairs]<sup>111</sup> 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 [or regulations]<sup>112</sup> made or non-compliance of any direction given or order passed thereunder by the Commission, the Commission may cancel [or suspend]<sup>113</sup> any one or more of the licences in respect of the various forms of business of the NBFC [or registration granted to any notified entity]<sup>114</sup>, after issuing a show cause notice and giving such NBFC [or notified entity as the case may be]<sup>115</sup>, an

<sup>104</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>105</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>106</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>107</sup> Inserted by Finance Act, 2008 dated June 27, 2008.

<sup>108</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>109</sup> Substituted for "five" through Finance Act, 2007 dated June 30, 2007.

<sup>110</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>111</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>112</sup> Inserted by Finance Act, 2008 dated June 27, 2008.

<sup>113</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>114</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>115</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

opportunity of being heard or pass any other order which may be deemed appropriate by the Commission.

(3) Upon cancellation of all the licences [or registrations]<sup>116</sup> the functions and carrying on the business of NBFC [or the notified entity]<sup>117</sup> shall cease and [notwithstanding anything contained in section 305 or sub-clause (c) of the proviso to section 309,]<sup>118</sup> the Commission may move the Court for winding up of the NBFC [or the notified entity]<sup>119</sup>.

(4) [Where a NBFC or a notified entity carries on the business after its licence or registration to do such business has been suspended by the Commission, the chief executive, by whatever name called, and every director, manager, and other officer of the NBFC or the notified entity as the case maybe, who is responsible for such default, shall be punishable with fine not exceeding fifty million rupees and to a further fine of two hundred thousand rupees for every day after the first during which the default continues.]<sup>120</sup>

(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.

**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 a person not being a professional advisor in accordance with whose directions or instructions the directors are accustomed to act,]<sup>121</sup> or official liquidator or any officer of a NBFC [or a notified entity] in any document, prospectus, report, return, accounts, information or explanation required to be furnished in pursuance of this Ordinance or the rules [or regulations]<sup>122</sup> 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 a notified entity]<sup>123</sup> 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 a notified entity]<sup>124</sup> or misusing

<sup>116</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>117</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>118</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>119</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>120</sup> Substituted by Finance Act, 2007 dated June 30, 2007.

<sup>121</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>122</sup> Inserted by Finance Act, 2008 dated June 27, 2008.

<sup>123</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>124</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

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 [or the notified entity]<sup>125</sup> who is either directly or indirectly owned, controlled or managed by the Federal Government or a Provincial Government who extends, or aids in extending, a loan, advance, or any financial facility to a borrower or customer on the verbal instruction of a holder of a public officer 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 notified entity,]<sup>126</sup> or a company which does not hold a license under section 282C or the licence granted to which has been cancelled, [or which has not been registered under section 282C or its registration has been cancelled]<sup>127</sup> or any individual or association or body of individuals, transacts the business specified in section 282 A, 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.

**282L. Procedure for amalgamation of NBFCs.—**(1) Without prejudice to the provisions contained in Part IX of this Ordinance, NBFCs may be amalgamated with each other provided a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the NBFC concerned separately, and approved by a resolution passed by a majority in number representing two thirds in value of the shareholders of each of the said NBFCs, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the NBFC concerned in accordance with the relevant articles of association, indicating the time, place and object of the meeting, and

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<sup>125</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>126</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

<sup>127</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the NBFCs concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme, of amalgamation at the meeting or has given notice in writing at or prior to the meeting to the NBFC concerned or the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Commission to claim from the NBFC concerned, in respect of the shares held by him in that NBFC, their value as determined by the Commission when sanctioning the scheme and such determination by the Commission as to the value of the shares to be paid to dissenting shareholder shall be final for all purposes.

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Commission for sanction and shall, if sanctioned by the Commission by an order in writing passed in this behalf be binding on the NBFCs concerned and also on all the shareholders thereof.

(5) Where a scheme of amalgamation is sanctioned by the Commission under the provisions of this section, the remaining or resulting entity shall transmit a copy of the order sanctioning the scheme to the registrar before whom the NBFC concerned have been registered and the registrar shall, on receipt of any such order, strike off the name of the NBFC hereinafter in this section referred to as the amalgamated NBFC which by reason of the amalgamation will cease to function.

(6) On the sanctioning of scheme of amalgamation by the Commission, the property of the amalgamated NBFC shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said NBFC shall, by virtue of the said order be transferred to and become the liabilities of the NBFC which under the scheme of amalgamation is to acquire the business of the amalgamated NBFC, subject in all cases to the terms of the order sanctioning the scheme.

**282M. Punishment and adjudication of fine or penalty.**-(1) Where a penalty or fine other than fine in addition to, or in lieu of, imprisonment is provided for any offence, contravention of, or default in complying with, any provision of this Part or rules [or regulations]<sup>128</sup> made thereunder or a directive or order of the Commission or other officer or authority empowered to issue a directive under any provision of this Ordinance, the same shall be adjudged and imposed by the Commission or any officer of the Commission empowered, in writing, to exercise the said powers in respect of any case or class of cases, either to the exclusion of, or concurrently with, any other officer of the Commission:

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<sup>128</sup> Inserted by Finance Act, 2008 dated June 27, 2008.

Provided that the fine or penalty as aforesaid shall be imposed after giving the person concerned an opportunity to show cause why he should not be punished for the alleged offence, contravention, default or non-compliance, and if he so requests, after giving him an opportunity of being heard personally or through such person as may be prescribed in this behalf.

(2) No Court shall take cognizance of any offence punishable under section 282 K except on a complaint in writing made by an officer of the Commission generally or specially authorized in writing in this behalf by the Commission and no Court other than the High Court shall try such offence.]

**[282N. Rehabilitation of NBFCs and notified entities.—**(1) Notwithstanding anything contained in this Ordinance, the Commission shall have the same powers as are exercisable by the Federal Government under section 296 for the rehabilitation of a NBFC or a notified entity which is facing financial or operational problems.

(2) Where in exercise of its powers granted under sub-section (1) the Commission declares a NBFC or a notified entity as sick, the Commission may, in addition to any other powers specified in section 296,—

- (a) make an application to the Court under section 412 or section 413 and the provisions contained in sections 412 to 415 shall, *mutatis mutandis*, apply thereto in all respects; and
- (b) make an application to the Court for declaring any preference, made or done by or against the NBFC or the notified entity within twelve months before such NBFC or notified entity is declared sick, as fraudulent as provided in section 408, and the provisions contained in sections 408 and 409 shall *mutatis mutandis* apply thereto in all respects.

(3) Whosoever fails to give effect, or carry out or implement the rehabilitation plan approved by the Commission or any matter provided therein or any direction issued, shall be liable to a fine not exceeding ten million rupees and, in case of a continuing failure, to a further fine not exceeding ten thousand rupees for every day after the first during which the failure or default continues.]<sup>129</sup>

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<sup>129</sup> Inserted by Finance Act, 2007 dated June 30, 2007.

## **PART IX - ARBITRATION, ARRANGEMENTS AND RECONSTRUCTION**

### **ARBITRATION**

**283. Power for companies to refer matter to arbitration.** - (1) A company may by written agreement refer to arbitration, in accordance with the Arbitration Act, 1940 (X of 1940), an existing or future difference between itself and any other company or person.

(2) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any term or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) The provisions of the Arbitration Act, 1940 (X of 1940), shall apply to all arbitrations between companies and persons in pursuance of this Ordinance.

### **COMPROMISES, ARRANGEMENTS AND RECONSTRUCTION**

**284. Power to compromise with creditors and members.** - (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the member of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members, as the case may be, present and voting either in person or, where proxies are allowed, by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court be binding on all the creditors or the class of creditors or on all the members or class of members, as the case may be, and also on the company, or, in the case of a

company in the course of being wound up, on the liquidator and contributories of the company:

Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company and the like.

(3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the registrar within thirty days and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made and filed as aforesaid, or in the case of a company not having a memorandum to every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with sub-section (3), the company and every officer of the company who is knowingly wilfully in default shall be liable to a fine which may extend to five thousand rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as it thinks fit and proper until the application is finally disposed of.

(6) In this section the expression "company" means any company liable to be wound up under this Ordinance and the expression "arrangement" includes a re-organisation of the share-capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods, and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

**285. Power of Court to enforce compromises and arrangements.** - (1) Where the Court makes an order under section 284 sanctioning a compromise or an arrangement in respect of a company, it may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court is satisfied that a compromise or arrangement sanctioned under section 284 cannot be worked satisfactorily with or without modification, it may, either of its own motion or on the application of the registrar or any person interested in

the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 305.

(3) The provision of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Ordinance sanctioning a compromise or an arrangement.

**286. Information as to compromises or arrangements with creditors and members.** - (1) where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 284-

- (a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect; and in particular, stating any material interest of the directors including the chief executive of the company, whether in their capacity as such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement if, and in so far as, it is different from the effect on the like interest of other persons; and
- (b) in every notice calling the meeting which is given by advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement effects the rights of debenture-holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who knowingly and wilfully is in default, shall be liable to fine which may extend to two thousand rupees; and for the purpose of this sub-section any liquidator of the company and trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be under this sub-section if he shows that the default was due to the refusal of any other person, being a director, including chief executive, or managing agent or trustee for debenture-holder, to supply the necessary particulars as to his material interests.

(5) Every director, including chief executive, or managing agent of the company and every trustee for debenture-holders of the company, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section and on the request of the company shall provide such further information as may be necessary for the purposes of this section; and, if he fails to do so within the time allowed by the company, he shall be liable to fine which may extend to one thousand rupees.

**287. Provisions for facilitating reconstruction and amalgamation of companies.** - (1) Where an application is made to the Court under section 284 for the sanctioning of a compromise or arrangement proposed between a company and any such person as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies or the division of any company into two or more companies, and that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters, namely:-

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any person who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and, in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within thirty days after the making of the order, and if default is made 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 a fine which may extend to one thousand rupees.

(4) In this section the expression "property includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) In this section the expression " transferee company" does not include any company other than a company within the meaning of this Ordinance, and the expression "transferor company " includes any body corporate, whether a company within the meaning of this Ordinance or not.

**288. Notice to be given to registrar for applications under section 284 and 287.** - The Court shall give notice of every application made to it under section 284 to 287 to the registrar and shall take into consideration the representation if any, made to it by the registrar before passing any order under any of these sections.

**289. Power and duty to acquire shares of share-holders dissenting from scheme or contract.** - (1) Where a scheme or contract involving the transfer of shares or any class of shares in any company (in this section referred to as "the transferor company") to another company (in this section referred to as "transferee company") has, within one hundred and twenty days after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within sixty days after the expiry of the said one hundred and twenty days, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares; when such a notice is given the transferee company, shall, unless, on an application made by the dissenting shareholder within thirty days from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that, where shares in the transferor company of the same class as the shares whose transfer is involved are already held as aforesaid by the transferee company to a value greater than one-tenths of the aggregate of the value of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless-

- (a) the transferee company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares, or shares of any class, in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first mentioned company held at the date of the transfer by, or by a nominee for, the transferee company or its subsidiary comprise nine-tenths in value of the shares, or shares of that class, as the case may be, in the first-mentioned company, than-

- (a) the transferee company shall, within thirty days from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and
- (b) any such holder may, within ninety days from the giving of the notice to him, require the transferee company to acquire the shares in question;

and where a shareholder gives notice under clause (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed, or as the Court on the application of either the transferee company or the shareholders thinks fit to order.

(3) Where a notice has been given by the transferee company under sub-section (1) and the Court has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiration of thirty days from the date on which the notice has been given or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of

transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire; and the transferor company shall-

- (a) thereupon register the transferee company as the holders of those shares; and
- (b) within thirty days of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company:

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall forthwith be paid into a separate bank account to be opened in a scheduled bank and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were or was respectively received.

(5) The following provisions shall apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company, namely:-

- (a) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information as may be prescribed;
- (b) every such offer shall contain a statement by or on behalf of the transferee company disclosing the steps it has taken to ensure that necessary cash will be available;
- (c) every circular containing or recommending acceptance of, such offer shall be presented to the registrar for registration and no such circular shall be issued until it is so registered;
- (d) the registrar may refuse to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a misleading, erroneous or false impression; and

- (e) an appeal shall lie to the Commission against an order of the registrar refusing to register any such circular.
- (5) Whoever issues a circular referred to in clause (c) of sub-section (5) which has not been registered shall be punishable with fine which may extend to two thousand rupees.

## **PART X - PREVENTION OF OPPRESSION AND MISMANAGEMENT**

**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.

**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.

**292. Interim order.** - 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.

**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.

**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.

**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 anytime 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.

**296. Rehabilitation of companies owing sick industrial units.** - (1) The provisions of this section shall apply to a company owning an industrial unit which is facing financial or operational problems and is declared as a sick company by the Federal Government.

(2) After a company is declared as a sick company under sub-section (1), any institution, authority, committee or person authorised by the Federal Government in this behalf may draw up a plan for the rehabilitation, reconstruction and reorganisation of such company, hereafter in this section referred to as the rehabilitation plan.

(3) Without prejudice to the generality of the foregoing provision, the rehabilitation plan, may, in addition to any other matter, provide for all or any of the following-

- (i) reduction of capital so as to provide for all or any of the matters referred to in section 96 or reconstruction, compromise, amalgamation and other arrangements so as to provide for all or any of the matters referred to in section 284 or section 287 or section 289;
- (ii) alteration of share capital and variation in the rights and obligations of shareholders or any class of shareholders;

- (iii) alteration of loan structure, debt rescheduling or conversion into shares carrying special rights or other relief and modification in the terms and conditions in respect of outstanding debts and liabilities of the company or any part of such loan, debts or liabilities or variation in the rights of the creditors or any class of them including any security pertaining thereto;
- (iv) acquisition or transfer of shares of persons who are or have been sponsors or otherwise managing the affairs of the company on the specified terms and conditions;
- (v) issue of further capital including shares carrying special rights and obligations relating to voting powers, dividend, redemption or treatment on winding up;
- (vi) removal and appointment of directors(including the chief executive) or other officers of the company;
- (vii) amendment, modification or cancellation of any existing contract; or
- (viii) alteration of the memorandum or articles or changes in the accounting policy and procedure.

(4) The rehabilitation plan shall be submitted for approval to the Federal Government which shall, unless it otherwise decides for reasons to be recorded, cause it to be published in the official Gazette for ascertaining the views of the shareholders, creditors and other persons concerned within a specified period.

(5) Before approving the rehabilitation plan, the Federal Government shall take into consideration the views relating thereto received from any quarter within the specified period.

(6) On the approval of the rehabilitation plan by the Federal Government, its provisions, with such modification as may be directed by the Federal Government, shall become final and take effect and be implemented and shall be valid, binding and enforceable in all respects notwithstanding anything in this Ordinance or any other law or the memorandum or articles of the company or in any agreement or document executed by it or in any resolution passed by the company in general meeting or by its directors, whether the same be registered, adopted, executed or passed, as the case may be, before or after the commencement of this Ordinance.

(7) Any provision contained in the memorandum, articles, agreements, documents or resolutions as aforesaid shall, to the extent to which it is repugnant to the provisions of this Ordinance or the rehabilitation plan, become void.

(8) No compensation or damages shall be payable to any one for any matter or arrangement provided for in, or action taken in pursuance of, the rehabilitation plan.

(9) The Federal Government may vary or rescind rehabilitation plan from time to time and issue such directions as to its implementation and matters ancillary thereto as it may deem expedient.

(10) The Federal Government or any authority or other person authorized by the Federal Government in this behalf shall supervise the implementation of the rehabilitation plan and may issue such directions to the parties concerned as may be deemed necessary by such Government, authority or person, as the case may be.

(11) Whosoever fails to give effect, to carry out or implement the rehabilitation plan or any matter provided for therein or any direction issued under subsection (10), shall be liable to imprisonment of either description for a term which may extend to two years and fine not exceeding one million rupees and, in case of a continuing failure, to a further fine not exceeding five thousand rupees for every day after the first during which the failure or default continues.

(12) Until a rehabilitation plan has been approved by the Federal Government and is in operation, the provisions of this section shall not prejudice or affect the power or rights of a company or its shareholders or creditors to enter into, arrive at or make any compromise, arrangement or settlement in any manner authorised by this Ordinance or any other law for the time being in force.

(13) The rehabilitation plan approved by the Federal Government and any modification thereof shall, unless otherwise directed by it, be published in the official Gazette and a copy thereof shall be forwarded by the Federal Government to the registrar who shall register and keep the same with the documents of the company.

(14) The Federal Government may, by notification in the official Gazette, make rules to carry out the purposes of this section.

**PART XI -- WINDING UP****PRELIMINARY**

**297. Modes of winding up.-** (1) The winding up of a company may be either-

- (i) by the Court; or
- (ii) voluntary; or
- (iii) subject to the supervision of the Court.

(2) Save as otherwise expressly provided, the provisions of this Ordinance with respect to winding up shall apply to the winding up of a company in any of the modes specified in sub-section (1).

**Contributories**

**298. Liability as contributories of present and past members. -** (1) In the event of a company being wound up, every present and past member shall, subject to the provisions of section 299, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following, that is to say, -

- (i) a past member shall not be liable to contribute if he has ceased to be member for one year or upwards before the commencement of the winding up;
- (ii) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (iii) a past member shall not be liable to contribute unless it appears to the Court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance;
- (iv) in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;

- (v) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of sub-section (2), be required from any past or present member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (vi) nothing in this Ordinance shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract; and
- (vii) a sum due to any past or present member of a company in his character as such, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not being a member of the company, but any such sum may be taken in to account for the purpose of the final adjustments of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sum unpaid on any shares held by him, as if the company were a company limited by shares.

**299. Liability of directors whose liability is unlimited.** - In the winding up of a limited company any director, whether past or present, whose liability is, in pursuance of this Ordinance, unlimited, shall, in addition to his ability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company:

Provided that-

- (i) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (ii) A past director shall not be liable to make such further contribution in respect of any debtor liability of the company contracted after he ceased to hold office;
- (iii) subject to the articles, a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

**300. Definition of "contributory".** - The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and include the holder of any shares which are fully paid up; and, in all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

**301. Nature of liability of contributory.** - (1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the time specified in calls made on him for enforcing the liability.

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes.

**302. Contributories in case of death of member.** - (1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives shall be liable, in a due course of administration, to contribute to the assets of the company in discharge of his liability, and shall be contributories accordingly.

(2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, and of compelling payment thereof of the money due.

**303. Contributory in case of insolvency of member.** - If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then-

- (a) his assignees in insolvency shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the insolvent the estimated value of his liability to further calls as well as calls already made.

**304. Contributories in case of winding up of a body corporate which is a member.** - If a body corporate which is a contributory is ordered to be wound up, either before or after it has been placed on the list of contributories,-

- (a) the liquidator of the body corporate shall represent it for all purposes of the winding up of the company and shall be a contributory accordingly, and may be called on to admit to proof against the assets of the body corporate, or otherwise to allow to be paid out of its assets in due course

of law, any money due from the body corporate in respect of its liability to contribute to the assets of the company; and

- (b) there may be proved against the assets of the body corporate the estimated value of its liability to future calls as well as calls already made.

## **WINDING UP BY COURT**

### **CASES IN WHICH COMPANIES MAY BE WOUND UP BY COURT**

**305. Circumstances in which company may be wound up by Court.-** 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-
  - (i) conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities;
  - (ii) carrying on business not authorised 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; <sup>1</sup>[or]
- <sup>2</sup>[(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 1938), howsoever described, whereby, in return for a deposit or contribution, whether periodically or otherwise, of a sum of money in cash or by means of coupons, certificates, tickets or other documents, payment, at future date or dates of money or grant of property, right or benefit, directly or indirectly, and whether with or without any other right or benefit, determined by chance or lottery or any other like manner, is assured or promised shall be deemed to be an unlawful activity.

**Explanation II.-** "Minority shareholders" means shareholders together holding not less than twenty per cent. of the equity share capital of the company.

**306. Company when deemed unable to pay its debts.** - (1) A company shall be deemed to be unable to pay its debts-

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one per cent. of its paid-up capital of fifty thousand rupees, whichever is less, than due, has served on the company, by causing the same to be delivered by registered post or otherwise, at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for thirty days thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if execution or other process issued on a decree or order of any Court or any other competent authority in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

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<sup>1</sup> Substituted 'or' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Inserted by Companies (Amendment) Ordinance, 2002.

(2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by an agent or legal adviser duly authorised on his behalf, or in the case of a firm if it is signed by such agent or legal adviser or by any member of the firm on behalf of the firm.

### TRANSFER OF PROCEEDINGS

**307. Transfer of proceedings to other Courts.-** Where the High Court makes an order for winding up a company under this Ordinance, it may, if it thinks fit, direct all subsequent proceedings to be had in a civil Court empowered by the Federal Government under sub-section (1) of section 7 or, with the consent of any other High Court, in such High Court or in a civil Court subordinate thereto; and thereupon, for the purposes of the winding up of the company, such High Court or civil court, as the case may be, shall be deemed to be the "Court" within the meaning of this Ordinance and shall have all the powers and jurisdiction of the Court thereunder.

**308. Withdrawal and transfer of winding up from one Court to another. -** If, during the progress of a winding up in a civil court, it is made to appear to the High Court that the same could be more conveniently proceeded within the High Court or in any civil court empowered by the Federal Government under sub-section (1) of section 7 the High Court may, as the case may require,-

- (a) withdraw the case and proceed with the winding up itself; or
- (b) transfer the case to such civil court, and thereafter the winding up shall proceed in such civil court.

### PETITION FOR WINDING UP

**309. Provisions as to applications for winding up. -** 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 authorised 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 authorised 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 authorised 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 of its members; and such petition shall not be presented or authorised 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.

**310. Right to present winding up petition where company is being wound up voluntarily or subject to Court's supervision.-** (1) Where a company is being wound up voluntarily or subject to the supervision of the Court, a petition for its winding up by the Court may be presented by any person authorised to do so under section 309 and subject to the provisions of that section.

(2) The Court shall not make a winding up order on a petition presented to it under sub-section (1) unless it is satisfied that the voluntary winding up or winding up

subject to the supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both.

### COMMENCEMENT OF WINDING UP

**311. Commencement of winding up by Court.-** A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

### POWERS OF COURT HEARING APPLICATION

**312. Hearing of winding up petition by the Court.-** A petition for winding up of a company shall come up for regular hearing, be proceeded with and decided in the manner laid down in section 9.

**313. Court may grant injunction.-** The Court may, at any time after presentation of the petition for winding up a company under this Ordinance, and before making an order for its winding up, upon the application of the company itself or of any its creditors or contributories, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

**314. Powers of Court on hearing petition. -** (1) On hearing a winding up petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally subject to the limitation imposed in section 9 or make any interim order, or an order for winding up the company or any other order that it deems just; but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up, if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report or in holding the statutory meeting or any two consecutive annual general meetings, the Court may, instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held, and order that costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

(4) If, on hearing a petition, the Court is of opinion that, although the facts would justify the making of a winding up order, the making of such order would unfairly prejudice the members or the creditors, the Court may, instead of making an order for

winding up the company, make such order as it thinks fit in the circumstances for regulating the conduct of the affairs of the company and bringing to an end the matters complained of, including an order for a change in the management of the company.

(5) Where the Court makes an order for the winding up of a company, it shall forthwith cause intimation thereof to be sent to the official liquidator appointed by it and to the registrar.

**315. Copy of winding up order to be filed with registrar.** - (1) Within fifteen days from the date of the making of the winding up order, the petitioner in the winding up proceedings and the company shall file a certified copy of the order with the registrar.

(2) If default is made in complying with the foregoing provision, the petitioner or, as the case may require, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for each day during which the default continues.

(3) On the filing of a certified copy of a winding up order, the registrar shall forthwith make a minute thereof in his books relating to the company, and shall simultaneously notify in the official Gazette that such an order has been made.

(4) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

**316. Suits stayed on winding up order.**- (1) When a winding up order has been made or a provisional manager has been appointed, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of, any suit or proceeding by or against the company.

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by the Court.

**317. Court may require expeditious disposal of suits, etc.**- (1) Notwithstanding anything contained in any other law,-

- (a) If any suit or proceedings, including an appeal, by or against the company which is allowed to be proceeded with in any Court other than the Court in which winding up of the company is proceeding, the Court may issue directions to that other Court if that Court is subordinate to it and, in any other case, make a request to that other Court for expeditious

disposal of the pending suit or proceedings by or against the company;  
and

- (b) If any proceedings, including proceedings for assessment or recovery of any tax, duty or levies or appeal or review petitions against any order is pending or is likely to be instituted, before any officer, tribunal, authority or other body, the Court may issue directions to that officer, tribunal, authority or other body for expeditious action and disposal of the said proceedings.

(2) Upon issue of a direction or making of a request as aforesaid, the Court, officer, tribunal, authority or body to whom the same is addressed shall, notwithstanding anything contained in any other law, proceed to dispose of the said suit or other proceedings expeditiously by according it special priority and adopting such measures as may be necessary in this behalf, and shall inform the Court issuing the direction or making the request of the action taken.

**318. Effect of winding up order.** - An order for winding up a company shall operate in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

**319. Power of Court to stay winding up, etc.**- (1) The Court may at any time not later than three years after an order for winding up, on the application of any creditor or contributory or of the registrar or the Commission or a person authorised by it, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, withdrawn, cancelled or revoked, make an order accordingly, on such terms and conditions as the Court thinks fit.

(2) On any application under sub-section (1), the Court may, before making an order, require the official liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under sub-section (1) shall forthwith be forwarded by the Court to the registrar, who shall make a minute of the order in his books relating to the company.

**320. Court to have regard to wishes of creditors or contributories.** - The Court shall, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

## OFFICIAL LIQUIDATORS

**321. Appointment of official liquidator.** - (1) For the purpose of this Ordinance, so far as it relates to the winding up of companies by the Court, the Court shall maintain, from amongst persons recommended by the Commission, a panel of persons from whom it shall appoint a provisional manager or official liquidator of a company ordered to be wound up by the Court.

(2) In the order of winding up a company the Court shall appoint one or more of the persons on the panel maintained as aforesaid to act as official liquidator of the company and thereupon such person or persons shall, unless, within three days of the communication of the order, he or they inform or informs the Court of his or their inability to act as such, forthwith start performing the duties and functions of official liquidator in relation to that company and continue to perform such duties and functions till the conclusion of winding up proceedings:

<sup>1</sup>[Provided that no person shall be appointed as liquidator of more than three companies at one point of time.]

(3) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act by this Ordinance required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.

(4) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment.

(5) Any vacancy in the office of an official liquidator shall be filled up by the Court by the appointment of another person on the panel referred to in sub-section (1).

(6) Notwithstanding anything contained in sub-section (1) or sub-section (5), the Court may, if it considers it necessary so to do for reasons to be recorded, or on the application of creditors to whom amounts not less than sixty per cent. of the issued share-capital of the company being wound up are due, after notice to the registrar, appoint a person (other than the official receiver) whose name does not appear on the panel maintained for the purpose, to be the official liquidator.

**322. Resignation, removal, filling up vacancies, etc., of official liquidator.-**

(1) An official liquidator shall not resign or quit his office as official liquidator before conclusion of the winding up proceedings except for reasons of personal disability to the satisfaction of the Court:

Provided that an official liquidator may at any time be removed by the Court for reasons to be recorded.

(2) Any vacancy in the office of an official liquidator shall be filled up by the Court by the appointment of another person from the panel maintained under section

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<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

321; and, until the person so appointed in his stead takes charge, the outgoing official liquidator shall, unless the Court directs otherwise, continue to act as the official liquidator.

**323. Remuneration of official liquidator.-** (1) An official liquidator, not being a salaried officer of Government or of the Court, shall be entitled to such remuneration by way of percentage of the amount realised by him by disposal of assets or otherwise as may be fixed by the Court having regard to the amount and nature of the work actually done and subject to such limits as may be prescribed:

Provided that different percentage rates may be fixed for different types of assets and items.

(2) In addition to the remuneration payable under sub-section (1), the Court may permit payment of a monthly allowance to the official liquidator for meeting the expenses of the winding up for a period not exceeding twelve months from the date of the winding up order.

(3) The remuneration fixed as aforesaid shall not be enhanced subsequently but may be reduced by the Court at any time.

(4) If the official liquidator resigns, is removed from office or otherwise ceases to hold office before conclusion of the winding up proceedings, he shall not be entitled to any remuneration and the remuneration already received by him, if any, shall be refunded by him to the company.

<sup>1</sup>[(5) No remuneration shall be payable to official liquidator who fails to complete the winding up proceedings within the prescribed period.]

**324. Style of official liquidator. -** An official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he acts, and not by his individual name.

**325. Appointment and powers of provisional manager. -** (1) At any time after the presentation of winding up petition and before the making of a winding up order, the Court may appoint a person eligible for appointment as official liquidator under section 321 to be provisional manager.

(2) Before appointing a provisional manager, the Court shall give notice to the company and afford to it a reasonable opportunity to make its representations, if any, unless, for special reasons to be recorded, the Court thinks fit to dispose with such notice.

(3) Where a provisional manager is appointed by the Court the Court may limit and restrict his powers by the order appointing him or by a subsequent order; but otherwise he shall have the same powers as a liquidator.

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<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

(4) Unless the Court directs otherwise the provisional manager shall cease to hold office as provisional manager on the winding up order being made.

**326. General provisions as to liquidators.-** (1) The official liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the Court may impose.

(2) The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification:

Provided that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

(3) The winding up proceedings shall be completed by the official liquidator within a period of one year from the date of commencement of winding up:

Provided that the Court may, on the application of the official liquidator, grant extension by one month at any one time but the extensions so granted shall not exceed a period of six months in all and shall be allowed only for the reason that any proceedings for or against the company are pending in a Court superior to the Court in which liquidation proceedings are in progress.

(4) If an official liquidator is convicted of misfeasance, or breach of duty or other lapse or default in relation to winding up proceedings of a company, he shall cease to be the official liquidator of the company and shall also become disqualified, for a period of five years from such conviction, from being the liquidator or to hold any other office including that of a director, in any company and if he already holds any such office he shall forthwith be deemed to have ceased to hold such office.

(5) The registrar and the Commission shall take cognizance of any lapse, delay or other irregularity on the part of the official liquidator and may, without prejudice to any other action under the law, report the same to the Court.

**327. Receiver not to be appointed of assets with liquidator.-** A receiver shall not be appointed of assets in the hands of a liquidator except by, or with the leave of, the Court.

**328. Statement of affairs to be made to official liquidator. -** (1) Where the Court has made a winding up order or appointed an official liquidator or provisional manager, there shall be made out and submitted to the official liquidator or provisional manager a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely:-

- (a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company;
- (b) the debts and liabilities of the company;
- (c) the names, residences and occupations of the creditors of the company, stating separately the amount of secured debts and unsecured debts, and, in the case of secured debts, particulars of the securities given, their value and the dates when they were given;
- (d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom;
- (e) where any property of the company is not in its custody or possession, the place where and the person in whose custody or possession such property is;
- (f) full address of the places where the business of the company was conducted during the six months preceding the relevant date and the names and particulars of the persons incharge of the same;
- (g) details of any pending suits or proceedings in which the company is a party; and
- (h) such other particulars as may be prescribed or as the Court may order or the official liquidator or provisional manager may require in writing, including any information relating to secret reserves and personal assets of directors.

(2) The statement shall be submitted and verified by persons who are at the relevant date the directors and by the persons who are at that date the chief executive and secretary of the company, or by such of the persons hereafter in this sub-section mentioned as the official liquidator or provisional manager, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons-

- (a) who are or have been directors, chief executives or officers of the company within one year from the relevant date;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion

of the official liquidator or provisional manager capable of giving the information required;

(d) who are or have been within the said year officer of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time not exceeding forty-five days from that date as the official liquidator or provisional manager or the Court may, for special reasons, appoint.

(4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional manager, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator or provisional manager may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(6) Without prejudice to the operation of any provisions imposing penalties in respect of any such default as aforesaid, the Court which makes the winding up order or appoints a provisional manager may take cognizance of an offence under sub-section (5) and try the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1898 (Act V of 1898), for the trial of cases by Magistrates and further direct the persons concerned to comply with the provisions of this section within such times as may be specified by it.

(7) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(8) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and shall, on the application of the official liquidator or provisional manager, be punishable accordingly.

(9) In this section, the expression "the relevant date" means, in a case where a provisional manager is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

**329. Report by official liquidator.** - (1) In a case where a winding up order is made, the official liquidator shall, as soon as practicable after receipt of the statement

to be submitted under section 328 and not later than thirty days, or such further period not exceeding thirty days as the Court may allow, from the date of the winding up order submit a preliminary report to the Court -

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets, particulars of-
  - (i) cash, bank balances and negotiable securities;
  - (ii) debts due from contributories;
  - (iii) debts due to the company and securities, if any, available in respect thereof;
  - (iv) movable and immovable properties belonging to the company;
  - (v) unpaid calls; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of its business.

(2) The official liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since its formation, and any other matter which in his opinion, it is desirable to bring to the notice of the Court.

(3) If the official liquidator states in any such report or further report that in his opinion a fraud has been committed as aforesaid, the Court shall have the further power provided in sections 351, 352 and 353.

(4) A certified copy of the reports aforesaid shall also be sent to the registrar simultaneously with their submission to the Court.

**330. Custody of company's property.** - (1) The provisional manager or official liquidator, as the case may be, shall take into his custody or under his control, all the books and papers, property, effects and actionable claims belonging to or to which the company is or appears to be entitled; and all persons who are or have been directors, chief executives, managers, officers, servants, bankers, auditors or agents of the company and who may be having in their knowledge, custody, control or charge, directly or under them any such books or papers, property, effects and actionable claims, shall forthwith report and hand over or cause to be handed over possession to the liquidator of all such

items and furnish to the liquidator such information and explanations as he may require and any default or failure on their part shall be punishable with imprisonment of either description which may extend to one year and with fine which may extend to ten thousand rupees and the Court may direct the books, papers,, property and effects to be delivered to the liquidator in case of default or failure, and in the event of non-compliance with the directive, to order the person in default to pay further amount by way of compensation equal to the value of the property as the Court may determine.

(2) For the purpose of enabling the provisional manager or the official liquidator, as the case may be, to take into his custody or under his control any property, effects, actionable claims or books of account or other documents to which the company is or appears to be entitled, the provisional manager or the official liquidator, as the case may be, may by writing request the District Magistrate within whose jurisdiction such property, effects, or actionable claims or books of account or other documents may be found to take possession thereof and the District Magistrate shall thereupon, after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the provisional manager or the official liquidator, as the case may be.

(3) For the purpose of securing compliance with the provisions of subsection (2), the District Magistrate may take or cause to be taken such steps, and use or caused to be used such force, as may in his opinion be necessary.

(4) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding-up of the company.

**331. Committee of inspection in compulsory winding up.** - (1) When a winding up order has been made by the Court, the liquidator shall within thirty days summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed:

Provided that, where the winding up order has been made on the ground that the company is unable to pay its debts, it shall not be necessary for the liquidator to summon a meeting of the contributories.

2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the Court shall decide the difference and make such order thereon as the Court may think fit.

**332. Constitution and proceedings of committee of inspection.** - (1) A committee of inspection appointed under section 331 shall consist of creditors and contributories of the company or persons holding general powers of attorney from

creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court:

Provided that, where a winding up order has been made on the ground that a company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(2) The committee shall meet at such times as it may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of its members present at a meeting but shall not act unless a majority of the members of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or at a meeting of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy in the committee the official liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that, if the official liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the Court and the Court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

**333. Powers of official liquidator.** - (1) The liquidator in a winding up by the Court shall have power, with the sanction either of the Court or of the committee of inspection,-

- (a) to institute or defend any suit, action, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;
  - (b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;
  - (c) to pay any classes of creditors in full;
  - (d) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
  - (e) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such calls, debt, liability or claim and give a complete discharge in respect thereof;
  - (f) to sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels.
- (2) Subject to any general or special direction of the Court or of the committee of inspection, the liquidator in winding up by the Court shall have power:-
- (a) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;
  - (b) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and ratably with the other separate creditors;
  - (c) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

- (d) to raise on the security of the assets of the company any money requisite;
- (e) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purposes of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
- (f) to appoint an agent to do any business which the liquidator is unable to do himself ; and
- (g) to do all such other acts and things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory or the registrar may apply to the Court with respect to any exercise or proposed exercise of any of the said powers.

**334. Discretion of official liquidator.** - The Court may provide by any order that the official liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in paragraph (a) or paragraph (b) of sub-section (1) of section 333 without the sanction or intervention of the Court.

**335. Provision for assistance to official liquidator.** - The official liquidator may, with the sanction of the committee of inspection or, where there is no committee of inspection, with the sanction of the Court, appoint a person entitled to appear before the Court or such person as may be prescribed to assist him in the performance of his duties:

Provided that, where the official liquidator is an advocate, he shall not appoint his partner unless the latter consents to act without remuneration.

**336. Liquidator to keep books containing proceedings of meetings, etc.-** The official liquidator of a company which is being wound up by the Court shall keep, in the manner prescribed, proper books and papers in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

**337. Liquidator's account.** - (1) Every official liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments and dealings as liquidator, together with such further information as may be prescribed.

(2) The account and information as aforesaid shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(3) The Court shall cause the account and the books and papers of the official liquidator to be audited in such manner as it thinks fit and for the purpose of the audit the liquidator shall furnish the Court with such books and papers and information as the Court may require, and the Court may at any time require the production of and inspect or cause to be inspected any books or papers kept by the liquidator.

(4) When the account and the books and papers have been audited, one copy thereof alongwith the auditor's report shall be filed and kept by the Court, and the other copy alongwith the auditor's report shall be delivered to the registrar for filing; and each copy shall be open to the inspection of any person on payment of prescribed fee.

(5) The official liquidator shall cause a copy of the account when audited or a summary thereof to be sent by post to every creditor and contributory

(6) The Federal Government may, by notification in the official Gazette require that the accounts and information referred to in sub-section (1) shall be furnished to an officer to be designated by it for the purpose and that such officer shall cause the accounts to be audited; and, upon the publication of such notification, reference to "Court" in the preceding provisions of this section shall be construed as a reference to such officer.

**338. Exercise and control of liquidator's powers.** - (1) Subject to the provisions of this Ordinance, the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The official liquidator may apply to the Court for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Ordinance, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

**339. Settlement of list of contributories and application of assets.** - (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Ordinance and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of, or liable for the debts of, others.

**340. Power to require delivery of property.**- Without prejudice to the obligation imposed under any other provisions, the Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent, officer or employee or past officer or employee or auditor of the company to pay, deliver, convey, surrender or transfer forthwith, or within, such time as the Court directs, to the official liquidator any money, property or books and papers including documents in his hands to which the company is *prima facie* entitled.

**341. Power to order payment of debts by contributory.** - (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Ordinance.

- (2) The Court in making such an order may-
- (a) in the case of an unlimited company, allow to the contributory by way of set-off, any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and
  - (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

**342. Power of Court to make calls.** - (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

**343. Power to order payment into bank.** - (1) The Court may order any contributory, purchaser or other person from whom any money is due to the company to pay the same into the account of the official liquidator in a scheduled bank instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

(2) Information about the amount deposited shall be sent by the person paying it to the official liquidator within three days of the date of payment.

**344. Regulation of account with Court.** - All moneys, bills, hundis, notes and other securities paid and delivered into the scheduled bank where the official liquidator of the company may have his account, in the event of a company being wound up by the Court, shall be subject in all respect to the orders of the Court.

**345. Order on contributory conclusive evidence.** - (1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

**346. Power to exclude creditors not proving in time.**- The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

**347. Adjustment of rights of contributories.**- The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

**348. Power to order costs.** - The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

**349. Distribution by official liquidator.** - Subject to any directions given by the Court, the official liquidator shall, within thirty days of the coming into his hands of funds sufficient to distribute among the creditors or contributories after providing for expenses of the winding up or for other preferential payments as provided in this Ordinance, distribute in accordance with the provisions of this Ordinance:

Provided that such portion of the funds as may be required for meeting any claim against the company which may be subjudice or subject matter of adjudication or assessment shall not be distributed till the claim is finally settled:

Provided further that any amounts retained as aforesaid shall be invested by the official liquidator in Khas Deposit Certificates and the same shall be deposited by him with the Court and the distribution thereof shall be made by him after the pending claims are settled.

**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 any 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.

**351. Power to summon persons suspected of having property of company.**  
- (1) The Court may, at any time after the appointment of a provisional manager or the making of winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers of the company, or known or suspected to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, books or papers, affairs or property of the company.

(2) The Court may examine a person summoned under sub-section (1) on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require a person summoned under sub-section (1) to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being paid or tendered a reasonable sum for his expenses, fails to come before the Court at the time appointed, not having a lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

(5) If, on his examination, any officer or person so summoned admits that he is indebted to the company, the Court may order him to pay to the provisional manager or, as the case may be, the liquidator, at such time and in such manner as the Court may direct, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(6) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the Court may order him to deliver to the provisional manager or, as the case may be, the liquidator that property or any part thereof, at such time, in such manner and on such terms as the Court may direct.

(7) Orders made under sub-sections (5) and (6) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908 (Act V of 1908), respectively.

(8) Any person making any payment or delivery in pursuance of an order made under sub-section (5) or sub-section (6) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.

**352. Power to order public examination of promoters, directors, etc.-** (1) 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.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section-

(a) shall, before his examination, be furnished at his own cost with a copy of the official liquidator's report; and

(b) may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(7) If any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the official liquidator to appear on the hearing of the application and call the attention of the Court to any matters which appear to the official liquidator to be relevant, and if the Court, after hearing any evidence given or witnesses called by the official liquidator, grants the application, the Court may allow the applicant such costs as it may think fit.

(8) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The Court may, if it thinks fit, adjourn the examination from time to time.

(10) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any officer of the Court, being an Official Referee, Master, Registrar, Additional Registrar or Deputy Registrar.

(11) The powers of the Court under this section as to the conduct of the examination, but not as to costs may be exercised by the person before whom the examination is held by virtue of a direction under sub-section (10).

**353. Power to arrest absconding contributory.** - The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to quit Pakistan or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable property to be seized, and him and them to be safely kept until such time as the Court may order.

**354. Saving of other proceedings.** - Any powers conferred on the Court by this Ordinance shall be in addition to, and not in derogation of, any existing power of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

### ENFORCEMENT OF ORDERS

**355. Power to enforce orders.**- All orders made by a Court under this ordinance may be enforced in the same manner in which decrees of such Court made in any suit may be enforced.

**356. Order made by any Court to be enforced by other Courts.** - Any order made by a Court for, or in the course of, winding up of a company shall be enforceable in any place in Pakistan, and in the same manner in all respects as in such order had been made by a Court having jurisdiction in respect of that company or a Court to whom the Court refers the order for enforcement.

**357. Mode of Dealing with Orders to be enforced by other Courts.**- Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made; and thereupon the last mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

### VOLUNTARY WINDING UP

**RESOLUTION FOR, AND COMMENCEMENT OF VOLUNTARY WINDING UP**

**358. Circumstances in which company may be wound up voluntarily.** - 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).

**359. Commencement of voluntary winding up.** - 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**

**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.

**361. Notice of resolution to wind up voluntarily.** - (1) Notice of any resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in a newspaper circulating in the Province where the registered office of the company is situate and, in the case of a listed company, such notice shall also be published at least in one issue of a daily newspaper in the English language and a daily newspaper in the Urdu language having circulation in the Province in which the stock exchange on which it is listed is situate and a copy thereof shall be sent to the registrar immediately thereafter.

(2) If a company makes default in complying with the requirements of subsection (1), it shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues; and every officer of the company who without reasonable excuse authorises or permits the default or is a party to the default shall be liable to a like penalty.

(3) For the purpose of this section, a liquidator of a company shall be deemed to be an officer of the company.

### DECLARATION OF SOLVENCY

#### **362. Declaration of solvency in case of proposal to wind up voluntarily.-**

(1) Where it is proposed to wind up a company voluntarily, its directors, or in case the company has more than three directors, the majority of the directors, including the chief executive, may, at a meeting of the board of directors make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that having done so, they have formed the opinion that the company has no debts, or that it will be able to pay all its debts in full within such period not exceeding twelve months from the commencement of the winding up, as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Ordinance, unless-

- (a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the registrar for registration before that date; and
- (b) it is accompanied by a copy of the report of the auditors of the company, prepared, so far as the circumstances admit, in accordance with the provisions of this Ordinance, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance-sheet of the company made out as on the last mentioned date and also embodies a statement of the company's assets and liabilities as at that date.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration 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.

(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period specified in the declaration; it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Ordinance referred to as "a members'

voluntary winding up", and a winding up in the case of which a declaration has not been so made and delivered is in this Ordinance referred to as "a creditors' voluntary winding up".

(6) Sub-sections (1) to (3) shall not apply to a winding up commenced before the commencement of this Ordinance, in which case the provisions applicable immediately before such commencement shall apply.

#### **PROVISIONS APPLICABLE TO MEMBERS' VOLUNTARY WINDING UP**

**363. Provisions applicable to members' voluntary winding up.-** The provisions contained in section 364 to 370, both inclusive, shall, subject to the provisions of section 371 apply in relation to a members voluntary winding up.

**364. Appointment of liquidators. -** (1) The company in general meeting shall appoint one or more liquidators, whose written consent to act as such has been obtained in advance, for the purpose of winding up the affairs and distributing the assets of the company.

(2) The liquidator or liquidators shall be entitled to such remuneration by way of percentage of the amount realised by him or them by disposal of assets or otherwise, as the company in general meeting may fix having regard to the amount and nature of the work to be done and subject to the prescribed limits:

Provided that different percentage rates may be fixed for different types of assets and items.

(3) In addition to the remuneration payable under sub-section (2), the company in general meeting may authorise payment of a monthly allowance to the liquidator for meeting the expenses of the winding up for a period not exceeding twelve months from the date of the commencement of winding up.

(4) The remuneration fixed as aforesaid shall not be enhanced subsequently but may be reduced by the Court at any time.

(5) If the liquidator resigns, is removed from office or otherwise ceases to hold office before conclusion of winding up, he shall not be entitled to any remuneration and remuneration already received by him, if any, shall be refunded by him to the company.

(6) On the appointment of a liquidator all the powers of the directors, chief executive and other officers shall cease, except for the purpose of giving notice of resolution to wind up the company and appointment of liquidator and filing of consent of liquidator in pursuance of sections 361 and 366 or in so far as the company in general meeting, or the liquidator sanctions the continuance thereof.

(7) The liquidator shall not resign or quit his office as liquidator before conclusion of the winding up proceedings except for reasons of personal disability to the satisfaction of the Court and may also be removed by the Court for reasons to be recorded.

<sup>1</sup>[(8) No remuneration shall be payable to liquidator who fails to complete the winding up proceedings within the prescribed period.]

**365. Power to fill vacancy in office of liquidator.** - (1) If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy by appointing a person who has given his written consent to act as liquidator.

(2) For that purpose a general meeting shall be convened by the out-going liquidator before he ceases to act as liquidator except where the vacancy occurs by death, or where there were more liquidators than one, by the continuing liquidator, and failing that may be convened by any contributory, or by the Court on the application of the registrar or any person interested in the winding up of the company.

(3) The meeting shall be held in the manner provided by this Ordinance or by the articles or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

(4) If default is made in complying with the provisions of this section, every person, including the outgoing liquidator, who is in default shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

**366. Notice of appointment of liquidator to be given to registrar along with his consent.**- (1) The company shall give notice to the registrar of the appointment of a liquidator or liquidators made by it under section 364 and 375, of every vacancy occurring in the office of liquidator, and of the name of the liquidator or liquidators appointed to fill every such vacancy under section 365 or a change made under section 368 and shall send therewith the consent of the liquidator to act as such where any appointment is made.

(2) The notice aforesaid shall be given by the company within ten days of the event to which it relates.

(3) If default is made in complying with sub-section (1) or sub-section (2) the company, and every officer of the company (including every liquidator or outgoing or continuing liquidator) who is, in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

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<sup>1</sup> Inserted by Companies (Amendment) Ordinance, 2002.

**367. Power of liquidator to accept shares, etc., as consideration for sale of property of company.-** (1) Where-

- (a) a company (in this section called the "transferor company") is proposed to be, or is in the course of being, wound up altogether voluntarily; and
- (b) the whole or a part of its business or property is proposed to be transferred or sold to another body corporate, whether a company within the meaning of this Ordinance or not (in this section called "the transferee company"),

the liquidator of the transferor company may, with the sanction of a special resolution of that company conferring on the liquidator either a general authority or an authority in respect of any particular arrangement,-

- (i) receive, by way of compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company; or
- (ii) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the special resolution, he may require the liquidator either-

- (a) to abstain from carrying the resolution into effect; or
- (b) to purchase his interest at a price to be determined by agreement or by arbitration in the manner hereafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purpose of this section by reason only that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless it is sanctioned by the Court.

(6) The provisions of the Arbitration Act, 1940 (X of 1940), other than those restricting the application of this Ordinance in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

**368. Duty of liquidator to call creditors' meeting in case of insolvency.- (1)**

If, in the case of a winding up commenced after the commencement of this Ordinance, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 362, or that period has expired without the debts having been paid in full, he shall forthwith summon a meeting of the creditors and shall lay before the meeting a statement of the assets and liabilities of the company and such other particulars as may be prescribed.

(2) Where sub-section (1) becomes applicable, the creditors may in their meeting held as aforesaid appoint a different liquidator who has consented to act as such and in that case the person so appointed shall be the liquidator unless otherwise directed by the Court.

(3) A return of convening the creditors meeting as aforesaid along with a copy of the notice thereof and a statement of assets and liabilities of the company and the minutes of the meeting shall be filed with the registrar within ten days of the date of the meeting.

(4) If the liquidator fails to comply with any of the requirements of this section, he shall be punishable with fine which may extend to five thousand rupees and, in the case of a continuing failure, to a further fine not exceeding one hundred rupees for every day after the first during which the failure continues.

**369. Duty of liquidator to call general meeting at the end of each year.-(1)**

Subject to the provisions of section 371, in the event of the winding up continuing for more than one year, the liquidator shall-

- (a) summon a general meeting of the company at the end of the first year from the commencement of the winding up and, if the proceedings are not concluded during the first year and extension is granted under section 387, within 30 days of such extended period;
- (b) lay before the meeting an audited account of his receipts and payments and acts and dealings and of the conduct of the winding up during the preceding year together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation, including reasons for the delay in finalisation of the winding up, steps taken and being taken to expedite it and the time required for the purposes; and

(c) forward by post to every contributory a copy of the account and statement referred to in clause (b) together with the auditor's report and notice of the meeting at least ten days before the meeting required to be held under this section.

(2) A return of convening of each general meeting together with a copy of the notice, account and statement as aforesaid and the minutes of the meeting shall be filed by the liquidator with the registrar within ten days of the date of the meeting.

(3) If the liquidator fails to comply with this section, he shall be liable, in respect of each failure, to a fine not exceeding five thousand rupees and, in the case of a continuing failure, to a further fine not exceeding one hundred rupees for every day after the first during which the failure continues.

**370. Final meeting and dissolution.** - (1) Subject to the provisions of section 371, as soon as the affairs of the company are fully wound up, the liquidator shall-

(a) make up a report and account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of and such other particulars as may be prescribed; and

(b) call a general meeting of the company for the purpose of laying the report and account before it, and giving any explanation thereof.

(2) The account referred to in clause (a) of sub-section (1) shall be audited and a copy thereof together with a copy of the auditor's report and notice of meeting shall be sent by post to each contributory of the company at least ten days before the meeting required to be held under this section.

(3) The notice of the meeting specifying the time, place and object of the meeting shall also be published at least ten days before the date of the meeting in the manner specified in sub-section (1) of section 361 for publication of a notice under that sub-section.

(4) Within one week after the meeting, the liquidator shall send to the registrar a copy of his report and account, and shall make a return to him of the holding of the meeting along with the minutes of the meeting in the prescribed manner.

(5) If a quorum is not present at the meeting, the liquidator shall in lieu of the return referred to in sub-section (4), make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made within one week after the date fixed for the meeting along with a copy of his report and account in the prescribed manner, the provision of sub-section (4) as to the making of the return shall be deemed to have been complied with.

(6) The registrar, on receiving the report and account and either the return mentioned in sub-section (4) or the return mentioned in sub-section (5), shall, after such scrutiny as he may deem fit, register them, and on the expiration of three months from such registration, the company shall be deemed to be dissolved:

Provided that, if on his scrutiny the registrar considers that the affairs of the company or the liquidation proceedings have been conducted in a manner prejudicial to its interest or the interests of its creditors and members or that any actionable irregularity has been committed, he may take action in accordance with the provisions of this Ordinance:

Provided further that the Court, may on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect, for such time as the Court thinks fit.

(7) It shall be the duty of the person on whose application an order of the Court under the foregoing proviso is made, within fourteen days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and, if that person fails so to do, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

(8) if the liquidator fails to comply with any requirements of this section, he shall be punishable with fine which may extend to five thousand rupees and, in the case of a continuing failure, to a further fine which may extend to one hundred rupees for every day after the first during which the failure continues.

**371. Alternative provisions as to annual and final meetings in case of insolvency.-** Where section 368 has effect, sections 381 and 382 shall apply to the winding up, to the exclusion of sections 369 and 370 as if the winding up were creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under section 381 at the end of the first year from the commencement of the winding up, unless the meeting held under section 368 has been held more than three months before the end of the year.

#### **PROVISIONS APPLICABLE TO CREDITORS' VOLUNTARY WINDING UP**

**372. Provisions applicable to creditors' voluntary winding up. -** The provisions contained in sections 373 to 382, both inclusive, shall apply in relation to creditors' voluntary winding up.

**373. Meeting of creditors.-** (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the general meeting of the company at which the resolution

for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the general meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised in the manner specified in sub-section (1) of section 361 for the publication of a notice under that sub-section.

(3) The directors and chief executive of the company shall-

(a) cause a full statement of the position of the company's affairs and assets and liabilities together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their numbers to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors, held in pursuance of sub-section (1) of this section, shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made-

(a) by the company in complying with sub-section (1) and (2);

(b) by the directors and chief executive of the company in complying with sub-section(3);

(c) by any director of the company in complying with sub-section(4);

the company, each of the directors or the director or the chief executive, as the case may be, shall be punishable with 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 and, in the case of default by the company, every officer of the company who is in default shall be liable to the like punishment. company, every officer of the company who is in default shall be liable to the

**374. Notice of resolution passed by creditors' meeting to be given to registrar.** - (1) Notice of any resolution passed at a creditors' meeting in pursuance of

section 373 shall be given by the company to the registrar, along with the consent of the liquidator to act as such, within ten days of the passing thereof.

(2) If default is made in complying with sub-section (1), the company and every officer of the company who is in default shall be punishable with fine which may extend to two hundred rupees for every day during which the default continues.

(3) For the purpose of this section, a liquidator of the company shall be deemed to be an officer of the company.

**375. Appointment of liquidator.-** (1) The creditors and the company at their respective meetings mentioned in sections 368 and 373 may nominate a person, who has given his written consent to act as such, to be liquidator for the purpose of winding up the affairs and distributing the assets of the company.

(2) If the creditors and company nominate different persons, the persons nominated by the creditors shall be liquidator:

Provided that any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

(3) If no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator.

(4) If no person is nominated by the company, the person, if any, nominated by the creditors shall be the liquidator.

(5) The liquidator shall not resign or quit his office as liquidator before conclusion of the winding up proceedings except for reasons of personal disability to the satisfaction of the Court and may also be removed by the Court for reasons to be recorded.

**376. Appointment of committee of inspection. -** (1) The creditors at the meeting to be held in pursuance of section 368 or 373 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons.

(2) If such a committee is appointed, the company may either at the meeting at which the resolution for voluntary winding up is passed or at any subsequent general meeting, appoint such number of persons, not exceeding five, as they think fit to act as members of the committee:

Provided that the creditors may, if they think fit, resolve that all or any of the person so appointed by the company ought not to be member of the committee of inspection.

(3) If the creditors so resolve, the person mentioned in the resolution shall not unless the Court otherwise directs be qualified to act as a member of the committee.

(4) On any application to the Court for a direction under sub-section (3), the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the creditors' resolution.

(5) Subject to the provisions of sub-sections (2) to (4) and to such rules as may be prescribed, the provisions of section 332, except sub-section (1) thereof, shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

**377. Fixing of liquidator's remuneration.** - (1) The liquidator shall be entitled to such remuneration by way of percentage of the amount realised by him by disposal of assets or otherwise as the committee of inspection, or if there is no such committee, the creditors may fix having regard to the amount and nature of the work to be done and not exceeding the prescribed limits:

Provided that different percentage rates may be fixed for different types of assets and items.

(2) In addition to the remuneration payable under sub-section (1), the committee of inspection or the creditors, as the case may be, may authorise payment of a monthly allowance to the liquidator for meeting the expenses of the winding up for a period not exceeding twelve months from the date of commencement of winding up.

(3) The remuneration fixed as aforesaid shall not be enhanced subsequently but may be reduced by the Court at any time.

(4) If the liquidator resigns, is removed from office or otherwise ceases to hold office before conclusion of winding up, he shall not be entitled to any remuneration and the remuneration already received by him, if any, shall be refunded by him to the company.

**378. Director's powers to cease on appointment of liquidators.** - On the appointment of a liquidator, all the powers of the directors, chief executive and other officers shall cease, except for the purpose of giving notice of resolution to wind up and appointment of the liquidator and filing of consent of the liquidator as required under this Ordinance and except so far as the committee of inspection or if there is no such committee, the creditors, in general meeting may sanction the continuance thereof.

**379. Power to fill vacancy in office of liquidator.-** If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by or by the direction of, the Court, the creditors in general meeting may fill the vacancy by appointing a person who has given his written consent to act as liquidator, and for this purpose the provisions of section 365 shall *mutatis mutandis* apply.

**380. Application of section 367 to a creditor's voluntary winding up.-** The provisions of section 367 shall apply in the case of a creditor's voluntary winding up as in the case of member's voluntary winding up with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

**381. Duty of liquidator to call meetings of company and of creditors at the end of every year.-** (1) In the event of the winding up continuing for more than one year, the liquidator shall-

- (a) summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up and, if the proceeding are not concluded during the first year and extension is granted under section 387, within thirty days of such extended period;
- (b) lay before the meetings an audited account of his receipts and payments and acts and dealings and of the conduct of winding up during the preceding year together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings and position of liquidation including reasons for the delay in finalisation of the winding up, steps taken and being taken to expedite it and the time required for the purpose; and
- (c) forward by post to every creditor and to every contributory a copy of the account and statement referred to in clause (b) together with the auditors' report and notice of the meeting at least ten days before the meeting required to be held under this section.

(2) A return of convening of each general meeting and creditors meeting, together with a copy each of the notices, accounts and statement as aforesaid and the minutes of the meetings shall be filed with the registrar within ten days of the date of the meeting.

(3) If the liquidator fails to comply with this section, he shall be liable in respect of each failure to a fine which may extend to five thousand rupees and, in the case of a continuing failure, to a further fine which may extend to one hundred rupees for every day after the first during which the failure continues.

**382. Final meeting and dissolution.-** (1) As soon as the affairs of the company are fully wound up, the liquidator shall-

(a) make up a report and account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of and such other particulars as may be prescribed; and

(b) call a general meeting of the company and a meeting of the creditors for the purpose of laying the report and account before the meetings and giving any explanation thereof.

(2) The account referred to in clause (a) of sub-section (1) shall be audited and a copy thereof together with a copy of the auditor's report and notice of the meeting shall be sent by post to each contributory and creditor of the company at least ten days before the meetings, required to be held under this section.

(3) The notice of the meeting referred to in this section specifying the time, place and object thereof shall also be published at least ten days before the meeting in the manner specified in sub-section (1) of section 361 for the publication of a notice under that sub-section.

(4) Within one week after the date of the meetings, or if the meetings, are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar a copy of his report and account, and shall make a return to him of the holding of the meetings along with the minutes of the meetings in the prescribed manner.

(5) If a quorum (which for the purpose of this section shall be two persons) is not present at either of such meetings, the liquidator shall, in lieu of the return referred to in sub-section (4), make return that the meetings were duly summoned and that no quorum was present thereat and, upon such a return being made within one week after the date fixed for the meetings along with a copy of his report and account in the prescribed manner, the provisions of sub-section (4) as to making of the return shall, in respect of that meeting, be deemed to have been complied with.

(6) On receiving the report and account and also, in respect of each such meeting either the return mentioned in sub-section (4) or the return mentioned in sub-section (5), the registrar shall after such scrutiny as he may deem fit, register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that, if on his scrutiny the registrar considers that the affairs of the company or the liquidation proceedings have been conducted in a manner prejudicial to its interest or the interests of its creditors or members or that any actionable irregularity has been committed, he may take action in accordance with the provisions of this Ordinance:

Provided further that the Court may, on the application of the liquidator or any other person who appears to the Court to be interested, make an order deferring the date

at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(7) It shall be the duty of the person on whose application an order is made by the Court under the foregoing proviso, within fourteen days after the making of the order, to deliver to the registrar a certified copy of the order for registration and, if that person fails so to do, he shall be liable to a fine which may extend to one hundred rupees for every day during which the default continues.

(8) If the liquidator fails to comply with any requirements of this section, he shall be punishable with fine which may extend to five thousand rupees and, in the case of a continuing failure, to a further fine which may extend to one hundred rupees for every day after the first during which the failure continues.

### **PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP**

**383. Provisions applicable to every voluntary winding up.-** The provisions contained in sections 384 to 395, both inclusive, shall apply to every voluntary winding up whether a members or a creditors' winding up.

**384. Accounts and statements to be audited. -** (1) All accounts and statements referred to in sections 369, 370, 381 and 382 shall, before being placed before the meetings of the creditors or contributories, be duly audited by an auditor appointed in the manner provided in section 434.

(2) The auditor's report shall be annexed to the accounts and statements referred to in sub-section (1).

(3) The auditor shall submit his report within two months of the end of the period to which the accounts relate, or within such extended time as may be allowed to him by the registrar.

(4) Whoever fails to comply with any provision of this section shall be punishable with a fine which may extend to five thousand rupees.

**385. Distribution of property of company. -** Subject to the provisions of this Ordinance as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application shall, unless the articles otherwise provide be distributed among the members according to their rights and interests in the company.

**386. Application of sections 328 and 329 to voluntary winding up. -** The provisions of sections 328 and 329 shall, so far as may be, apply to every voluntary winding up as they apply to winding up by the Court except that references to-

(a) "the Court" shall be omitted;

- (b) the "official liquidator" or the "provisional manager" shall be construed as references to the liquidator; and
- (c) the "relevant date" shall be construed as reference to the date of commencement of the winding up; and

the report referred to in section 329 shall be submitted to the registrar instead of the Court.

**387. Powers and duties of liquidator in voluntary winding up.** - (1) The liquidator may-

- (a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and, in the case of a creditors' voluntary winding up, of either the Court or the committee of inspection, or (if there is no such committee) of a meeting of the creditors, exercise any of the powers given by sub-section (1) of section 333 to a liquidator in a winding up by the Court;
- (b) without the sanction referred to in clause (a), exercise any of the other powers given by this Ordinance to the liquidator in a winding up by the Court;
- (c) exercise the power of the Court under this Ordinance of settling a list of contributories, which shall be prima facie evidence of the liabilities of the persons named therein to be contributories;
- (d) exercise the powers of the Court of making calls;
- (e) summon general meeting of the company and creditors for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The exercise by the liquidator of the powers given by clause (a) of sub-section (1) shall be subject to the control of the Court; and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of the power conferred by this section.

(3) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(4) The liquidator shall within thirty days of the coming into his hands of any funds sufficient to distribute among the creditors or contributories after providing for expenses of the winding up or for other preferential payments as provided in this Ordinance, distribute in accordance with the provisions of this Ordinance:

Provided that such portion of the funds as may be required for meeting any claim against the company which may be subjudice or subject matter of adjudication or assessment shall not be distributed till the claim is finally settled:

Provided further that any amounts retained as aforesaid shall be invested by the official liquidator in Khas Deposit Certificates or in such other securities or instruments as may be prescribed and the distribution thereof shall be made by him after the pending claims are settled.

(5) The winding up proceedings shall be completed by the liquidator within a period of one year from the date of commencement of winding up:

Provided that the Court may, on the application of the liquidator, grant extension by one month at any time but such extension shall not exceed a period of six months in all and shall be allowed only for the reason that any proceedings for or against the company are pending in a court and the Court shall also have the power to require expeditious disposal of such proceedings as it could under section 317 if the company was being wound up by the Court.

(6) If an official liquidator is convicted of misfeasance, or breach of duty or other lapse or default in relation to winding up proceedings of a company, he shall cease to be the official liquidator of the company and shall also become disqualified, for a period of five years from such conviction, from being the liquidator of, or to hold any other office including that of a director in any company and if he already holds any such office he shall forthwith be deemed to have ceased to hold such office.

(7) When several liquidators are appointed, any power given by this Ordinance may be exercised by such one or more of them as may be determined at the time, of their appointment, or in default of such determination, by any two or more of them.

**388. Power of Court to appoint and remove liquidator in voluntary winding up.** - (1) If from any cause whatever, there is no liquidator acting, the Court may appoint an official liquidator in accordance with the provisions of section 321 who shall have the same powers, be subject to the same obligations and in all respect stand in the same position as an official liquidator appointed by the Court has in winding up by the Court.

(2) The Court may, on cause shown, remove a liquidator and appoint an official liquidator in his place on the application of any creditor or contributory or the registrar or a person authorised by the Commission.

(3) The remuneration to be paid to the official liquidator appointed under sub-section (1) or sub-section (2) shall be fixed by the Court as if the company were being wound up by the Court.

**389. Notice by liquidator of his appointment.** - (1) Every liquidator shall, within fourteen days after his appointment, publish in the official Gazette, and deliver to the registrar for registration, a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply 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.

**390. Arrangement when binding on company and creditors.** - (1) Any arrangement entered into between a company about to be, or in the course of being wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution and on the creditors if acceded to by three-fourth in number and value of the creditors.

(2) Any creditor or contributory may, within twenty-one days from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary, confirm or set aside the arrangement.

**391. Power to apply to Court to have questions determined or powers exercised.** - (1) The liquidator or any contributory or creditor may apply to the Court-

- (a) to determine any question arising in the winding up of a company; or
- (b) to exercise as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The liquidator or any contributory may apply to the Court specified in sub-section (3) for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) An application under sub-section (2) shall be made-

- (a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and
- (b) if the attachment, distress or execution is levied or put into force by any other court, to the court having jurisdiction to wind up the company.

(4) The Court, if it is satisfied that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other orders on the application as it thinks just.

(5) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar, who shall make a minute of the order in his books relating to the company.

**392. Application of liquidator to Court for public examination of promoters, directors, etc.-** The liquidator may make a report to the Court stating that in his opinion a fraud or any other actionable irregularity has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation; and the Court may, after considering the report, direct that person or officer shall attend before the Court on a day appointed by it 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 officer thereof, in the manner provided for such examination in the case of winding up of a company by the Court.

**393. Costs of voluntary winding up.** -All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

**394. Saving for right of creditors and contributories.** - The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

**395. Power of Court to adopt proceedings of voluntary winding up.** - Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

#### **WINDING UP SUBJECT TO SUPERVISION OF COURT**

**396. Power to order winding up subject to supervision.** - When a company has passed a resolution for voluntary winding up, the Court may of its own motion or on the application of any person entitled to apply to the Court for winding up a company, make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

**397. Effect of petition for winding up subject to supervision.** - A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits and another legal proceedings, be deemed to be a petition for winding up by the Court.

**398. Court may have regard to the wishes of creditors and contributories.**

- The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, but subject to the provisions which would have been applicable had the company been wound up by the Court.

**399. Power to replace liquidator.** - (1) Where an order is made for winding up subject to supervision, the Court shall by that order appoint an official liquidator who shall have the same powers, be subject to the same obligations and in all respects stand in the same position as if he had been appointed by the company.

(2) An application under this section may be made to the Court by any creditor or contributory or the registrar or a person authorised by the Commission in this behalf.

**400. Effects of supervision order.** - (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restriction imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(2) Except as provided in sub-section (1), and save for the purposes of section 352 an order made by the Court for a winding up subject to the supervision of the Court shall for all purposes including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make call or to enforce calls made by the liquidator, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

(4) Unless otherwise directed by the Court, an order for winding up subject to supervision shall not in any way affect the duties, obligations and liabilities of the liquidator as provided for in respect of voluntary winding up.

**401. Appointment of voluntary liquidator as official liquidator in certain cases.** - Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court shall by the last mentioned order, appoint the voluntary liquidator, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

**PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP  
STATUS OF COMPANIES BEING WOUND UP**

**402. Status of companies being wound up, etc..-** A company being wound up shall continue to be a company for all purposes till its final dissolution in accordance with the provisions of this Ordinance and, unless otherwise specified, all provisions and requirements of this Ordinance relating to companies shall continue to apply *mutatis mutandis* in the case of companies being wound up:

Provided that, from the date of commencement of the winding up of a company, the official liquidator or the liquidator shall be deemed to have taken the place of the directors, chief executive and managing agents of the company, as the case may be.

**PROOF AND RANKING OF CLAIMS, ETC.**

**403. Debts of all description to be proved. -** In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Ordinance or the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason do not bear a certain value.

**404. Application of insolvency rules in winding up of insolvent companies.-** In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividend out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

**405. Preferential payments. -** (1) In a winding up, there shall be paid in priority to all other debts-

- (a) all revenues, taxes, cesses and rates due from the company to the Federal Government or a Provincial Government or to a local authority at the relevant date and having become due and payable within the twelve months next before that date;
- (b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee in respect of services rendered to the company and due for a period not

exceeding four months within the twelve months next before the relevant date and any compensation payable to any workman under any law for the time being in force, subject to the limit specified in sub-section (2);

- (c) all accrued holiday remuneration becoming payable to any employee or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;
- (d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions towards insurance payable during the twelve months next before the relevant date, by the company as employer of any persons, under any other law for the time being in force;
- (e) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (VIII of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;
- (f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company; and
- (g) the expenses of any investigation held in pursuance of section 263 or section 265 in so far as they are payable by the company.

(2) The sum to which priority is to be given under clause (b) of sub-section (1) shall not, in the case of any one claimant, exceed two thousand rupees:

Provided that, where a claimant is a labourer in husbandry who has entered into contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen's Compensation Act, 1923 (VIII of 1923), is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (e) of sub-section (1), be taken to be the amount of the lump sum for

which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

- (4) Where any payment has been made-
  - (i) to an employee of a company on account of wages or salary; or
  - (ii) to an employee of a company or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

- (5) The foregoing debts shall-
  - (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and
  - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them and, in the case of the debts to which priority is given by clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

- (8) For the purposes of this section-

- (a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;
- (b) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday; and
- (c) the expression "the relevant date" means-
  - (i) in the case of a company ordered to be wound up compulsorily by the Court, the date of the appointment (or first appointment) of the provisional manager or, if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
  - (ii) in any other case, the date of the passing of the resolution for the voluntary winding up of the company.

**406. Avoidance of transfers, etc.** - Except when an order to the contrary is passed by the Court,-

- (a) every transfer of shares and alteration in the status of a member made after the commencement of winding up shall, unless approved by the liquidator, be void;
- (b) any transfer of property, movable or immovable (including actionable claims), or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by or subject to the supervision of the Court or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.

**407. Disclaimer of property.** - (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken

possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine as from the date of disclaimer, the rights, interests, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in case the property is a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Ordinance in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him and on such terms as the Court thinks just; and, on any such vesting order being made, the

property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company whether as under lessee or as mortgagee except upon the terms of making that person-

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so required) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of the injury, and may accordingly prove the amount as a debt in the winding up.

#### **EFFECT OF WINDING UP ON ANTECEDENT AND OTHER TRANSACTIONS**

**408. Fraudulent preference.** - (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly:

Provided that, in relation to things made or done before the commencement of this Ordinance, this sub-section shall have effect as if for the reference therein to "six months" a reference to "three months" were substituted.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

**409. Liabilities and rights of certain fraudulently preferred persons. - (1)**

Where, in the case of a company which is being wound up, anything made or done after the commencement of this Ordinance, is invalid under section 408 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities and shall have the same rights as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

(4) Sub-section (3) shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applied in relation to such payments.

**410. Avoidance of certain attachments, executions, etc.- (1)** Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects or any sale held without leave of the Court of any of the properties of the company after the commencement of the winding up shall be void.

(2) Nothing in this section applies to proceedings by the Government.

**411. Effect of floating charge. -** Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with surcharge on that amount at the rate of one per cent, per month or part thereof or such other rate as may be notified by the Commission in the official Gazette:

Provided that, in relation to a charge created more than six months before the commencement of this Ordinance, this section shall have effect as if for the reference therein to "twelve months", a reference to "six months" were substituted.

## OFFENCES ANTECEDENT TO OR IN COURSE OF WINDING UP

### **412. Power of Court to assess damages against delinquent directors, etc.-**

If in the course of winding up a company it appears that any person who has taken part in the promotion or formation of the company or any past or present director, liquidator or officer of the company-

- (a) has misapplied or retained or become liable or accountable for any money or property of the company; or
- (b) has been guilty of any misfeasance or breach of trust in relation to the company;

the Court may, on the application of the official liquidator or the liquidator or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with surcharge at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

(3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.

**413. Liability for fraudulent conduct of business.-** (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other person, or for any fraudulent purpose, the Court, on the application of the official liquidator or the liquidator or any creditor or contributory of the company, may, if it thinks fit, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

(2) On the hearing of an application under sub-section (1), the official liquidator or the liquidator, as the case may be, may himself give evidence or call witnesses.

(3) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration; and, in particular, may make provision for making that liability of any such person under the

declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

**Explanation.**- For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which declaration is made.

(4) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twenty thousand rupees, or with both.

(5) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

**414. Liability under sections 412 and 413 to extend to partners or directors in firm or body corporate.** - Where an order under section 412 or a declaration under section 413 is or may be made in respect of a firm or body corporate, the Court shall also have power to pass an order under section 412 or make a declaration under section 413, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

**415. Penalty for fraud by officers of companies which have gone into liquidation.** - If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Court or which subsequently passes a resolution for voluntary winding up,-

- (a) has, by false pretenses or by means of any other fraud, induced any person to give credit to the company; or
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two

months before, the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

**416. Liability where proper accounts not kept.** - (1) If, where a company is being wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who is knowingly and willfully in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twenty thousand rupees or with both.

(2) For the purpose of sub-section (1), proper books of account shall be deemed not to have been kept in the case of a company, if there have not been kept-

- (a) such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and all cash paid; and
- (b) where the trade or business has involved dealings in goods, statement of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

**417. Penalty for falsification of books.**- If any director, manager, officer, auditor or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, books or paper belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to two years, or with fine which may extend to twenty thousand rupees, or with both.

**418. Prosecution of delinquent directors.**- (1) If it appears to the Court in the course of winding up by, or subject to the supervision of, the Court that any past or present director, or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question, as he may require.

(3) Where any report is made under sub-section (1) or (2) to the registrar, he may, if he thinks fit, refer the matter to the Commission for further inquiry and the Commission may thereupon investigate the matter and may, if it thinks it expedient, appoint one or more competent inspectors to investigate the affairs of the company and to report thereon as if it were a case falling under clause (c) of section 263 and thereupon the provision contained in sections 266 to 280 shall *mutatis mutandis* apply in all respects.

(4) If on any report to the registrar under sub-section (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, giving his reasons, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the registrar, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report and, on a report being made accordingly, the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of sub-section (1) or (2).

(6) If, where any matter is reported or referred to the registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Commission, and the Commission may, after taking such legal advice as it thinks fit, direct the registrar or the prosecutor appointed under section 480 to institute proceedings:

Provided that no report shall be made by the registrar under this sub-section without first giving the accused person an opportunity of making a statement in writing to the registrar and of being heard thereon.

(7) Notwithstanding anything contained in the Evidence Act, 1872 (1 of 1872), when any proceedings are instituted under this section it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give, and for the purposes of this sub-section the expression agent in relation to a company shall be deemed to include any banker or legal

adviser of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(8) If any person fails or neglects to give assistance in manner required by sub-section (7), the Court may, on the application of the registrar or the prosecutor, as the case may be, direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the cost of the application shall be borne by the liquidator personally.

**419. Penalty for false evidence.** - If any person, upon any examination upon oath authorised under this Ordinance, or in any affidavit, disposition or solemn affirmation, in or about the winding up of any company under this Ordinance, or otherwise in or about any matter arising under this Ordinance, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to two years, and shall also be liable to fine.

**420. Penal Provisions.** - (1) If any person, being a past or present director, chief executive, managing agent, manager, auditor or other officer of a company which at the time of the commission of the alleged offence, is being wound up, whether by or under the supervision of the Court or voluntarily or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up-

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company which he is required by law to deliver up; or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of one hundred rupees or upwards or conceals any debt due to or from the company; or
- (e) within twelve months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of one hundred rupees or upward; or

- (f) makes any material omission in any statement relating to the affairs of the company; or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or
- (h) after the commencement of the winding up, prevents the production of any books or papers affecting or relating to the property or affairs of the company; or
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter, makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; or
- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

- (o) within twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be punishable, in the case of the offences mentioned respectively in clauses (m), (n) and (o) of this sub-section, with imprisonment for a term which may extend to five years, and, in the case of any other offence, with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to twenty thousand rupees in each case:

Provided that it shall be a good defence, to a charge under any of clauses (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of clauses (a), (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub-section (1) every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to a fine which may extend to twenty thousand rupees.

#### **SUPPLEMENTARY PROVISIONS AS TO WINDING UP**

**421. Liquidator to exercise certain powers subject to sanction.-** (1) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of a special resolution of the company in the case of a voluntary winding up, do the following things or any of them:

- (i) pay any classes of creditors in full;
- (ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable;
- (iii) compromise any calls and liabilities to calls, debts, and liabilities, capable of resulting in debts, and all claims, present or future, certain or contingent subsisting or supposed to subsist between the company and a

contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such calls, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers under sub-section (1) shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

**422. Meetings to ascertain wishes of creditors or contributories.-** (1) In all matter relating to the winding up of a company, the Court-

- (a) shall have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;
- (b) may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs; and
- (c) may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) When ascertaining the wishes of creditors, regard shall be had to the value of each creditor's debt.

(3) When ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory.

**423. Documents of company to be evidence. -** Where any company is being wound up, all books and papers of the company and of the liquidators, shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

**424. Summary disposal of certain suits by liquidators. -** Notwithstanding any thing contained in the Code of Civil Procedure, 1908 (Act V of 1908), a liquidator desiring to recover any debt due to the company may apply to the Court in which the proceedings are pending that the same be determined summarily, and the Court may determine it on affidavits but when the Court deems it just and expedient, either on an application made to it in this behalf or of its own motion, it may set down any issue or issues for hearing on other evidence also and pass such orders for discovery of particulars as it may do in a suit.

**425. Limitation.-** Notwithstanding anything contained in the Limitation Act (IX of 1908), in computing the time within which a liquidator may file a suit for the

recovery of any debt due to the company, the period which elapses between the making of the petition for liquidation and the assumption of charge by the liquidator, or a period of one year, whichever be greater, shall be excluded.

**426. Court fees.** - (1) Notwithstanding anything contained in the Court-fees Act, 1870 (VII of 1870), or in the Code of Civil Procedure, 1908 (Act V of 1908), where sufficient funds are not available with the liquidator and it is necessary to file a suit for the recovery of a debt due to the company, no court-fee stamp need be affixed on the plaint.

(2) If the liquidator succeeds in the suit, the Court shall calculate the amount of court-fee which would have been paid by the liquidator if he had not been permitted to sue under sub-section (1), and such amount shall be recoverable by the Court from any party ordered by the decree to pay the same.

(3) Where the liquidator does not succeed, the court-fee shall be payable by him out of other assets, if any, whenever realised.

**427. Inspection of documents.** - (1) After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly.

(2) The order as aforesaid may, in the case of voluntary winding up, be made by the Commission.

(3) Nothing in sub-section (1) shall be taken as excluding or restricting any rights conferred by any law for the time being in force-

- (a) on the Federal Government or a Provincial Government; or
- (b) on the Commission or any officer thereof; or
- (c) on any person acting under the authority of any such Government or the Commission or officer thereof; or
- (d) on the registrar.

**428. Disposal of books and papers of company.** - (1) Subject to any rules made under sub-section (3), when a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say-

- (a) in the case of a winding up by or subject to the supervision of the Court in such way as the Court directs;

(b) in the case of a members voluntary winding up, in such way as the company by special resolution directs; and

(c) in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company may direct.

(2) After the expiry of three years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Federal Government, may by rules, prevent for such period (not exceeding three years from the dissolution of the company as the Federal Government thinks proper, the destruction of the books and papers of a company which has been wound up, and enable any creditor or contributory of the company to make representations to the Federal Government.

(4) If any person acts in contravention of any such rules or of any direction of the Federal Government thereunder, he shall be punishable with fine which may extend to five thousand rupees.

**429. Power of Court to declare dissolution of company void.** - (1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do he shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

**430. Information as to pending liquidations.** - (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, once in each half year and at intervals of not more than six months, or such shorter period as may be prescribed, until the winding up is concluded, file in the Court or with the registrar, as the case may be, a statement in the prescribed form and containing the prescribed particulars with respect to the accounts, proceedings in and position of the liquidation alongwith the report of auditors.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and shall be punishable accordingly on the application of the liquidator.

(3) When the statement is filed in the Court a copy shall simultaneously be filed by the liquidator with the registrar and shall be kept by him along with the other records of the company.

(4) If a liquidator fails to comply with the requirements of this section, he shall be punishable with fine which may extend to five thousand rupees and, in the case of a continuing failure, to a further fine which may extend to one hundred rupees for every day after the first during which the default continues.

**431. Payments by liquidator into bank.** - (1) Every liquidator of a company shall, in such manner as may be prescribed, pay and keep all moneys received by him or which become available with him or come under his control in his capacity as such in a special account opened by him in that behalf in a scheduled bank in the name of the company. Under his control in his capacity as such in a special account opened by him in t

(2) If any such liquidator at any time retains or allows any money to be not so paid and kept as aforesaid or utilises otherwise for more than three days a sum exceeding five hundred rupees or such other amount as the Court may on the application of the liquidator authorise him to retain then he shall pay surcharge on the amount so retained at the rate of two per cent, per month or part thereof and shall be liable to (a) disallowance of all or such part of his remuneration as the Court may think just; (b) to make good any loss suffered by the company personally and (c) he removed from the office by the Court of its own motion or on application of the registrar or a creditor or contributory of the company, and shall also be liable personally for any loss occasioned by the default.

(3) No liquidator shall pay into his personal account or any account other than the liquidation account of the particular company in liquidation any sums received by him as liquidator.

(4) Every liquidator who makes default in complying with the provisions of this section shall, in addition to his other liabilities, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five thousand rupees.

**432. Unclaimed dividends and undistributed assets to be paid to Companies Liquidation Account.**- (1) Where any company is being wound up, if the liquidator has in his hands or under his control any money of the company representing unclaimed dividends payable to any creditor or undistributed assets refundable to any

contributory which have remained unclaimed or undistributed for six months after the date on which they became payable or refundable, the liquidator shall forthwith pay the said money into the State Bank of Pakistan to the credit of the Federal Government in an account to be called the Companies Liquidation Account, and the liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unclaimed dividends or undistributed assets in his hands at the date of dissolution.

(2) The liquidator shall when making any payment referred to in sub-section (1) furnish to the registrar or such other officer as the Federal Government may appoint in this behalf a statement in the prescribed form setting forth in respect of all sums included in such payment the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed, alongwith the official receipt of the State Bank of Pakistan.

(3) The receipt of the State Bank of Pakistan for any money paid to it under sub-section (1) shall be an effectual discharge of the liquidator in respect thereof.

(4) The liquidator shall make the payments referred to in sub-section (1) by transfer from his special banking account referred to in section 431.

(5) The liquidator shall, when filing a statement in pursuance of subsection (1) of section 430 indicate the sum of money which is payable to the State Bank of Pakistan under sub-section (1) which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down and shall within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(6) Any person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of this section may apply to the registrar for payment thereof, and the registrar, if satisfied that the person claiming is entitled, may after obtaining approval of the Commission, make the payment to that person of the sum due:

Provided that no claim under this sub-section shall be entertained after a period of fifteen years from the date of deposit of the amount in the State Bank of Pakistan.

(7) Notwithstanding anything contained in any previous Companies Act, any money paid into the Companies Liquidation Account in pursuance of this section which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Federal Government.

(8) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall, in addition to such money, pay surcharge on the amount retained at the rate of two per cent per month or part thereof and shall also be liable to pay any expenses or losses occasioned by reason of his

default and he shall also be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court on an application by the registrar.

**433. Books of accounts and other proceedings to be kept by liquidators. -**

(1) Every liquidator shall maintain at the registered office proper books of accounts in the manner required in the case of companies under section 230 and the provisions of that section shall apply *mutatis mutandis* to companies being wound up.

(2) Every liquidator shall also keep at the registered office proper books and papers in the manner required under section 336.

(3) Any creditor or contributory may, subject to the control of the Court, inspect any books and papers kept by the liquidator under sub-section (1) and (2).

(4) The Federal Government may alter or add to any requirements of this section by a general or special order in which case the provisions so altered or added shall apply.

(5) If any liquidator contravenes any provisions of this section, he shall be punishable with imprisonment for a term, which may extend to one year and with fine, which may extend to ten thousand rupees.

**434. Application of provisions relating to audit. -** The provisions of this Ordinance relating to audit of accounts, rights, powers, duties, liabilities and report of auditors of companies and the duties of companies and their officers as applicable to companies shall apply *mutatis mutandis* to companies being wound up, books of account and books and papers kept by the liquidator and his statements of accounts subject as follows: —

- (a) all reference therein to officers of the company shall include references to the liquidator;
- (b) the appointment of auditor shall be made by the Court, members or creditors, as the case may be, who appointed the liquidator, who shall also fix his remuneration which shall be paid by the liquidator from the funds of the company:

Provided that if no appointment of auditor is made by the members or creditors, as the case may be, the liquidator shall apply to the Commission who shall make the appointment and fix his remuneration.

**435. Enforcement of duty of liquidator to make return, etc.-** (1) If any liquidator who has made any default in complying with any provision of this Ordinance or committed any other irregularity in the performance of his duties fails to make good the default or undo the irregularity, as the case may be, within thirty days after the service on him of a notice requiring him to do so, the Court may of its own motion or on an

application made to it by any contributory or creditor of the company or by the registrar, make an order directing the liquidator and any other person involved to make good the default or undo the irregularity or otherwise make amends as the circumstances may require, within such time as may be specified in the order:

Provided that, where an application under this section is made by the registrar, the Court shall dispose of the same within fourteen days of the submission thereof.

(2) Any such order may provide that all costs of, and incidental to, the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalty on a liquidator in respect of any such default or irregularity as aforesaid.

**436. Notification that a company is in liquidation.** - (1) Where a company is being wound up, whether by or under the supervision of the Court or voluntarily, every advertisement, notice, invoice, order for goods, business letter or other communication or document issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up and about the mode of its winding up.

(2) If default is made in complying with this section, the company and any of the following persons who knowingly and willfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to fine which may extend to two thousand rupees.

**437. Court or person before whom affidavit may be sworn.**- (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn-

- (a) in Pakistan, before any Court, judge, or person lawfully authorised to take and receive affidavits; and
- (b) elsewhere before a Pakistan Consul or Vice-Consul.

(2) All courts, judges, justices, commissioners, and persons acting judicially in Pakistan shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part

### COURT RULES

**438. Power to make rules.** - (1) The Supreme Court may, in consultation with the High Courts or, where the Supreme Court advises the Federal Government to do

so, the Federal Government may in consultation with the High Courts, from time to time, make rules, consistent with this Ordinance, concerning the mode of proceedings to be had for winding up a company in a High Court and in the Courts subordinate thereto, and for voluntary winding up (both members and creditors), for the holding of meetings of creditors and members in connection with proceedings under section 284 of this Ordinance, and for giving effect to the provisions as to the reduction of the capital and the scheme of reorganization of a company and generally for all applications to be made to the Court and all other proceedings or matters coming within the purview or powers or duties of the Court under the provisions of this Ordinance and shall make rules providing for all matters relating to the winding up of companies which, by this Ordinance, are to be prescribed.

(2) Without prejudice to the generality of the foregoing powers, such rules may enable or require all or any of the powers and duties conferred and imposed on the Court by this Ordinance in respect of the matters following, to be exercised or performed by the official liquidator, and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of—

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories;
- (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
- (c) requiring delivery of property or documents to the liquidator;
- (d) making calls;
- (e) fixing a time within which debts and claims must be proved:

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

#### **REMOVAL OF DEFUNCT COMPANIES FROM REGISTER**

**439. Registrar may strike defunct company off register.** - (1) Where the registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he may within thirty days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter

within one month from the date thereof, a notice will be published in the official Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in the official Gazette, and send to the company by post a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) Without prejudice to any other provisions, if, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of three consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the official Gazette and send to the company a like notice as is provided in the last preceding sub-section.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the official Gazette, and, on the publication in the official Gazette of this notice, the company shall be dissolved:

Provided that the liability criminal, civil or otherwise (if any) of every director, officer, liquidator and member of the company shall continue and may be enforced as if the company had not been dissolved:

Provided further that nothing in this section shall affect the powers of the Court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or a member or creditor made before the expiry of three years from the publication in the official Gazette of the notice aforesaid, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register and, upon the filing of a certified copy of such order with the registrar, the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, chief executive or other officer of the company whose name and address are known to the

registrar or if no such address is known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(8) The provisions of this section shall not apply to a company which has any known assets and liabilities, and such company shall be proceeded against for winding up.

(9) If due to inadvertence or otherwise the name of any company which has any assets and liabilities or which has been in operation or carrying on business or about whose affairs any enquiry or investigation may be necessary has been struck off the register, the registrar may, after such enquiries as he may deem fit, move the Commission to have the name of the company restored to the register and thereupon the Commission may, if satisfied that it would be just and proper so to do, order the name of the company to be restored in the manner provided in sub-section (6).

(10) The provisions of this section shall *mutatis mutandis* apply to a company established outside Pakistan but having a place of business in Pakistan as they apply to a company registered in Pakistan.

## **PART XII - APPLICATION OF ORDINANCE TO COMPANIES FORMED AND REGISTERED UNDER PREVIOUS COMPANIES ACTS**

**440. Application of Ordinance to companies formed and registered under previous Companies Acts.** - This Ordinance shall apply to existing companies as follows: —

- (a) in the case of a limited company other than a company limited by guarantee, this Ordinance shall apply in the same manner as if the company had been formed and registered under this Ordinance as a company limited by shares;
- (b) in the case of a company limited by guarantee, this Ordinance shall apply in the same manner as if the company had been formed and registered under this Ordinance as a company limited by guarantee; and
- (c) in the case of a company other than a limited company, this Ordinance shall apply in the same manner as if the company had been formed and registered under this Ordinance as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous Companies Act concerned.

**441. Application of Ordinance to companies registered but not formed under previous Companies Acts.** - This Ordinance shall apply to every company registered but not formed under any previous Companies Act in the same manner as it applies to existing companies under this Ordinance:

Provided that reference, express, or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous Companies Act concerned.

**442. Application of Ordinance to unlimited companies registered under previous Companies Acts.** - This Ordinance shall apply to every unlimited company registered as a limited company, in pursuance of any previous Companies Act, in the same manner as it applies to an unlimited company registered in pursuance of this Ordinance as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as limited company under the previous Companies Act concerned.

### **PART XIII - WINDING UP OF UNREGISTERED COMPANIES**

**443. Meaning of "unregistered company".** - For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament of the United Kingdom or by a Pakistan law, nor a company registered under any previous Companies Act or under this Ordinance, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

**444. Winding up of unregistered companies.** - (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Ordinance, and all the provisions of this Ordinance with respect to winding up shall apply to an unregistered company, with the following exceptions and additions: —

- (i) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in the Province where its principal place of business is situated or, if it has a principal place of business situate in more than one Province then in each Province where it has a principal place of business; and the principal place of business situate in the Province in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company;
- (ii) no unregistered company shall be wound up under this Ordinance voluntarily or subject to supervision of the Court;

- (iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say):-
  - (a) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;
  - (b) if the company is unable to pay its debts;
  - (c) if the Court is of opinion that it is just and equitable that the company should be wound up;
- (iv) an unregistered company shall, for the purposes of this Ordinance, be deemed to be unable to pay its debts-
  - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding twenty-five thousand rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for thirty days after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;
  - (b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within fifteen days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;
  - (c) if execution or other process issued on a decree or order obtained in any Court or other competent authority in favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

- (d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts; and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company and its solvency.

(2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any previous Companies Act:

Provided that references in any such enactment to any provision contained in any previous Companies Act shall be read as references to the corresponding provision (if any) of this Ordinance.

(3) Where a company incorporated outside Pakistan which has been carrying on business in Pakistan ceases to carry on business in Pakistan, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

**445. Contributories in winding up of unregistered companies.-** (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the cost and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of any contributory dying or being adjudged insolvent, the provisions of this Ordinance with respect to the legal representatives and heirs of deceased contributories, and to the assignees of insolvent contributories, shall apply.

**446. Power to stay or restrain proceedings. -** The provisions of this Ordinance with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor; extend to suits and legal proceedings against any contributory of the company.

**447. Suits stayed on winding up order. -** Where an order has been made for winding up an unregistered company, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

**448. Directions as to property in certain cases.** - If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order, or by any subsequent order, direct that all or any part of the property, movable or immovable, including all interests and rights in, to and out of property, movable and immovable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name and thereupon the property or any part thereof specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

**449. Provisions of this part cumulative.** - The provisions of this Part with respect to unregistered companies shall be in addition to, and not in derogation of, any provisions hereinbefore, in this Ordinance contained with respect to winding up of companies by the Court and the Court or official liquidator may exercise any powers or do any act in the cases of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Ordinance; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this Part.

#### **PART XIV - COMPANIES ESTABLISHED OUTSIDE PAKISTAN**

##### **PROVISIONS AS TO ESTABLISHMENT OF PLACES OF BUSINESS IN PAKISTAN**

**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.

##### **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 authorised 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.

**452. Return to be delivered to registrar by foreign companies whose documents, etc., altered.** - 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 authorised 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 authorised to accept service of process, notices and other documents on behalf of the company, also his consent to do so.

**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.

**454. Certain obligations of foreign companies.-** Every foreign company shall -

- (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.

**455. Service on foreign company.-** 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 authorised 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.

**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.

**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.

**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.

**459. Penalties.-** 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 authorises 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.

**460. Interpretation of provisions of this Part.-** For the purposes of this Part,-

- (a) the expression “certified” means certified in the prescribed manner to be a true copy or a correct translation’;
- (b) the expression “director”, in relation to a company includes any person in accordance with whose directives or instructions the directors of the company are accustomed to act;
- (c) the expression “place of business” includes a branch, management, share transfer or registration office, factory, mine or other fixed place of business, but does not include an agency unless the agent has, and habitually exercise, a general authority to negotiate and conclude contracts on behalf of the company or maintains a stock of merchandise belonging to the company from which he regularly fills orders on its behalf:

Provided that:

- (i) a company shall not be deemed to have an established place of business in Pakistan merely because it carries on business dealings in Pakistan through a bona fide broker or general commission agent acting in the ordinary course of his business as such;
  - (ii) the fact that a company has a subsidiary which is incorporated, resident, or carrying on business in Pakistan (whether through an established place of business or otherwise) shall not of itself constitute the place of business of that subsidiary an established place of business of the company; and
- 
- (e) the expression “secretary” includes any person occupying the position of secretary, by whatever name called.

### **PROSPECTUS**

**461. Issue of prospectus.-** No person shall issue, circulate or distribute in Pakistan any prospectus offering for subscription securities of a foreign company or soliciting deposits of money, whether the company has or has not established, or when formed will or will not establish, a place of business in Pakistan unless authorised to do so by the Federal Government under the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947), or as may be prescribed.

**462. Restriction on canvassing for sale of securities.-** (1) No person shall go from house to house offering securities of a foreign company for subscription or purchase to the public or any member of the public.

*Explanation.-* In this sub-section, “house” shall not include an office used for business purposes.

(2) Any person acting in contravention of sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

### **REGISTRATION OF CHARGES, ETC.**

**463. Registration of charges.-** (1) The provision of sections 121 to 136 both inclusive, shall extend to charges on properties in Pakistan which are created, and to charges on property in Pakistan which is acquired, by a foreign company which has an established place of business in Pakistan:

Provided that references in the said sections to the registrar shall be deemed to be references, to the registrar referred to in clause (d) of section 460, and reference to the

registered office of the company shall be deemed to be reference to the principal place of business in Pakistan of the company:

Provided further that, where a charge is created outside Pakistan or the completion of the acquisition of property takes place outside Pakistan, clause (I) of the proviso to sub-section (1) of section 121 and the proviso to sub-section (1) of section 122 shall apply as if the property wherever situated were situated outside Pakistan.

(2) Where a company to which this section applies creates, or has created at any time before establishing a place of business in Pakistan, a charge on any property otherwise registerable under this Ordinance it shall register the same with the registrar in accordance with the provisions of this Ordinance,-

- (a) within thirty days of the establishment of a place of business in Pakistan; or
- (b) if the charge was created before the commencement of this Ordinance and subsisted immediately before such commencements, within three months thereof.

**464. Notice of appointment of receiver.-** The provisions of section 137 and 138 shall *mutatis mutandis* apply to the case of all foreign companies having an established place of business in Pakistan and the provisions of section 230 shall apply to such companies to the extent of requiring them to keep at their principal place of business in Pakistan the books of account required by that section with respect to money received and expended, sales and purchases made, and assets and liabilities in relation to its business in Pakistan:

Provided that references in the said section to the registrar shall be deemed to be references to the registrar referred to in clause (d) of section 460 and references to the registered office of the company shall be deemed to be reference to the principal place of business in Pakistan of the company.

## NOTICE OF LIQUIDATION

**465. Notice of liquidation, etc.-** (1) If a foreign company having an established place of business in Pakistan goes into liquidation in the country of its incorporation, it shall—

- (a) within thirty days give notice thereof to the registrar, and simultaneously publish a notice at least in two daily newspapers circulating in the Province or Provinces or the part of Pakistan not forming part of a Province, as the case may be, in which its place or places of business are situated and furnish to the registrar within thirty days of the conclusion

of the liquidation proceedings all returns relating to the liquidation and the liquidation account in respect of such portion of the company's affairs as relates to its business in Pakistan; and

(b) cause, in legible letters, a statement to appear, on every invoice, order, bill-head, letter paper, notice of other publication in Pakistan, to the effect that the company is being wound up in the country of its incorporation.

(2) Where a company to which this section applies has been dissolved, or has otherwise ceased to exist, no person shall, after the date of such dissolution or cessation, carry on, or purport to carry on, any business in Pakistan in the name or on behalf of such company.

(3) Nothing in this section shall be construed as preventing a company to which this section applies from being wound up in Pakistan in accordance with the provisions of this Ordinance, notwithstanding that it has neither been dissolved nor otherwise ceased to exist in the country of its incorporation.

#### **PART XV - REGISTRATION OFFICES AND FEES**

**466. Registration offices.**- (1) For the purposes of the registration of companies and other work under this Ordinance, there shall be offices at such places as the Federal Government thinks fit.

(2) The Federal Government may appoint such registrars, additional registrars, joint registrars, deputy registrars and assistant registrars as it thinks necessary for the registration of companies and performing other duties under this Ordinance, and may make regulations with respect to their duties.

(3) All assistant registrars, deputy registrars, joint registrars and additional registrars shall observe and follow the order and instructions of the registrar who is head of the organization for the registration of companies in Pakistan.

(4) The salaries and other terms and conditions of service of the persons appointed under this section shall be fixed by the Federal Government.

(5) The Federal Government may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Any person may inspect the documents kept by the registrar and any person may require a certificate of incorporation or a certificate of commencement of business of any company, or a copy or extract of any other document or register or any part of any other document on register to be certified by the registrar on payment of the fees specified in the Sixth Schedule.

(7) Wherever any act is by this Ordinance directed to be done to or by the registrar it shall, until the Federal Government otherwise directs, be done to or by the existing registrar of joint stock companies or in his absence to or by such person as the Federal Government may for the time being authorize; but, in the event of the Federal Government altering the constitution of the existing registration offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Federal Government may appoint.

**467. Production of documents kept by registrar, etc..-** (1) No process for compelling the production of any document or register kept by the registrar shall issue from any Court except with the special leave of that Court for reasons to be recorded; and any such process, if issued, shall bear thereon a statement that it is issued with the special leave of the Court so granted and state the reasons for grant of such leave.

(2) A copy of, or extract from, any document or register kept and registered at any of the offices for the registration of companies under this Ordinance, certified to be a true copy under the hand of the registrar (whose official position it shall not be necessary to prove) shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

(3) Notwithstanding anything contained in any other law, no one shall, without the permission of the Commission in writing, take over or remove any original document or register from the custody of the registrar.

**468. Registrar not to accept defective documents.-** (1) Where, in the opinion of the registrar, any document required or authorized by or under this Ordinance to be filed or registered with the registrar-

- (a) contains any matter contrary to law, or does not otherwise comply with the requirements of law;
- (b) is not complete owing to any defect, error or omission;
- (c) is insufficiently legible or is written upon paper which is not durable; or
- (d) is not properly authenticated;

the registrar may either require the company to file a revised document in the form and within the period to be specified by him or refuse to accept or register the same.

(2) Subject to the provisions of sub-sections (3) and (4), if the registrar refuses to accept any document for any of the reasons aforesaid, the same shall not be deemed to have been delivered to him in accordance with the provisions of this Ordinance unless a revised document in the form acceptable to the registrar is duly delivered within such time, or such extended time, as the registrar may specify in this behalf.

(3) The registrar shall, if he refuses to accept any document as aforesaid, communicate his decision in writing to the company.

(4) If registration of any document is refused, the company 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 upheld 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.

**469. Acceptance of documents presented after prescribed time.-** (1) Where any document required or authorised by or under this Ordinance to be filed or registered with the registrar within a specified period is presented after the expiry of such period, the registrar may, on payment by the company or other person concerned of such additional fee as may be prescribed by the Commission, not exceeding three times the amount of the specified fee payable in respect thereof, accept the same.

(2) No such document as aforesaid shall be deemed to have been filed with the registrar until the specified or prescribed fee, as the case may be, has been paid in full.

(3) The acceptance of the document by the registrar under sub-section (1) shall not absolve the defaulting company or other person concerned of any liability arising from the default, delay in filing or other failure to comply with the requirements of this Ordinance.

**470. Fees.-** (1) There shall be paid in respect of the several matters mentioned in the Sixth Schedule the several fees therein, for the time being, specified <sup>1</sup>[...] fees as the <sup>2</sup>[Commission] may direct:

Provided that, in the case of resolutions to which section 172 applies, not more than one fee shall be required for the filing of more resolutions than one passed in the same meeting if such resolutions are filed with the registrar at the same time.

(2) All fees paid in pursuance of this Ordinance shall be accounted for to the Commission.

<sup>1</sup> Deleted 'or such smaller' by Companies (Amendment) Ordinance, 2002.

<sup>2</sup> Substituted " Federal Government" by Companies (Amendment) Ordinance, 2002.

(3) Any document required or authorised by this Ordinance to be filed by a company with the registrar shall not be deemed to have been so filed until the fee payable in respect thereof has been duly paid and either the original receipt or other proof acceptable to the registrar has been furnished to him.

**471. Power of the Federal government to prescribe fees chargeable by companies.-** The maximum limits of fees to be paid to or charged by companies and liquidators from members, creditors or other persons for supply of copies of documents, inspection of records and other services as are required to be provided under this Ordinance shall be such as may be prescribed.

**472. Enforcing compliance with provisions of Ordinance.-** (1) If a company, having made default in complying with any provision of this Ordinance or committed any other irregularity fails to make good the default or undo the irregularity, as the case may be, within thirty days after the service of a notice on the company requiring it to do so, the Commission may, of its own motion or on an application made to it by any member or creditor of the company, or a reference by the registrar and, in the case of a listed company, besides other persons as aforesaid, on a reference by the stock exchange, make an order directing the company and any officer thereof, as the case may be, to make good the default or undo the irregularity or otherwise make amends, as the circumstances may require, within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application or reference shall be borne by the company or by an officer of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

**473. Power of Court, etc. trying offences under Ordinance to direct compliance with the provisions.-** The Court, the Commission, the registrar or other officer trying an offence for a default in compliance with any provisions or requirements of this Ordinance may, at any time during the pendency of the trial or at the time of passing final order, direct, without prejudice to any liability, any officer, auditor or employee of the company in respect of which the default has been committed to comply with the said provisions or requirements within such time as may be specified in the order.

#### **PART XVI - GENERAL LEGAL PROCEEDINGS, OFFENCES, ETC.**

**474. Cognizance of offences, etc.-** (1) Save as provided in section 476, no Court or authority or officer shall take cognizance of any offence against this Ordinance (other than an offence with respect to which proceedings etc. instituted under section 418) which is alleged to have been committed by any company or any officer or auditor thereof, except on the complaint in writing of-

- (a) the <sup>1</sup>[Commission or the] registrar; or
- (b) in the case of a company having a share capital, by a member or members holding not less than five per cent of the issued share capital of the company or a creditor or creditors of the company having interest equivalent in amount to not less than five per cent of the issued share capital of the company; or
- (c) in the case of a company not having a share capital, by any member or creditor entitled to present a petition for winding up of the company:

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers or employees:

Provided further that, where the registrar is himself empowered to impose a penalty, he may take cognizance of the offence and start proceedings on the basis of a memorandum of allegations placed on record by him or an officer subordinate to him.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) where the complainant under sub-section (1) is registrar or the Commission or a person authorized by the Federal Government, the personal attendance of the complainant before the Court or authority trying the offence shall not be necessary unless the Court, the Commission, the registrar or other officer, as the case may be, for reasons to be recorded, requires his personal attendance at the trial.

(3) Sub-section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part XI, or in any other provision of this Ordinance relating to the winding up to companies.

(4) A liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (1).

**475. Offences to be non-cognizable.-** Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), every offence against this Ordinance shall, for the purposes of the said Code, be deemed to be non-cognizable.

<sup>1</sup>**[476. Punishment and adjudication of fine or penalty.-** (1) Where a fine (other than a fine in addition to, or in lieu of, imprisonment) is provided for any offence, contravention of, or default in complying with, any of the provisions of this Ordinance or a directive of the Commission or the registrar or other authority empowered to issue a directive under any provisions of this Ordinance, it shall be adjudged and imposed,-

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<sup>1</sup> Inserted ' Commission or the' by Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Substituted by Companies (Amendment) Ordinance, 2002.

- (a) where the maximum initial fine provided is less than ten thousand rupees, whether or not there is fine for continuing default, by the officer who is incharge of the registration office in which the company is registered:

Provided that the Commission and the registrar shall have concurrent jurisdiction under this clause;

- (b) where the maximum fine provided is ten thousand rupees or more but less than one hundred thousand rupees, or where or not there is fine for continuing default, or where only fine for continuing default is provided, by the registrar:

Provided that the Commission shall have concurrent jurisdiction under this clause; and

- (c) where the maximum fine provided is one hundred thousand rupees or more and whether or not there is fine for continuing default, by the Commission or an officers to whom the Commission has delegated its powers and functions in this behalf.]

(2) Notwithstanding anything contained in sub-section (1), the Commission may, by an order in writing empower any officer to exercise the powers conferred by the said sub-section in respect of any case or class of cases, either to the exclusion of, or concurrently with, any other officer.

(3) The fine as aforesaid shall be imposed after giving the person concerned an opportunity to show cause why he should not be punished for the alleged offence, contravention, default or non-compliance and, if he so requests, after giving him an opportunity of being heard personally or through such person as may be prescribed in this behalf.

(4) Where imprisonment or imprisonment in addition to fine is provided for any contravention of, or default in complying with, any provisions of this Ordinance, it shall be adjudged by a Court not inferior to that of a Court of Session.

**477. Appeal and revision.-** (1) Any person aggrieved by any order or sentence passed under sub-section (1) of section 476 may, within sixty days of such order or sentences, prefer a revision application as hereinafter provided -

- (a) where the order, judgement or sentence has been passed by an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, to the registrar;
- (c) where the order, judgement or sentence has been passed or upheld on revision application by the registrar (not being an additional registrar, a joint

registrar, a deputy registrar or an assistant registrar) or by an authority or officer authorised by the Commission in this behalf, to the Authority;

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and the registrar, the Commission, the authority or officer authorised as aforesaid or the Federal Government, as the case may be, may pass such order in relation to the application as he or it thinks fit:

Provided that no order enhancing the fine shall be passed unless the applicant has been given an opportunity of showing cause against it and, if he so requests, of being heard personally or through such person as may be prescribed in this behalf.

**478. Powers of the Federal Government, etc., in relation to enquiries and proceedings.-** (1) The Federal Government, the Commission, the officer or registrar, as the case may be, shall, for the purposes of a proceeding or enquiry in exercise of its or his powers and discharge of functions, 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) summoning and enforcing the attendance of any witness and examining him on oath or affirmation;
- (b) compelling the discovery or production of any document or other material object;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for the examination of witnesses and documents.

(2) Any proceeding before the Federal Government, the Commission, the officer or registrar, as the case may be, shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and such Government, the Commission, the officer or registrar shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898).

**479. Procedure for the trial of a corporate body.-** (1) In any proceedings against a body corporate for an offence against any provisions of this Ordinance a notice to show cause or appear may be sent to or served on the body corporate by registered post or in any other manner laid down for the service of summons issued by a Court under the Code of Civil Procedure, 1908 (Act V of 1908), at its registered office, or if there is no registered office at its principal place of business in Pakistan and where no such office is known to exist or is not functioning, at the address of the chief executive or any director or officer of the body corporate.

(2) On service of the notice referred to in sub-section (1), it shall be the duty of the chief executive and other officers of the company to show cause or appear before the Court, Commission, registrar, other officer or authority himself or by a counsel or by an officer or other authorised representative of the body corporate who may be in a position to answer the charge as may be specified in the notice.

(3) Where a body corporate does not appear in the manner aforesaid, the Court, Commission, registrar or officer trying the offence, as the case may be, may either issue a directive to the chief executive or other officer of the body corporate as is referred to in sub-section (2) to appear personally and answer the charge, or, at its or his direction, proceed to bear and decide the case in the absence of the body corporate.

(4) Any sum adjudged, fine imposed or directed to be paid under section 476 shall, unless paid on demand, be recoverable as an arrear of land revenue.

**480. Power of Federal Government to appoint company prosecutors.-** Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Federal Government may appoint generally, or in any case, or for any specified class of cases in any local area, one or more persons as company prosecutors, on such terms and conditions as it may deem fit, for the conduct of prosecutions arising out of this Ordinance; and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by that Code on public prosecutors appointed by a Provincial Government under section 494 of that Code.

**481. Appeal against acquittal.-** Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Commission may, in any case arising out of this Ordinance, direct any company prosecutor appointed under section 480 or authorise any other person, either by name or by virtue of his office, to present an appeal from an order of acquittal passed by the officer, authority or registrar or any Court other than a High Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

**482. Payment of compensation in cases of frivolous or vexatious prosecution.-** (1) In respect of any case instituted upon the complaint of a member or creditor against the company or any officer thereof under section 474, the following provisions shall apply instead of the provisions of section 250 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) If the Court, officer, Commission or registrar by whom any such case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Court, officer, Commission or registrar, as the case may be, may by its or his order of discharge or acquittal, if the member or creditor upon whose complaint the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused, or to each or any of such accused when there is more than one, or if such

member or creditor is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(3) The Court, officer, Commission or registrar, as the case may be, shall record and consider any cause which such member or creditor may show; and if it or he is satisfied that the accusation was false and either frivolous or vexatious, it or he may, for reasons to be recorded, direct that compensation to such amount as it may determine be paid by such member or creditor, as the case may be, to the accused or to each or any of them not exceeding ten thousand rupees in all.

(4) In default of payment of the compensation ordered under sub-section (3), the member or creditor ordered to pay such compensation shall suffer simple imprisonment for a term not exceeding two months, and shall also be liable to a fine not exceeding two thousand rupees.

(5) When any person is imprisoned under sub-section (4), the provisions of sections 68 and 69 of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall, so far as may be, apply.

(6) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) A complainant who has been ordered to pay compensation under sub-section (3) may appeal from the order, in so far as it relates to the payment of compensation, as if such complainant had been convicted on a trial.

(8) Where an order for payment of compensation to an accused person is made, the amount of compensation recovered shall not be paid to him before the period allowed for the presentation of the appeal under sub-section (7) has elapsed; or, if an appeal is presented, before the appeal has been decided.

**483. Application of fines.-** (1) The Court, officer, Commission or registrar imposing any fine under this Ordinance may direct that the whole or any part thereof shall be applied in or towards-

- (i) payment of costs of the proceedings;
- (ii) rewarding the person on whose information the fine is recovered; and
- (iii) payment to an aggrieved party of compensation for any loss caused by the offence.

(2) Any amount recovered as fine which is not applied as aforesaid shall be accounted for to the Federal Government.

**484. Revision and review.-** (1) Any order, other than an order under section 476, passed or made under this Ordinance by the registrar or officer or by an officer subordinate to the Commission or exercising powers of the Commission, not being an order of the Court, shall be subject to revision by the Commission upon application being made by any aggrieved person or the registrar within sixty days from the date of such order; and the Commission's order in revision shall be final.

(2) The Commission or the registrar may, upon an application being made to it within sixty days from the date of any order passed by it otherwise than in revision under sub-section (1), or if its own motion, review such order; and such order in review shall be final.

(3) Any order passed or made by the Federal Government under this Ordinance shall be subject to review by the Federal Government of its own motion or on an application made to it within sixty days from the date of the order.

**485. Appeals against orders etc.-** (1) Any person aggrieved by an original order, directive or judgment of the Commission or the Federal Government other than an order, directive or judgment passed on a revision or review application may, within thirty days thereof, as an alternative to making an application for revision or review to the Commission or the Federal Government, as the case may be, prefer an appeal to the High Court within whose jurisdiction the order, directive or judgment is passed:

Provided that no appeal under sub-section (1) shall lie from an order which does not dispose of the entire case before the Commission or the Federal Government, as the case may be, or an order against which an appeal lies before the Appellate Bench of the Commission.

(2) An appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall lie on any one of the following grounds, namely:-

- (a) the decision being contrary to law or to some usage having the force of law; or
- (b) the decision having failed to determine a material issue of law or usage having the force of law; or
- (c) a substantial error apparent in the procedure provided by or under this Ordinance which may possibly have led to an error in the decision.

**486. Production and inspection of books where offence suspected.-** (1) Without prejudice to the powers otherwise exercisable by any officer or registrar or

person under this Ordinance, the Court in Chambers may, on an application made by a public prosecutor or the Attorney-General for Pakistan or the Advocate-General of the Province or an officer authorised by the Commission in this behalf or by a company prosecutor appointed under section 480 or by the registrar, if it is shown that there is reasonable cause to believe that any person has, while he was an officer of a company, committed an offence in connection with the management of the company's affairs, and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company or any officer or agent of the company, make an order-

- (i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating, and obtaining evidence of the commission of, the offence; or
- (ii) requiring the chief executive of the company or such other officer thereof or person as may be named in the order, to produce the said books or papers or any of them to a person, and at a place and time, named in the order.

(2) Sub-section (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in clause (ii) thereof shall be made by virtue of this sub-section.

- (3) No appeal shall lie from a decision under this section.

**487. Power to require limited company to give security for costs.-** Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, the Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

**488. Power of Court, etc., to grant relief in certain cases.-** (1) If in any criminal proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court, officer, Commission or registrar hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court, Officer, Commission or registrar, as the case may be, may relieve him, either wholly or partly, from his liability on such terms as the Court, Officer, Commission or registrar, as the case may be, may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default,

breach of duty, or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as if proceedings against that person for negligence, default, breach of duty or breach of trust had been brought before the Court.

- (3) The persons to whom this section applies are the following namely:-
- (a) directors of a company;
  - (b) chief executive of a company;
  - (c) officers of a company;
  - (d) persons employed by a company as auditors, whether they are or are not officers of the company;
  - (e) liquidator of a company.

(4) The Court, Officer, Commission or registrar shall not grant any relief to any person under sub-section (1) or sub-section (2) unless it or he, by notice served in the manner specified by it or him, as the case may be, requires the registrar and such other person, if any, as it or he thinks necessary to show cause why such relief should not be granted.

**489. Enforcement of orders of Court.-** Any order made by the Court under this Ordinance may be enforced in the same manner as a decree made by a Court in a suit.

**490. Enforcement of orders of Court by other Courts.-** (1) Where any order made by the Court is required to be enforced by another Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order.

(2) The production of such certified copy shall be sufficient evidence of the order.

(3) Upon the production of such certified copy, the Court shall take the requisite steps for enforcing the order, in the same manner as if it had been made by itself.

**491. Protection of acts done in good faith.-** No suit, prosecution or other legal proceeding shall lie against the Government or the Commission or any officer of Government or the Commission or the registrar or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules or orders made thereunder or in respect of the publication by or under the authority of the Government, Commission or such officer of any report, paper or proceedings.

<sup>1</sup>[**492. Penalty for false statement.** - Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding [five]<sup>130</sup> hundred thousand rupees.]

**493. Penalty for wrongful withholding of property.**- (1) Any director, chief executive or other officer or employee or agent of a company who wrongfully obtains possession of any property of the company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorised by this Ordinance shall, on the complaint of the company or any creditor or contributory thereof or a memorandum placed on record by the registrar or an officer subordinate to him, be punishable with fine not exceeding ten thousand rupees and may be ordered by the Court, or officer, Commission or registrar or the Federal Government trying the offence, to deliver up or refund within a time to be fixed by the said Court, officer, Commission or registrar or the Federal Government any such property improperly obtained or wrongfully withheld or wilfully misapplied and any gain or benefit derived therefrom.

(2) Whoever fails to comply with an order under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to a fine.

**494. Liability of directors for allotment of shares for inadequate consideration.**- (1) Any director, creditor or member of a company may apply to the Court for a declaration that any shares of the company specified in the application have been allotted for inadequate consideration.

(2) Every director of the company who is a party to making the allotment of such shares shall be liable, jointly and severally with his co-directors, to make good to the company the amount by which the consideration actually received by the company for the shares is found by the Court, after full inquiry into the circumstances of the transaction, to be less than the consideration that the company ought to have received for such shares, if it is proved, as to any such first mentioned director, that such director-

- (a) had knowledge that the consideration so received by the company was inadequate, or
- (b) failed to take reasonable steps to ascertain whether such consideration so received by the company was in fact adequate.

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<sup>1</sup> Substituted by Companies (Amendment) Ordinance, 2002.

<sup>130</sup> The word "five" inserted through Finance Act, 2007.

**495. Punishment for non-compliance of directive of Court, etc.,- (1)**

Where any directive is given or order is issued by the Court, the officer, the Commission, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding <sup>1</sup>[fifty] thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding <sup>1</sup>[two] thousand rupees for every day after the first during which such non-compliance continues.

(2) If non-compliance or failure continues after conviction under sub-section (1), the officer or other person who is a party to such non-compliance or failure shall be liable to punishment with imprisonment which may extend to six months and fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues, and shall further cease to hold office in the company and be disqualified from holding any office in any company for a period of five years.

**496. Penalty for carrying on *ultra vires* business.-** If any business or part of business carried on or any transaction made, by a company is *ultra vires* of the company, every person who acted as a director or officer of the company and is responsible for carrying on such business shall be liable to a fine not exceeding [five hundred]<sup>131</sup> thousand rupees and shall also be personally liable for the liabilities and obligations arising out of such business or transaction.

**497. Penalty for improper use of word “Limited”.-** If any person or persons trade or carry on business under, or otherwise use or display, any name or title of which the word “Limited” or the words “(Private) Limited” or “(Guarantee) Limited” or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability or as a private limited company or with the liability of members limited by guarantee, as the case may be, be liable to a fine not exceeding <sup>2</sup>[five hundred]<sup>132</sup> thousand rupees and, in the case of a continuing offence, to a further fine not exceeding <sup>3</sup>[ten thousand rupees]<sup>133</sup> for every day after the first for which that name or title has been used.

**498. Penalty where no specific penalty is provided elsewhere in the Ordinance.-** If a company or any other person contravenes or fails to comply with any provision of this Ordinance or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, for which no punishment is provided elsewhere in this Ordinance, the company and every officer of the company

<sup>1</sup> Substituted 'five' by Companies (Amendment) Ordinance, 2002.

<sup>1</sup> Substituted 'one' by Companies (Amendment) Ordinance, 2002.

<sup>131</sup> The words “five hundred” inserted through Finance Act, 2007

<sup>2</sup> Substituted ' five' by Companies (Amendment) Ordinance, 2002.

<sup>132</sup> The words “five hundred” inserted through Finance Act, 2007.

<sup>3</sup> Substituted 'one' by Companies (Amendment) Ordinance, 2002.

<sup>133</sup> The words “ten thousand rupees” inserted through Finance Act, 2007.

who is in default or such other person shall be punishable with a fine which may extend to <sup>4</sup>[one] million rupees, and, where the contravention is a continuing one, with a further fine which may extend to <sup>5</sup>[one hundred thousand] rupees for every day after the first during which the contravention continues.

**POWER TO ACCORD APPROVAL, ETC.,  
SUBJECT TO CONDITIONS**

**499. Power to accord approval subject to conditions.-** (1) Where the Commission or registrar is required or authorised by any provision of this Ordinance-

- (a) to accord approval, sanction, consent, confirmation or recognition to or in relation to any matter;
- (b) to give any direction in relation to any matter; or
- (c) to grant any exemption in relation to any matter,

then, in the absence of anything to the contrary contained in such or any other provision of this Ordinance, the Commission or registrar may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption subject to such conditions, limitations or restrictions as the Commission or registrar may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2) Save as otherwise expressly provided in this Ordinance, every application which may be or is required to be made to the Commission or registrar under any provision of this Ordinance-

- (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by the Commission or registrar, or in relation to, any matter; or
- (b) in respect of any direction or exemption to be given or granted by the Commission or registrar to or in relation to any other matter; or
- (c) in respect of any other matter;

shall be accompanied by fee specified in the Sixth Schedule.

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<sup>4</sup> Substituted 'one' by Companies (Amendment) Ordinance, 2002.

<sup>5</sup> Substituted 'fifty' by Companies (Amendment) Ordinance, 2002.

## ANNUAL REPORT ADMINISTRATION OF THE ORDINANCE

**500. Annual Report by Commission.-** The Commission shall prepare and furnish to the Federal Government as soon as possible after the end of each financial year an annual report on the working and administration of this Ordinance and related matters.

### DELEGATION OF POWERS

**501. Delegation of powers.-** (1) The Federal Government may, by notification in the official Gazette, direct that all or any of its powers and functions under this Ordinance may, subject to such limitations, restrictions or conditions, if any, as it may from time to time impose, be exercised or performed by the Commission or an officer specified for the purpose.

(2) The Commission may, by notification in the official Gazette, direct that any of its powers and functions under this Ordinance may, subject to such limitations, restrictions or conditions, if any, as it may from time to time impose, be exercised or performed by the registrar or any other officer of the Commission specified for the purpose.

### ADVISORY COMMITTEE

**502. Advisory Committee.-** The Federal Government may, for the purpose of obtaining advice and assistance in carrying out the purposes of this Ordinance, constitute an Advisory Committee consisting of such persons as it may think fit.

## APPLICATION OF ORDINANCE TO COMPANIES GOVERNED BY SPECIAL ENACTMENTS

**503. Application of Ordinance to companies governed by special enactments.-** (1) The provisions of this Ordinance shall apply-

- (a) to insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (IV of 1938);
- (b) to banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Companies Ordinance, 1962 (LVII of 1962);
- (c) to modaraba companies and modarabas, except in so far as the said provisions are inconsistent with the provisions of the Modaraba Companies and Modaraba (Floatation and Control ) Ordinance, 1980 (XXXI of 1980);
- (d) to any other company governed by any special enactment for the time being in force, except in so far as the said provisions inconsistent with the provisions of such special enactments.

(2) The provisions of sections 156, 158, 230 to 247, 254 to 274, 277 and 278 shall *mutatis mutandis* apply to listed companies or corporations established by any special enactment for the time being in force whose securities are listed and in the said sections the expression “company” shall include a listed company so established:

Provided that the Commission may, by notification in the official Gazette, direct that the provisions of any of the aforesaid sections specified in the notification shall, subject to such conditions, if any, as may be so specified, not apply to any listed company or securities so specified.

### **SCHEDULES, TABLES, FORMS AND GENERAL RULES**

**504. Forms.-** The forms in the schedules or forms as near thereto as circumstances admit and such other forms as may be prescribed shall be used in all matters to which those forms refer.

**505. Power of the Federal Government to alter schedules.-** The Federal Government may, by notification in the official Gazette, alter or add to any of the tables, regulations, requirements, forms and other provisions contained in any of the schedules, and such alterations or additions shall have effect as if enacted in this Ordinance and shall come into force on the date of the notification, unless the notification otherwise directs.

**506. Power of the Federal Government to make rules.-** (1) In addition to the powers conferred by any other section, the Federal Government may, by notification in the official Gazette, make rules-

- (a) for all or any of the matters which by this Ordinance are to be, or may be, prescribed by the Federal Government;
- (aa) for establishment and regulating the activities of any company or class of companies; and
- (b) generally to carry out the purposes of this Ordinance:

Provided that, before making any such rule, the draft thereof shall be published by the Federal Government in the official Gazette for eliciting public opinion thereon within a period of not less than fourteen days from the date of publication.

(2) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with a fine which may extend to [five hundred]<sup>134</sup> thousand rupees and, where the contravention is a continuing one, with a further fine which may

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<sup>134</sup> Substituted for “fifty” through Finance Act, 2007 dated June 30, 2007. Earlier ‘two’ was substituted by ‘fifty’ by Companies (Amendment) Ordinance, 2002.

extend to [ten thousand]<sup>135</sup> rupees for every day after the first during which such contravention continues.

**[506A. Power to make regulations.**—(1) The Commission may, by notification in the official Gazette, make such regulations as may be necessary to carry out the purposes of this Ordinance:

Provided that 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 the manner considered most appropriate by the Commission for eliciting public opinion thereon within a period of not less than fourteen days from the date of publication.

(2) Any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a fine which may extend to five hundred thousand rupees and, where the contravention is a continuing one, with a further fine which may extend to ten thousand rupees for every day after the first during which such contravention continues..

**506B. Power to issue directives, circulars, guidelines, etc.**—The Commission may issue such directives, prudential requirements, codes, guidelines, circulars or notifications as are necessary to carry out the purposes of this Ordinance and the rules and regulations made under this Ordinance.]<sup>136</sup>

**507.s Power of the Federal Government to permit use of Urdu words of abbreviations.**- The Federal Government may, by notification in the official Gazette, permit use of an Urdu equivalent of any English word or term required to be used pursuant to or for the purposes of this Ordinance or an abbreviation of any such word or term instead of such word or term.

#### **REPEAL, SAVINGS, ETC.**

**508. Repeal of laws and savings.** - (1) The laws mentioned in the Seventh schedule shall stand repealed to the extent specified in the fourth column thereof from the date of coming into force of this Ordinance.

Provided that-

- (i) the repeal shall not affect the incorporation of any company registered under any law hereby repealed;
- (ii) any document referring to any former law relating to companies shall be construed as referring to the corresponding provision of this Ordinance;

<sup>135</sup> Substituted for "five hundred" through Finance Act, 2007 dated June 30, 2007. Earlier 'one' was substituted by 'five hundred' by Companies (Amendment) Ordinance, 2002.

<sup>136</sup> Inserted through Finance Act, 2007 dated June 30, 2007.

- (iii) all funds and accounts constituted or maintained under this Ordinance shall be deemed to be in continuation of the corresponding funds and accounts constituted or maintained under the former laws relating to companies;
- (iv) where any offence has been committed under any former law relating to companies, proceedings may be taken under this Ordinance in respect of such offence after the commencement of this Ordinance, in the same manner as if the offence had been committed under the corresponding provision of this Ordinance.

(2) The mention of particular matters in this section or in any other section of this Ordinance shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with regard to the effect of repeals.

**509. Amendment of Ordinance XVII of 1969.**—As from the date of commencement of this Ordinance, sections 9, 21 and 28 of the Securities and Exchange Ordinance, 1969 (XVII of 1969) shall have effect subject to the amendments specified in the Eighth Schedule.

**510. Savings.**— Save as otherwise specifically provided, nothing in this Ordinance, or any repeal effected thereby, shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceedings taken or instrument executed or issued, under or in pursuance of any law repealed or amended by this Ordinance and any such thing, action, investigation, proceedings, order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceedings or instrument shall, if in force at the commencement of this Ordinance and not inconsistent with any of the provisions of this Ordinance, continue to be in force, and have effect as if it were respectively done, taken, commenced, made, directed, passed, given, executed or issued under this Ordinance or the law as amended by this Ordinance.

**511. Former registration offices, registers and registrars continued.**— (1) The offices existing at the commencement of this Ordinance for registration of companies shall be continued as if they had been established under this ordinance.

(2) Any person appointed to any office under or by virtue of any previous Companies Act shall be deemed to have been appointed to that office under or by virtue of this Ordinance.

(3) Any books of accounts, book or paper, register or document kept under the provisions of any previous law relating to companies shall be deemed part of the books of accounts, book or paper, register or document to be kept under this Ordinance,

**512. Construction of references to extraordinary resolution in articles, etc.,-** Any reference to an extraordinary resolution in the articles of a company, or in any resolution passed in general meeting by the company, or in another instrument, or in any law in force immediately before the commencement of this Ordinance, shall, on and from such commencement be construed as a reference to a special resolution.

**513. Transitional provisions.-** Within one year from the commencement of this Ordinance, all companies shall alter their memorandum and articles or any existing contract or agreement and shall take such other actions as are necessary to bring the constitution, working and procedures of the company in conformity with the provisions of this Ordinance:

Provided that, notwithstanding the fact that such actions have not been taken or such changes have not been made, the companies shall comply with the provisions of this Ordinance as if they were registered under this Ordinance.

**514. Removal of difficulties.-** If any difficulty arises in giving effect to any provision of this Ordinance, the Federal Government may, by notification in the official Gazette make such provisions as may appear to it to be necessary for the purpose of removing the difficulty.

## SCHEDULES

### FIRST SCHEDULE

#### TABLE A

(See section 2 and 26)

## REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

### PRELIMINARY

1. (1) In these regulations-

- (a) “section” means section of the Ordinance;
- (b) “the Ordinance” means the companies ordinance, 1984; and
- (c) “the seal” in relation to a company means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall have the same meaning as in the Ordinance; and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

### **BUSINESS**

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 146 if, and so far as, those restrictions are binding upon the company.

### **SHARES**

3. No shares shall be offered to the public for subscription except upon the term that the amount payable on application shall be the full amount of the nominal amount of the share.

4. The directors shall, as regards any allotment of shares, duly comply with such of the provisions of section 68 to 73, as may be applicable herein.

5. Every person whose name is entered as a member in the register of members shall without payment, be entitled to receive, within two months after allotment or within forty-five days of the application for registration of transfer, a certificate under the seal specifying the share or shares held by him and the amount paid up therein:

Provided that, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

6. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding one rupee, and on such terms, if any, as to evidence and indemnity and payment of expenses incurred by the company in investigating title as the directors think fit.

7. Except to the extent and in the matter allowed by section 95, no part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

**TRANSFER AND TRANSMISSION OF SHARES**

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of member in respect thereof.

9. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve: -

I..... of.....in consideration of the sum of rupees ..... paid to me by.....of.....(hereinafter called “the transferee”) do hereby transfer to the said transferee.....the share (or shares) numbered ...to.....inclusive, in the.....limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof, and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid.

As witness our hands this.....day of.....

Witness

Signature.....dated.....  
Full Address  
Witness

Signature .....  
Transferor

Signature.....  
Full Address.....

Signature.....  
Transferee  
Full Name, Father’s /  
Husband’s Name  
Nationality  
Occupation and Full Address of  
transferee.

10. The directors shall not refuse to transfer any fully paid shares unless the transfer deed id defective or invalid. The directors may also suspend the registration of transfers during the ten days immediately preceding a general meeting or prior to the determination of entitlement or rights of the shareholders by giving seven days previous notice in the manner provided in the Ordinance. The directors may decline to recognise any instrument of transfer unless-

- (a) a fee not exceeding two rupees as may be determined by the directors is paid to the company in respect thereof; and
- (b) the duly stamped instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors

may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of shares, they shall within one month after the date on which the transfer deed was lodged with the company send to the transferee and the transferor notice of the refusal indicating the defect or invalidity to the transferee who shall after removal of such defect or invalidity be entitled to re-lodge the transfer deed with the company.

### **TRANSMISSION OF SHARES**

11. The executors, administrators, heirs, or nominees, as the case may be, of a deceased sole holder of a share shall be the only person recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

12. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made; but the directors shall in either case have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

13. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

### **ALTERATION OF CAPITAL**

14. The company may from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

15. Subject to the provisions of the Ordinance, all new shares shall, before issue be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that

time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ration which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this regulation.

16. The new share shall be subject to the same provisions with reference to transfer, transmission and otherwise as the shares in the original share capital.

17. The company may, by ordinary resolution-

- (a) consolidate and divide its share capital into shares of larger amount than its existing shares;
- (b) sub-divided its existing shares or any of them into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of clause (d) of sub-section (1) of section 92;
- (c) cancel any shares which, at the date of the resolution, have not been taken or agreed to be taken by any person.

18. The company may, by special resolution, reduce its share capital in any manner and with, subject to, any incident authorised any consent required, by law.

### **GENERAL MEETINGS**

19. The statutory general meeting of the company shall be held within the period required by section 157.

20. A general meeting, to be called annual general meeting, shall be held, in accordance with the provisions of section 158, within eighteen months from the date of incorporation of the company and thereafter once at least in every year within a period of six months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting as may be determined by the directors.

21. All general meeting of a company other than the statutory meeting or an annual general meeting mentioned in section 157 and 158 respectively shall be called extraordinary general meetings.

22. The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default, may be called by such requisition, as is provided by section 159 If at any time there are not within Pakistan sufficient directors capable of acting to form a quorum, any

director of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meeting may be called by the directors.

### **NOTICE AND PROCEEDINGS OF GENERAL MEETINGS**

23. Twenty-one days notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general meeting, to such persons as are, under the Ordinance or the regulations of the company, entitled to receive such notices from the company; but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any general meeting.

24. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting with the exception of declaring a dividend, the consideration of the accounts, balance-sheet and the reports of the directors, and auditors the election of directors, the appointment of and the fixing of the remuneration of, the auditors.

25. No business shall be transacted at any general meeting unless a quorum of members is present at that time when the meeting proceeds to business; save as herein otherwise provided, members having twenty five percent of the voting power present in person or through proxy; and

- (a) in the case of private company, two members personally present; and
- (b) in case of any other company, except a single member company, two members present personally; and
- (c) in case of a single member company, single present in person or by proxy, shall be a quorum.

26. 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 being not less than two, shall be a quorum.

27. 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 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 willing to act as chairman, the members present shall choose one of their number to be chairman.

28. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

29. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded. Unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously or by a particular majority or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

30. A poll may be demanded only in accordance with the provisions of section 167.

31. If a poll is duly demanded, it shall be taken in accordance with the manner laid down in section 168 and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

32. A poll demanded on the election of chairman or on a question of adjournment shall be taken at once.

33. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall have and exercise a second or casting vote.

### **VOTES OF MEMBERS**

34. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote except for election of directors in which case the provisions of section 178 shall apply. On a poll every member shall have voting rights as laid down in section 160.

35. In case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

36. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on show of hands or on a poll by his committee or other legal guardian and any such committee or guardian may, on a poll, vote by proxy.

37. On a poll votes may be given either personally or by proxy:

Provided that no body corporate shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 162 is in force.

38. (1) The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing A proxy must be a member.

(2) The instrument appointing a proxy and the power-of -attorney or other authority (if any) under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than forty eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

39. An instrument appointing a proxy may be in the following form, or a form as near thereto as may be:

-----Limited.

“I ----- of ----- in the district ----- being a member of the----- limited, hereby appoint ----- of ----- as my proxy to vote for me and on my behalf at the (annual, extraordinary, as the case may be) general meeting of the company to be held on the ----- day of ----- and at any adjournment thereof.”

40. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting at which the proxy is used.

## DIRECTORS

41. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association, so, however, that such number shall not in any case be less than that specified in section 174.

42. The remuneration of the directors shall from time to time be determined by the company in general meeting subject to the provisions of the Ordinance.

43. Save as provided in section 187, no person shall be appointed as a director unless he is a member of the company.

## POWERS AND DUTIES OF DIRECTORS

44. The business of the 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 the Ordinance or any statutory modification thereof for the time being in force, or by these regulations, required to be exercised by the company in general meeting, subject nevertheless to the provisions of the Ordinance or to any of these regulations, and such regulations being not inconsistent with the aforesaid provisions, as may be prescribed by the company in general meeting but no regulation made by the company in general meeting shall in-radiate any prior act of the directors which would have been valid if that regulation had not been made.

45. The directors shall appoint a chief executive in accordance with the provisions of sections 198 and 199.

46. The amount for the time being remaining undercharged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time, without the sanction of the company in general meeting, exceed the issued share capital of the company.

47. The directors shall duly comply with the provisions of the Ordinance or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, to the keeping of a register of the directors, and to the sending to the registrar of an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or sub-division of shares, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

48. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company and of the directors and of committees of directors:

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

## THE SEAL

49. The directors shall provide for the safe custody of the seal and the seal shall not be affixed to any instrument except by the authority of a resolution of the board directors or by a committee of directors authorized in that behalf by the directors and the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is affixed in their presence.

### **DISQUALIFICATION OF DIRECTORS**

50. No person shall become the director of a company if he suffers from any the disabilities or disqualifications mentioned in section 187 and, if already a director, shall cease to hold such office from the date he so becomes disqualified or disabled:

Provided, however, that no director shall vacate his office by reason only of his being a member of any company which has entered into contracts with, or done any work for the company of which he is director, but such director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

### **PROCEEDINGS OF DIRECTORS**

51. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have and exercise a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Pakistan.

52. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the same or is unwilling to act as chairman, the directors present may choose one of their number to be chairman of the meeting.

53. The directors may delegate any of their powers not required to be exercised in their meeting to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any restrictions that may be imposed on them by the directors.

54. (1) A committee may elect a chairman of its meetings; but, if no such chairman is elected, or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the same or is unwilling to act as chairman, the members present may choose one of their number to be chairman of the meeting.

(2) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present. In case of an equality of votes, the chairman shall have and exercise a second or casting vote.

55. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

55A. A copy of the minutes of the meeting of the board of directors shall be furnished to every director within fourteen days of meeting.

56. A resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of the directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

### **FILLING OF VACANCIES**

57. At the first annual general meeting of the company, all the directors shall stand retired from office, and directors shall be elected in their place in accordance with section 178 for a term of three years.

58. A retiring director shall be eligible for re-election.

59. The director shall comply with the provisions of sections 174 to 178 and sections 180 and 184 relating to the election of directors and matters ancillary thereto.

60. Subject to the provisions of the Ordinance, the company may from time to time in annual general meeting increase or decrease the number of directors.

61. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is chosen was last elected as director.

62. The company may remove a director but only in accordance with the provisions of the Ordinance.

### **DIVIDENDS AND RESERVE**

63. The company in general meeting may declare dividends but no dividend shall exceed the amount recommended by the directors.

64. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

65. No director shall be paid otherwise than out of profits of the year or any other undistributed profits.

66. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.

67. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion either be employed in the business of company or be invested in such investments (other than shares of the company) as the directors way, subject to the provisions of the Ordinance, from time to time think fit.

(2) The directors may carry forward any profits which they may think prudent not to distribute, without setting them aside as a reserve.

68. If several persons are registered as joint-holders of any share, any one of them may give effectual receipt for any dividend payable on the share.

69. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein, but, in the case of a public company, the company may give such notice by advertisement in a newspaper circulating in the Province in which the registered office of the company is situate.

70. The dividend shall be paid within the period laid down in the Ordinance.

## ACCOUNTS

71. The directors shall cause to be kept proper books of account as required under section 230.

72. The books of accounts shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours

73. 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 book or papers of the company except as conferred by law or authorised by the directors or by the company in general meeting.

74. The directors shall as required by sections 233 and 236 cause to be prepared and to be laid before the company in general meeting such profit and loss accounts or income and expenditure accounts and balance sheets duly audited and reports as are referred to in those sections.

75. A balance-sheet, profit and loss account, income and expenditure account and other reports referred to in regulation 74 shall be made out in every year and laid before the company in the annual general meeting made up to a date not more than six months before such meeting. The balance sheet and profit and loss account or income and expenditure account shall be accompanied by a report of the auditors of the company and the report of directors.

76. A copy of the balance sheet and profit and loss account or income and expenditure account and reports of directors and auditors shall, at least twenty one days preceding the meeting, be sent to the persons entitled to receive notice of general meetings in the manner in which notices are to be given hereunder.

77. The directors shall in all respect comply with the provisions of sections 230 to 236.

78. Auditors shall be appointed and their duties regulated in accordance with sections 252 to 255.

## NOTICES

79. (1) A notice may be given by the 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 ordinance course of post.

80. 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 shareholders generally and advertised in a newspaper circulating in the neighborhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

81. 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.

82. A notice may be given by the company to the persons 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 of representatives of the deceased, or assignee 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.

83. Notice of every general meeting shall be given in some manner hereinbefore authorised 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, and also to (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) to the auditors of the company for the time being.

### **WINDING UP**

84. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Ordinance, divide amongst the members, in specie or kind, the whole or any part of the assets of the company, whether they consist of property of the same kind or not.

(2) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members

(3) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member shall be compelled to accept any shares or other securities Whereon there is any liability.

### **INDEMNITY**

85. Every officer or agent for the time being of the company may be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal arising out of his dealings in relation to the affairs of the company, except those brought by the company against him, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 488 in which relief is granted to him by the Court.

### **TABLE B** (See section 29)

**MEMORANDUM OF ASSOCIATION OF COMPANY LIMITED BY SHARES**

1. The name of the company is "The Indus Valley Transporters Limited".
2. The registered office of the company will be situated in the Province of Sindh.
3. The objects for which the company is established are the conveyance of passengers and goods by land between such places in Pakistan as the company may from time to time determine, and the doing of all such other things as are incidental or conducive to the attainment of the above objects.
4. The liability of the members is limited.
5. The share capital of the company is twenty thousand rupees, divided into two thousand shares of ten rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of the memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Name and surname (present & former) in full (in Block Letters)	Father's/ Husband's Name in full	Nationality with any former Nationality	Occupation	Residential Address in full	Number of shares taken by each subscriber	Signatures
1. AB	OP	Pakistani	Resident Director, Household Appliances Ltd., Lahore	14-A, Street No.2, Sadder Colony Hyderabad	10	
2. CD	QR	Pakistani	Advocate	-do-	2	
3. EF	ST	Pakistani	Property Dealer	-do-	1	
4. GH	UV	Pakistani	Shopkeeper	-do-	1	
5. IJ	WX	Pakistani	Civil Engineer	-do-	1	
6. KL	YZ	Pakistani	Auto-Part Dealer	-do-	1	
7. MN	PK	Pakistani	Housewife	-do-	1	
Total number of shares taken					17	

Dated the..... day of .....20.....

Witness to above signatures.

.....

Signature (Full Name, Father's Husband's Name)  
Full Address Occupation (in Block Letters)

**TABLE C**  
(See section 29)

**MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY  
LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

**MEMORANDUM OF ASSOCIATION**

1. The name of the company is "The Mutual Medical Relief Association (Guarantee) Limited."

2. The registered office of the company will be situated in the Province of Baluchistan.

3. The objects for which the company is established are to found, build, administer and run, hospitals, clinics, dispensaries, centres and places or medical aid and relief anywhere in Pakistan and to do all such other things as are incidental or conducive to the attainment of these objects.

4. The liability of the members is limited.

5. Every member of the company 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 or the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one thousand rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Name and surname (present & former) in full (in Block Letters)	Father's/ Husband's Name in full	Nationality with any former Nationality	Occupation	Residential Address in full	Number of shares taken by each subscriber	Signatures
1. AB	OP	Pakistani	Resident Director, Household Appliances Ltd.,	14-A, Street No.2, Sadder Colony	10	

			Lahore	Hyderabad		
2. CD	QR	Pakistani	Advocate	-do-	2	
3. EF	ST	Pakistani	Property Dealer	-do-	1	
4. GH	UV	Pakistani	Shopkeeper	-do-	1	
5. IJ	WX	Pakistani	Civil Engineer	-do-	1	
6. KL	YZ	Pakistani	Auto-Part Dealer	-do-	1	
7. MN	PK	Pakistani	Housewife	-do-	1	
Total number of shares taken					17	

Dated the..... day of ..... 20.....  
 Witness to above signatures.

.....  
 Signature (Full Name, Father's Husband's Name)  
 Full Address Occupation (in Block Letters)

## ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

### INTERPRETATION

1. In these articles—
  - (a) "the Ordinance" means the Companies Ordinance, 1984;
  - (b) "the seal" means the common seal of the company.

Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meaning as in the Ordinance or any statutory modification thereof in force at the date at which these regulations become binding on the company

### MEMBERS

2. The number of members with which the company proposes to be registered is 200, but the directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

3. The subscribers to the memorandum and such other persons as the directors shall admit to membership shall be members of the company.

### GENERAL MEETINGS

4. A general meeting to be called annual general meeting, shall be held within eighteen months from the date of incorporation of the company and thereafter once at least in every year within a period of six months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting as may be determined by the directors.

5. All general meetings other than annual general meetings shall be called extraordinary general meetings.

6. The directors may, whenever they think fit, call an extraordinary general meeting.

### **PROCEEDINGS AT GENERAL MEETINGS**

7. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual meeting with the exception of declaring a dividend, the consideration of accounts, balance sheet and the reports of the directors, and Auditors, the election of directors and other officers and the fixing of remuneration of the auditors.

8. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Save as herein otherwise provided, three members present in person who represent not less than twenty-five per cent of the total voting power in person or through proxy, shall be a quorum.

9. (1) If within half-an-hour from the time appointed for a meeting a quorum not present, the meeting, if called upon the requisition of members shall be dissolved.

(2) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and such other time a place as the directors may determine.

(3) If at the adjourned meeting a quorum is not present within half-an-hour from the time appointed for the meeting the members present shall be a quorum.

10. (1) The Chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

(2) If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for the meeting or is unwilling to act as chairman of the meeting, the directors present shall choose one of their number to be chairman of the meeting.

(3) If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for the meeting the members present shall choose one of their number to be the chairman of the meeting.

11. (1) The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place.

(2) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(3) When a meeting is adjourned for thirty days or more notice of the adjourned meeting shall be given as in the case of an original meeting.

(4) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

12. Unless a poll is demanded by at least five members present in person or by proxy or by any member or members representing not less than ten per cent of the total voting power in person or through proxy, a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the minutes of proceedings shall be conclusive evidence of the fact without proof of the number of votes recorded in favour or against the resolution.

13. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall have and exercise a second or casting vote.

14. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

### **VOTES OF MEMBERS**

15. Every member shall have one vote.

16. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote whether on a show of hands or on poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll vote by proxy.

17. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

18. On a poll, votes may be given either personally or by proxy.

19. (1) No objection shall be raised to the qualification of any voter except at meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

20. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed.

Provided that no intimation in writing of such death insanity or revocation shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

21. An instrument appointing a proxy shall be in writing and shall be deposited at the office of the company or the place of meeting at least forty-eight hours before the meeting at which it is to be used.

## **DIRECTORS**

22. The number of the first directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association, so, however, that such number shall not in any case be less than that specified in section 174.

## **POWER AND DUTIES OF DIRECTORS**

23. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Ordinance required to be exercised by the company in general meeting.

## **PROCEEDINGS OF DIRECTORS**

24. (1) The Directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit.

(2) A director may, and the chief executive or secretary on the requisition of a director shall, at any time, summon a meeting of the directors.

25 (1) Save as otherwise expressly provided in the Ordinance questions arising at any meeting of the directors shall be decided by a majority of votes.

(2) In case of an equality of votes, the chairman shall have and exercise a second or casting vote.

26. The continuing directors may act notwithstanding any vacancy but, if and so long as their number is reduced below the minimum fixed by the Ordinance, the continuing directors or director may act for the purpose of increasing the number of directors to that minimum or for summoning a general meeting of the company, but for no other purpose.

27. (1) The directors may elect a chairman and determine the period for which is to hold office within the limits prescribed by the Ordinance.

(2) If no such chairman is elected, or if at any meeting the Chairman is not present within ten minutes after the time appointed for the meeting or is unwilling to act as chairman, the directors present may choose one of their number to be chairman of the meeting.

28. All acts done by any meeting of the directors or by any person acting as director, shall, notwithstanding that it may afterwards be discovered that there was some defect in the appointment of any such director or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

29. A resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting, shall be as valid and effectual as if it had been passed a meeting of the directors duly convened and held.

#### **CHIEF EXECUTIVE**

30. Subject to the provisions of the Ordinance, a chief executive shall be appointed by the directors for such term, as such remuneration and upon such conditions as the may think fit.

#### **THE SEAL**

31. The director shall provide for the safe custody of the seal, which shall be used by authority of directors and every instrument to which the seal shall be affixed shall be signed by a director.

Name and surname (present & former) in full (in Block Letters)	Father's/ Husband's Name in full	Nationality with any former Nationality	Occupation	Residential Address in full	Signatures
1. AB	OP	Pakistani	Resident Director, Household Appliances Ltd., Lahore	14-A, Street No.2, Sadler Colony Hyderabad	
2. CD	QR	Pakistani	Advocate	-do-	

3.	EF	ST	Pakistani	Property Dealer	-do-	
4.	GH	UV	Pakistani	Shopkeeper	-do-	
5.	IJ	WX	Pakistani	Civil Engineer	-do-	
6.	KL	YZ	Pakistani	Auto-Part Dealer	-do-	
7.	MN	PK	Pakistani	Housewife	-do-	

Dated the..... day of .....20.....

Witness to above signatures.

.....

(Full Name, Father's / Husband's Name)

(in Block Letters)

Signatures  
Occupation  
Full Address

**TABLE D**  
[See section 29]

**MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY  
LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL**

**MEMORANDUM OF ASSOCIATION**

1. The name of the company is "Salt Range Hotel Company Limited".
2. The registered office of the company will be situated in the Province of the Punjab.
3. The objects for which the company is established are the facilitating of traveling in the salt range of the Punjab and the North-West Frontier Province by providing hotels for the accommodation of travelers and the doing of such other things as are incidental or conducive to the attainment of those objects.
4. The liability of the members is limited.
5. Every member of the company 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 after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding one thousand rupees.
6. The share capital of the company shall consist of twenty thousand rupee, divided into two thousand shares of ten rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Name and surname (present & former) in full (in Block Letters)	Father's/ Husband's Name in full	Nationality with any former Nationality	Occupation	Residential Address in full	Number of shares taken by each subscriber	Signatures
1. AB	OP	Pakistani	Resident Director, Household Appliances Ltd., Lahore	14-A, Street No.2, Sadder Colony Hyderabad	10	
2. CD	QR	Pakistani	Advocate	-do-	2	
3. EF	ST	Pakistani	Property Dealer	-do-	1	
4. GH	UV	Pakistani	Shopkeeper	-do-	1	
5. IJ	WX	Pakistani	Civil Engineer	-do-	1	
6. KL	YZ	Pakistani	Auto-Part Dealer	-do-	1	
7. MN	PK	Pakistani	Housewife	-do-	2	
Total number of shares taken					17	

Dated the..... day of ..... 20.....

Witness to above signatures.

.....  
(Full Name, Father's / Husband's Name)  
(in Block Letters)

Signatures  
Occupation  
Full Address

### **ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL**

1. The number of members with which the company proposes to be registered is 100, but the directors may from time to time register an increase of members.

2. All the regulations in Table A in the First Schedule to the Ordinance shall be deemed to be incorporated with these articles and shall apply to the company.

Name and surname (present & former) in full (in Block Letters)	Father's/ Husband's Name in full	Nationality with any former Nationality	Occupation	Residential Address in full	Number of shares taken by each subscriber	Signatures
1. AB	OP	Pakistani	Resident Director, Household Appliances Ltd., Lahore	14-A, Street No.2, Sadder Colony Hyderabad	10	
2.CD	QR	Pakistani	Advocate	-do-	2	
3.EF	ST	Pakistani	Property Dealer	-do-	1	
4.GH	UV	Pakistani	Shopkeeper	-do-	1	
5.IJ	WX	Pakistani	Civil Engineer	-do-	1	
6.KL	YZ	Pakistani	Auto-Part Dealer	-do-	1	
7.MN	PK	Pakistani	Housewife	-do-	1	
Total number of shares taken					17	

Dated the..... day of ..... 20.....  
 Witness to above signatures.

.....  
 (Full Name, Father's / Husband's Name)  
 (in Block Letters)

Signatures  
 Occupation  
 Full Address

**TABLE E**  
 (See section 29)

**MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN  
 UNLIMITED COMPANY HAVING A SHARE CAPITAL  
 MEMORANDUM OF ASSOCIATION**

1. The name of the company is "Khyber Fruit Products Company".
2. The registered office of the company will be situated in the North-West Frontier Province.
3. The objects for which the company is established are the preservation, canning and marketing of fruit anywhere in Pakistan and the doing of all such things as are incidental or conducive to the attainment of those objects.

We, the several persons whose names are subscribed are desirous of being forced into a company in pursuance of this memorandum of association, and we respectively

agree to take the number of shares in the capital of the company set opposite our respective names.

Name and surname (present & former) in full (in Block Letters)	Father's/ Husband's Name in full	Nationality with any former Nationality	Occupation	Residential Address in full	Number of shares taken by each subscriber	Signatures
1. AB	OP	Pakistani	Resident Director, Household Appliances Ltd., Lahore	14-A, Street No.2, Sadder Colony Hyderabad	10	
2. CD	QR	Pakistani	Advocate	-do-	2	
3. EF	ST	Pakistani	Property Dealer	-do-	1	
4. GH	UV	Pakistani	Shopkeeper	-do-	1	
5. IJ	WX	Pakistani	Civil Engineer	-do-	1	
6. KL	YZ	Pakistani	Auto-Part Dealer	-do-	1	
7. MN	PK	Pakistani	Housewife	-do-	1	
Total number of shares taken					17	

Dated the..... day of ..... 20.....

Witness to above signatures.

.....

(Full Name, Father's / Husband's Name)

(in Block Letters)

Signatures  
Occupation  
Full Address

### ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY

1. The number of members with which the company proposes to be registered is 40, but the directors may from time to time register an increase of members.

2. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

3. The company may by special resolution—

- (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
- (b) consolidate its shares into shares of a larger amount than its existing shares;

- (c) sub-divide its shares into shares of a smaller amount than its existing shares;
- (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person.

4. All the regulations in Table A in the First Schedule to the Ordinance shall be deemed to be incorporated with these articles and shall apply to the company.

Name and surname (present & former) in full (in Block Letters)	Father's/ Husband's Name in full	Nationality with any former Nationality	Occupation	Residential Address in full	Signatures
1.AB	OP	Pakistani	Resident Director, Household Appliances Ltd., Lahore	14-A, Street No.2, Sadder Colony Hyderabad	
2. CD	QR	Pakistani	Advocate	-do-	
3. EF	ST	Pakistani	Property Dealer	-do-	
4. GH	UV	Pakistani	Shopkeeper	-do-	
5. IJ	WX	Pakistani	Civil Engineer	-do-	
6.KL	YZ	Pakistani	Auto-Part Dealer	-do-	
7.MN	PK	Pakistani	Housewife	-do-	

Dated the..... day of ..... 20.....  
 Witness to above signatures.

.....  
 (Full Name, Father's / Husband's Name)  
 (in Block Letters)

Signatures  
 Occupation  
 Full Address

## TABLE F

(See sections 2 and 120)

### REGULATIONS FOR ISSUE AND SUBSCRIPTION OF TERM CAPITAL AND PARTICIPATION TERM CERTIFICATES

[Omitted by the Banking & Financial Services (Amendment of Laws) Ordinance, LVII of 1984]

**SECOND SCHEDULE**

*[See sections 45, 53 and 69]*

**PART I**

**MATTERS TO BE SPECIFIED IN PROSPECTUS AND REPORTS TO BE SET OUT THEREIN**

**SECTION 1**

**MATTERS TO BE SPECIFIED**

1. (1) Save as provided in clause 31, the contents 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.

(2) The number and value of shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

2. Description of business to be undertaken and its prospectus.

3. Any provision in the articles to remuneration of the directors, whether for their services to the company as directors or chief executive or otherwise.

4. (1) The names, addresses, descriptions, occupation 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:

Where any such person is already a director, chief executive or other officer of any other company, the name of such other company and the office held therein.

(2) Any provision in the articles or in any contract which has been entered into as to 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.

5. Where shares are offered to the public for subscription, particulars as to-
  - (a) the minimum amount which, in the opinion of the directors or of the signatories of the memorandum arrived at after due inquiry, must be raised by the issue of those shares in order to provide the sums, or if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following heads and distinguishing the amount required under each head:-
    - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
    - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to subscribe for, any shares in the company;
    - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
    - (iv) working capital;
    - (v) any other expenditure, stating the nature and purpose thereof and the estimated amount in each case; and
  - (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts to be provided.
6. The date and time of the opening and closing of the subscription list.
7. The amount payable on application on each share, and in the case of a 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 so allotted.

8. 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, giving the number, description and amount of any such shares or debentures and including the following particulars of the option or right: -

- (a) the period during which the option or right is exercisable;
- (b) the price to be paid for shares or debentures subscribed for under the option or right thereto;
- (c) the consideration, if any, given or to be given for the option or right or for the right thereto;
- (d) the names, addresses, descriptions and occupations of the persons to whom the option or right or the right thereto has been given or is proposed to be given or, if given to existing shareholders or debenture holders as such, the description and number of the relevant shares or debentures;
- (e) any other material fact or circumstances relevant to the grant of the option or right.

***Explanation.-*** Subscribing for shares or debentures shall, for the purposes of this clause, include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

9. The number, description and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued.

10. The amount paid or payable by way of premium, if any, on each share which has been issued within the two years preceding the date of the prospectus, or is to be issued, stating the dates or proposed dates of issue and, where some shares have been or are to be issued at premium and other shares of the same class at a lower premium, or at par or at a discount, the reasons for the differentiation and how any premium received have been or are to be disposed of.

11. Where any issue of share or debentures is underwriters, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge their obligations.

12. (1) As respects any property to which this clause applies-

- (a) the names, addresses, descriptions and occupation of the vendors;
- (b) the amount paid or payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;
- (c) the nature of the title or interest in such property acquired or to be acquired by the company;
- (d) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company or any person who is, or was at the time of the transaction, promoter or a director or proposed director of the company had interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(2) The property to which sub-clause (1) applies is property purchased or acquired by the company or proposed to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property-

- (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
- (b) as respects which the amount of the purchase money is not material.

(3) For the purposes of this clause, where any of the vendors is a firm, the members of the firm shall not be treated as separate vendors.

13. The amount, if any, or the nature and extent of any consideration paid within the two preceding years, or payable, as commission to any person (including commission so paid or payable to any sub-underwriter, who is a promoter or officer of the company) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in, or debentures of the company; and giving also the following particulars, namely: -

- (a) the name, address, description and occupation of each such person;
- (b) particulars of the amounts which each has underwriter or sub-underwritten as aforesaid;

- (c) the rate of the commission payable to each for such underwriting or sub-underwriting;
- (d) any other material term or condition of the underwriting or sub-underwriting contract with each such person; and
- (e) when any such person is a company or a firm, the nature of any interest, direct or indirect, in such company or firm of any promoter or officer of the company in respect of which the prospectus is issued.

14. (1) Save as provided in clause 31, the amount or estimated amount of preliminary expenses and the persons by whom any of the expenses have been paid or are payable.

(2) Save as aforesaid the amount or estimated amount of the expenses of the issue and the persons by whom any of these expenses have been paid or are payable.

15. Any amount or benefit paid or given within the two preceding years, or intended to be paid or given, to any promoter or officer, and the consideration for the payment or the giving of the benefit.

16. (1) The dates of, parties to, and general nature of-

- (a) every contract appointing or fixing the remuneration of a chief executive, managing agent, if any or secretary, whenever entered into, that is to say, whether within, or more than, two years before the date of the prospectus;
- (b) every other material contract, not being a contract entered into in the ordinary course of the business carried on by the company by or a contract entered into more than two years before the date of the prospectus.

(2) A reasonable time and place at which any such contract or a copy thereof may be inspected.

17. The names and addresses of the auditors and legal advisers, if any, of the company.

18. (1) Full particulars of the nature and extent of the interest, if any, of every director or promoter-

- (a) in the promotion of the company; or
- (b) in any property acquired by the company within two years of the date of the prospectus or proposed to be acquired by it.

(2) Where the interest of such a director or promoter consists in being a member of a firm or company, the nature and extent of the interest of the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm or company in connection with the promotion or formation of the company.

19. The right of voting at meetings of company conferred by, and the rights in respect of capital and dividends attached to, shares.

20. Where the articles of the company impose any restrictions upon the members of the company in respect of right of attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions.

21. (1) In case of a company which has been carrying on business, the length of time during which the business of the company has been carried on.

(2) If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business has carried on.

22. (1) If any reserves or profits of the company or any of its subsidiaries have been capitalized, particulars of the capitalization.

(2) Particulars of the surplus arising from any revaluation of the assets of the company or any of its subsidiaries done before the date of the prospectus and the manner in which such surplus has been applied, adjusted or treated.

23. A reasonable time and place at which copies of all balance sheets and profits and loss accounts, if any, on which the report of the auditors under section 2 of this Part is based, may be inspected.

24. The principal purposes for which the net proceeds of the issue are intended to be used and approximate amount intended to be used for each such purpose.

25. If any of the shares are to be issued otherwise than for cash, the general purpose of the distribution, the basis upon which these shares are to be offered, the amount of compensation and by whom they are to be borne.

26. A summary in columnar form of the earnings of the company or the company and its subsidiaries consolidated or otherwise, as appropriate, for each of the last three financial years of the company.

27. Pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the company or any of its subsidiaries is a party.

**SECTION 2****REPORTS TO BE SET OUT**

28. (1) A report by the auditors of the company with respect to-
- (a) profits and losses and asses and assets and liabilities, in accordance with sub-clause (2) or (3) of this clause, as the case may require; and
  - (b) the rates of the dividends, if any, paid by the company, in respect of each class of shares in the company for each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years; and if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.
- (2) If the company has no subsidiaries, the report shall-
- (a) so far as regards profits and losses, deal with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the issue of the prospectus; and
  - (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.
- (3) If the company has subsidiaries, the report shall-
- (a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by sub-clause (2) and in addition, deal either-
    - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or

- (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company;

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company, and so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

- (b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by sub -clause (2) and in addition, deal either-

- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or

- (ii) individually with the assets and liabilities of the subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries, the allowances to be made for persons other than members of the company.

29 If any shares have been or are to be issued or the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly-

- (i) in the purchase of any business; or
- (ii) in the purchase of an interest in any business; and by reason of that purchase or anything to be done in consequence thereof, or anything to be done in consequence thereof, or in connection therewith, the company will become entitled to an interest, as respects either the capital or profits and losses or both, in such business exceeding fifty per cent thereof;

a report made by auditors (who shall be named in the prospectus) upon-

- (a) the profits or losses of the business for each of the five financial year immediately preceding the issue of the prospectus; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus.

30. (1) If-
- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and
  - (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company;

a report made by auditors (who shall be named in the prospectus) upon-

- (i) the profits or losses of the other body corporate for each of the five financial year immediately preceding the issue of the prospectus; and
  - (ii) the assets and liabilities of the prospectus; and
- (2) The said report shall-
- (a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned member of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and
  - (b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-clause (3) of clause 28 in relation to the company and its subsidiaries.
- 30A. The Chief Executive and Chief Financial Officer of the company shall certify that the prospectus constitutes a full, true and plain disclosure of all material facts relating to the securities offered by the prospectus.
- 30B. An underwriter of an issue or offering for which a prospectus is prepared shall be deemed to have given his consent to the issue of the prospectus and the underwriter shall certify that to the best of his knowledge, information and belief, the prospectus constitutes full, true and plain disclosure of all material facts relating to securities offered by the prospectus.

### SECTION 3

#### PROVISIONS APPLYING TO SECTIONS 1 AND 2 OF THIS PART

31. Clause 1 (so far as it relates to particulars of the signatories of the memorandum and the shares subscribed for buy them) and clause 14 (so far as it relates to preliminary expenses) of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

32. Every person shall, for the purposes of this Part, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where-

- (a) the purchase money is not fully paid at the date of the issue of the prospectus; l
- (b) the purchase money is to be paid or satisfied, wholly or in part, out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfillment on the result of that issue.

33. Where any property to be acquired by the company is to be taken on lease., this Part shall have effect as if `vendor` included the lessor, `purchase money` included the consideration for the lease, and `sub-purchaser` included a sub-lessee.

34. If, in the case of a company which has been carrying on business, or of a business which has been carried on for less than five financial years, the accounts of the company or business have only been made up in respect of four such years, three such years, two such years or one such year, section 2 of this Part shall have effect as if reference to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for reference to five financial years.

35. Where the five financial years immediately preceding the issue of the prospectus which are referred to in section 2 of this Part or in this section cover a period of less than five years, references to a number of financial years the aggregate period covered by which is not less than five years immediately preceding the issue of the prospectus were substituted for references to the five financial years aforesaid.

36. Any report required by section 2 of this Part shall either-



any contract irrespective of the time when it was entered into, as to the appointment of and remuneration payable to the persons referred to in (a), (b), (c) and (d) above.

The right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares.

Number and amount of shares and debentures agreed to be issued as fully or partly paid-up other wise than in cash

1. ....shares of Rs..... fully paid.
2. ....shares upon which Rs.... Credited as paid.
3. ....debentures of Rs....
4. Consideration.

The consideration for the intended issue of those shares and debentures

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from, a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale

1. ....shares of Rs..... and ..... debentures of Rs.....

Period during which the option is exercisable  
Price to be paid for shares or debentures subscribed for or acquired under option

2. Until.....
3. Rs.

Consideration for the option or the right to option  
Persons to whom the option or the right to option was given or, if given to existing share-holders or debenture holders as such, the relevant shares or debentures

4. Consideration
5. Names and addresses

Names, occupations and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.

Amount (in cash, shares or debentures) payable to each separate vendor. Rs.

Amount (if any) paid or payable ( in cash shares, or debentures) for each such property, specifying amount (if any ) paid or payable for goodwill	Total purchase price	Rs.
	Cash	Rs.
	Shares	Rs.
	Debentures	Rs.

	Goodwill	Rs.
Short particulars of every transaction relating to each such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest, direct or indirect.		
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid..... Amount payable.....	
Rate of the commission	Rate per cent	
The number of shares, if any, which persons have agreed to subscribe for a commission	.....shares.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of -each of the five years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than five years and the accounts of which have only been made-up in respect of four years, three years, two years or one year, the above requirements shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for reference to five years, and in any such case the statement shall say how long the business to be acquired has been carried on.		
Where the financial year with respect to which the accounts of the business have been made-up is greater or less than a year, reference to five year in this paragraph shall have effect as if references to such number of financial year as in the aggregate, cover a period of not less than five years, four years, three years, two years or one year, as the case may be, were substituted for reference to three years, two years and one year' respectively.		
Estimated amount of preliminary expenses	Rs.	
By whom those expenses have been paid or are	Name of promoter.	

payable	
Amount paid or intended to be paid to any promoter	Amount: Rs.....
Consideration for the payment	Consideration.

Dates of parties to, and general nature of -

- (a) Contract appointing or fixing the remuneration of directors, chief executive, managing agent, if any, or secretary; and
- (b) Every other material contraction (other than (I) contracts entered into in the ordinary course of the business intended to be carried on by the company or (ii) entered into more than two year before the delivery of this statement).

Time and place at which-(1) the contracts or copies thereof or (2) (I) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (ii) in the case of a contract wholly or partly in a language other than English or Urdu, or embodying a translation in English or Urdu of the parts in the other language, as the case may be, being as the prescribed manner to be a correct translation, may be inspected

Names and addresses of the auditors and legal advisers of the company (if any).

Full particulars of the nature and extent of the interest of every director, chief executive, managing agent, if any, or secretary in the promotion of or in the property proposed to be acquired, by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

Amount of minimum subscription and other information as required under sub-clause (a) and (b) of clause 5 of part I

(Signatures of the persons above named as directors or proposed directors, or of their agents authorized in writing).

Date : \_\_\_\_\_

## **SECTION 2 REPORTS TO BE SET OUT**

1. Where it is proposed to acquire a business, a report made by auditors (who shall be named in the statement) upon-

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and
- (b) the assets and liabilities of the business as at the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by auditors (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (2) or (3) of this clause, as the case may require, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the share to be acquired, have concerned members of the company, and what allowance would have fallen to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-clause (1) shall-

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate as at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries the report referred to in sub-clause (1) shall-

- (a) so far as regards profits and losses, deal separately with other body corporate's profits or losses as provided by sub-clause (2) , and in addition either-

- (i) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of the other body corporate ; or
  - (ii) individually with the profits or losses of each subsidiary, so far as they concern member of the other body corporate; or instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and
- (b) so far as regards assets and liabilities deal separately with the other body corporate's assets and liabilities as provided by sub-clause (2) and, in addition, deal either-
- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or
  - (ii) individually with the assets and liabilities of each subsidiary; and shall indicate, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

**SECTION 3**  
**PROVISIONS APPLYING TO SECTIONS 1 AND 2 OF THIS PART**

3. (1) In this Part, the expression “vendor” includes a vendor as defined in section 3 of Part I.

(2) Clause 35 of Part I shall apply to the interpretation of section 2 of this Part as it applies to the interpretation of section 2 of Part I.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made up in respect of four such years, the accounts of the business or body corporate have only been made up in respect of four such years, three such years, two such years or one such year, section 2 of this Part shall have effect as if reference to four financial years three financial years, two financial years or one as if reference to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

5. Any report required by section 2 of this Part shall either -

- (a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appears to the person making the report necessary; or
- (b) make those adjustments and indicate that adjustments have been made.
6. Any report by auditors required by section 2 of this Part-
- (a) shall be made by auditors qualified under the Ordinance for appointment as auditors of a company; and
- (b) shall not be made by any auditor who is an officer or servant, or a partner or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, "officer" shall include a proposed director but not an auditor.

### **PART III**

#### **FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY AND REPORTS TO BE SET OUT THEREIN**

#### **THE COMPANIES ORDINANCE, 1984**

#### **SECTION 1**

#### **FORM OF STATEMENT AND THE PARTICULARS TO BE CONTAINED THEREIN**

(Pursuant to section 45 of the Companies Ordinance, 1984)

Name of company

Delivered for registration by

The nominal share capital of the company

Rs.....divided  
into.....shares of  
Rs.....Each.

Names, address and Description of:-

- (a) directors or proposed director;
- (b) chief executive or proposed chief executive;
- (c) managing agent or proposed managing agent, if any;
- (d) secretary or proposed secretary.

Any provision in the articles of the company, or in any contract irrespective, of the time when it was entered into, as to the appointment of and remuneration payable to the persons referred to in (a), (b),(c) and (d) above

Number and amount of shares issued	.....shares; Rs.....
Amount of commission paid or payable in connection therewith	Rs.
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.	Rs.
Unless more than two years have elapsed since the date on which the company was entitled to commence business;-	
Amount of preliminary expenses	Rs.
By whom those expenses have been paid or are payable	Name of promoter.
Amount paid or intended to be paid to any promoter	Rs
Consideration for the payment	Consideration;
Any other benefit given or intended to be given to any promoter	Name of promoter;
Consideration for the benefit	Nature and value of benefit
The right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	Consideration:
Number and amount of shares and debentures issues within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1 ..... Shares of Rs ..... fully paid. 2 ..... Share upon which Rs .... per share credited as paid. 3 ..... Debentures for Rs ..... each
Consideration for the issue of those shares or debentures	4. Consideration

<p>Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from, a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.</p>	<p>1 ..... Shares of Rs ..... and debentures of Rs .....</p>
<p>Period during which the option is exercisable</p>	<p>2. Until.</p>
<p>Price to be paid for shares or debentures subscribed for or acquired under the option</p>	<p>3. Rs.</p>
<p>Consideration for the option or right to option</p>	<p>4. Consideration</p>
<p>Persons to whom the option or the right to option was given, or, if given to existing shareholders or debentures holders as such, the relevant shares or debentures.</p>	<p>5. Name and addresses;</p>
<p>Names, addresses, descriptions and occupations of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the transaction and the company ceasing to be a private company or where the amount of the purchase money is not material.</p>	
<p>Amount (in case, shares or debentures) paid or payable to each separate vendor.</p>	<p>Rs.</p>
<p>Amount paid or payable in cash, shares or debentures for each such property, specifying the amount paid or payable for goodwill</p>	<p>Total purchase price Cash Shares Debentures Goodwill</p>
<p>Short particulars of every transaction relating to each such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the thereof, a promoter, director or proposed director of the company had any interest direct or indirect</p>	

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or rate of the commission.	Amount paid ... Amount payable .... Rate per cent .....
--	---

The number of shares, if any, which persons have agreed to subscribe for a commission .....shares.....

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business in respect of each of the five years immediately preceding the date of this statement, provided that, in the case of a business which has been carried on for less than five years, and the accounts of which have only been made up in respect of four years, three years, two years, or one year, the above requirements shall have effect as if references to five years and in any such case, the statement shall say how long the business to be acquired has been carried on.

Where the financial year with respect to which the accounts of the business have been made up is greater or less than a year, references to five years, four years, three years, two years and one year in this paragraph shall have effect as if references to such number of financial years, as, in the aggregate, cover a period of not less than five years, four years, three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year respectively.

Dates of, parties to, and general nature of -

- (a) contract appointing or fixing the remuneration of directors, chief executive, managing agent or secretary; and
- (b) every other material contract (other than (i) contracts entered into in the ordinary course of the business intended to be carried on by the company or (ii) entered into more than two years before the delivery of this statement ).

Time and place at which (1) the contracts or copies thereof; (2) (i) in the case of contract not reduced into writing a memorandum giving full particulars thereof, and (ii) in the case of a contract wholly or partly in language other than English or Urdu, a copy of translation thereof in English or Urdu or embodying a translation in English or Urdu of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, may be inspected.

Names and addresses of the auditors and legal advisers of the company.

Full particulars of the nature and extent of the interest of every director, chief executive, managing agent or secretary, in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or other wise for services rendered or to be rendered to the company by him or by the firm

Rate of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately, preceding the date of this statement or since the incorporation of the company, whichever period is shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

(Signatures of the persons above named as directors or proposed directors or of their agent authorized in writing )

Date: .....

## SECTION 2 REPORTS TO BE SET OUT

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by auditors (who shall be named in the statement) upon--

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and
- (b) the assets and liabilities of the business as at the last date to which the accounts of the business were made up.

2. (1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by auditors (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (2) or (3) of this clause, as the case may require, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of a company, and what allowance would have fallen to be made, in had at all material times held the shares to be required.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-clause (1) shall-

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate as at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-clause (1) shall-

- (a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-clause (2) , and in addition deal either-
  - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate;

- (ii) individually with the profits or losses of its subsidiaries, so far as they of the other body corporate; or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate, and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and
- (b) so far as regards as regards assets and liabilities, deal separately the other body corporate's assets and liabilities as provided by sub-clause (2) and in addition, deal either-
  - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without a the other body corporate's assets and liabilities; or
  - (ii) individually with the assets and liabilities of each subsidiary; and shall indicate, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

### **SECTION 3**

#### **PROVISIONS APPLYING TO SECTIONS 1 AND 2 OF THIS PART**

3. (1) In this Part, the expression “vendor” includes a vendor as defined in section 3 of Part I.

(2) Clause 35 of Part 1 shall apply to the interpretation of sections 1 and 2 of this Part as it applies to the interpretation of Part I.

4. If in the case of a business which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made up in respect of four such years, three such years, two such years or one such year, section 1 and 2 of this Part shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

5. Any report required by section 2 of this Part shall either-
- (a) indicate by way of note any adjustments as respects the figures of any profits losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary;
  - (b) make those adjustments and indicate that adjustments have been made.

6. Any report buy auditors required by section 2 of this Part shall -
- (a) be made buy auditors qualified under the Ordinance for appointment as auditors of a company ; and
  - (b) shall not be made by any auditor who is an officer or servant or a partner or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, “ officer” shall include a proposed director but not an auditor.

**\*[THIRD SCHEDULE**

(See section 156)

**FORM A- ANNUAL RETURN OF COMPANY HAVING SHARE CAPITAL**

1	Registration No.			
2	Name of the Company			
3	Form A made upto (Day/Month/Year)			
4	Date of AGM (Day/Month/Year)			

**PART-A**

5	Registered office address:			
6	Email Address:			
7	Office Tel. No.:			
8	Office Fax No.:			
9	Nature of Business:			
10	Authorized Share Capital			
	Type of Shares	No. of Shares	Amount	Face Value
	Ordinary Shares			
11	Paid up Share Capital			

\* Substituted by SRO 49(I)/2003 dated 15.01.2003.

Type of Shares	No. of Shares	Amount	Issue Price
Ordinary Shares			

12 Amount of indebtedness on the date upto which form A is made in respect of all Mortgages/Charges

13 Particulars of the holding company  
 Name  
 Registration No. % Shares Held

14 Chief Executive  
 Name NIC  
 Address

15 Chief Accountant  
 Name NIC  
 Address

16 Secretary  
 Name NIC  
 Address

17 Legal Adviser  
 Name  
 Address

18 Auditors  
 Name  
 Address

19 List of Directors on the date of Form-A

Name of Director	Address	Nationality	NIC (Passport No. if foreigner)																	
1.																				
2.																				
3.																				
4.																				
5.																				
6.																				
7.																				
8.																				
9.																				

PART-B

20. List of members & debenture holders on the date upto which this Form A is made

Folio	Name	Address	Nationality	No. of Shares	NIC (Passport No. if foreigner)



\*\*\*Use separate sheet, if necessary\*\*\*

22. I certify that this return and the accompanying statements state the facts correctly and completely as on the date upto which this Form-A is made

Date		Day	Month	Year	Signature	
					Designation (Please tick)	Chief Executive/Secretary

**INSTRUCTIONS FOR FILLING FORM-A**

1. The Form shall be made upto the date of last AGM of the Company or the last date of the year where no AGM is held during the year.
2. Under nature of business, please give precisely the specific nature of business in which the company is engaged.
3. Under S. No.20 above, the aggregate number of shares held by each member should be stated, and the aggregates must be added up so as to agree with the number of shares stated against NO. 11.
4. When the shares are of different classes the columns should be subdivided so that the number of each class held, or transferred, is shown separately against S. Nos. 10,11,20 and 21.
5. If the space provided in the Form is insufficient, the required particulars should be listed in a separate statement attached to this return which should be similarly certified and signed.
6. The return and any statement attached hereto shall be signed by the chief executive or the secretary.
7. In case a body corporate is a member, NIC number may be omitted to be given.
8. In case of foreign nationals, indicate “passport number” in the space provided for “NIC No.” Pakistani nationals will only indicate “NIC NO.”
9. This form is to be filed within 30 days (45 days in case of listed company) of the date indicated in S.No.3 above.

**FORM B- ANNUAL RETURN OF COMPANY NOT HAVING SHARE CAPITAL**

1	Registration No.			
2	Name of the Company			
3	Form B made upto (Day/Month/Year)			
4	Date of AGM (Day/Month/Year)			

PART-A

5	Registered office address:
6	Email Address:
7	Office Tel. No.:
8	Office Fax No.:
9	Nature of Business:
10	Total number of members

11	Amount of indebtedness on the date upto which form B is made in respect of all Mortgages/Charges	
12	<u>Particulars of the holding company</u>	
	Name	
	Reg. No.	

13	<u>Chief Executive</u>		
	Name	NIC	
	Address		

14	<u>Chief Accountant</u>		
	Name	NIC	
	Address		

15	<u>Secretary</u>		
	Name	NIC	
	Address		

16	<u>Legal Advisor</u>		
	Name		
	Address		

17	<u>Auditors</u>		
	Name		
	Address		

18 List of Directors on the date of Form-B

Name	Address	Nationality	NIC (Passport No. if Foreigner)	Appointment Date
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				

\*\*\*Use separate sheet, if necessary\*\*\*



3. The total number of members must be added up to agree with number stated against NO.10.
4. If the space provided in the Form is insufficient, the required particulars should be listed in a separate statement attached to this return which should be similarly certified and signed.
5. The return and any statement attached hereto shall be signed by the chief executive or the secretary.
6. In case a body corporate is a member, NIC number may be omitted to be given.
7. In case of foreign nationals, indicate "passport number" in the space provided for "NIC No." Pakistani nationals will only indicate "NIC No."
8. This form is to be filed within 30 days of the date indicated in S.No.3 above".

#### **FOURTH SCHEDULE**

*(See section 234)*

#### **REQUIREMENTS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT OF LISTED COMPANIES**

##### **PART I**

##### **GENERAL**

1. The listed companies and their subsidiaries shall follow all the International Accounting Standards in regard to accounts and preparation of balance sheet and profit and loss account as are notified for the purpose in the official Gazette by the Commission, under sub-section (3) of section 234 of the Companies Ordinance, 1984 (XLVII of 1984).
2. In this Schedule, unless there is anything repugnant in the subject or context,\_\_\_

- (i) “arm’s length price” means the price applied in a transaction between knowledgeable and willing parties, not being related parties, in uncontrolled conditions;
- (ii) "capital reserve" includes capital redemption reserve, capital repurchase reserve account, share premium account, profit prior to incorporation or any reserve not regarded free for distribution by way of dividend;
- (iii) "executive" means an employee, other than the chief executive and directors, whose basic salary exceeds five hundred thousand rupees in a financial year;
- (iv) “related party”, in relation to a company, means an entity which has the ability to control the company or exercise significant influence over the company in making financial and operating decisions or vice versa and includes the following, namely:\_\_\_
  - (a) entities that directly or indirectly through one or more intermediaries control, or are controlled by, or are under common control with, the reporting company including holding companies, subsidiaries and fellow subsidiaries;
  - (b) associates, as defined in the International Accounting Standard 28, Accounting for Investments in Associates;
  - (c) individuals owning, directly or indirectly, an interest in the voting power of the reporting company that gives them significant influence over the company, and close members of the family of any such individual;
  - (d) key management personnel, that is, persons having authority and responsibility for planning, directing and controlling the activities of the reporting company including directors and officers of such company and close members of the families of such individuals;
  - (e) entities in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in clause (c) or (d) or over which such person is able to exercise significant influence including entities owned by directors or major shareholders of the reporting company and entities that have a key management personnel in common with the reporting company;
  - (f) entities in which one or more of the directors or members of the governing board are appointed by the reporting company or vice versa;
  - (g) where one or more of the directors or members of the governing board of the entity as well as the reporting company are appointed by the same person or persons;

(h) entities whose process of manufacture or business is wholly dependent on the use of know-how, patents, copyrights, trade- marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the reporting company is the owner or in respect of which the company has exclusive rights or vice versa;

(i) where more than half of the raw materials and consumables required in the process of manufacture carried out by an entity are supplied by the reporting company, or by persons specified by the company, or vice versa, and the prices and other conditions relating to the supply are influenced by the entity or the company; and

(j) where goods or articles manufactured or processed by an entity are sold or transferred to the reporting company or to persons specified by the company, or vice versa, and the prices and other conditions relating thereto are influenced by the entity or the company;

**Explanation.**\_\_

(1) In considering each possible related party relationship, attention should be directed to the substance of the relationship and not merely to the legal form.

(2) For the purposes of this clause,\_\_

(i) “entity” means a partnership firm or a Hindu undivided family or an association of persons or a trust or a company; and

(ii) “close members of the family of an individual” means persons who may be expected to influence, or be influenced by, that individual in their dealings with the reporting company.

(v) "revenue reserve" means reserve that is normally regarded as available for distribution through the profit and loss account, including general reserves and other specific reserves created out of profit and un-appropriated profit i.e., credit balance of profit and loss account after appropriations for the period to the date of balance sheet;

(vi) “transfer pricing” means the pricing of transactions between two or more related parties or between two or more segments of a company; and

(vii) any word or expression used herein but not defined in the Ordinance or this Schedule shall be assigned the meaning as under the generally accepted accounting principles.

**3.** The following shall be disclosed in the financial statements, namely:\_\_

- (i) Where determinable, the capacity of an industrial unit, actual production and the reasons for shortfall; and
- (ii) the general nature of any credit facilities available to the company under any contract, other than trade credit available in the ordinary course of business, and not availed of at the date of the balance sheet.

4. Any penalty in terms of money or otherwise imposed under any law by any authority shall be disclosed in the first annual report furnished after the imposition of the penalty. If, as a result of any appeal, revision petition, or review application, such penalty is reduced enhanced or waived, the original penalty imposed shall nevertheless be disclosed, and the fact of any reduction, enhancement or waiver shall be disclosed, in the first annual report furnished after such reduction, enhancement or waiver.

5. Where any property or asset, acquired with the funds of the company, is not held in the name of the company or is not in the possession and control of the company, this fact shall be stated; and the description and value of the property or asset, the person in whose name and possession or control it is held shall be disclosed.

6. In extremely rare circumstances, where the company decides to use a price other than the arm's length price, subject to the approval of the Board of Directors, for reasons to be recorded in writing, it is in the interest of the company to do so, there shall be disclosed in the financial statements,\_\_\_

- (i) that transactions between the company and related parties and between segments of the company have been measured at arm's length prices except for the transaction in question;
- (ii) the transaction for which a price other than the arm's length price has been used, the arm's length price that could have been applied and the price used; and
- (iii) the financial impact of the departure from the arm's length price on the company's net profit or loss, assets, liabilities, equity and cash flows for each relevant period presented.

## **PART II. \_\_ REQUIREMENTS AS TO BALANCE SHEET**

### **FIXED ASSETS**

1. Fixed assets, other than investments, shall be classified under appropriate sub- heads, duly itemized such as:

- (i) Property, plant and equipment:

- (a) land (distinguishing between free-hold and leasehold);
- (b) buildings (distinguishing between buildings on free-hold land and those on leasehold land);
- (c) plant and machinery;
- (d) furniture and fittings;
- (e) vehicles;
- (f) office equipment;
- (g) capital work in progress indicating significant item wise details;
- (h) development of property; and
- (i) others (to be specified).

**(ii) Intangible:**

- (a) goodwill;
- (b) brands names;
- (c) computer software;
- (d) licences and franchises;
- (e) patents, copyright, trade marks and designs;
- (f) intangible assets under development; and
- (g) others (to be specified).

**LONG-TERM INVESTMENTS**

**2(A).** There shall be shown under separate sub-heads the aggregate amount in respect of the following, namely:\_\_\_

- (i) Investments in related parties; and
- (ii) other investments.

**(B)** For the purposes of clauses(i) and (ii) of sub-head 2(A) above, investments shall be shown under the head long term investments, indicating separately,\_\_\_

- (a) at cost;
- (b) using the equity method;
- (c) held to maturity investments, which are not due to mature within next twelve months; and
- (d) available for sale investments, which are not intended to be sold within next twelve months.

### **LONG TERM LOANS AND ADVANCES**

**3(A)** There shall be shown under separate sub-heads, distinguishing between considered good and considered bad or doubtful, aggregate amounts respectively of the company's,\_\_\_

- (i) loans and advances to related parties; and
- (ii) other loans and advances.

**(B)** There shall be stated under sub-head 3(A)(i),\_\_\_

- (i) the name of each borrower together with the amount of loans and advances, the terms of loan and advance and the particulars of collateral security held, if any; and
- (ii) in case of loans and advances to directors, chief executive and executives, the purposes for which loans and advances were made and reconciliation of the carrying amount at the beginning and end of the period showing disbursement and repayments.

**(C)** There shall be stated under sub- head 3(A) (ii) in respect of loans and advances other than those to the suppliers of goods or services, the name of the borrower and terms of repayment if the loan or advance is material together with the particulars of collateral security, if any.

**(D)** There shall be disclosed separately in respect of sub-head 3(A) (i) the maximum aggregate amount of loans and advances outstanding at any time since the date of incorporation or since the date of the previous balance-sheet, whichever is later. Such maximum amounts shall be calculated by reference to month-end balance.

**(E)** Provision, if any, made for bad or doubtful loans and advances shall be shown as a deduction under each clause of sub-head 3(A).

**LONG-TERM DEPOSITS AND PREPAYMENTS**

**4.** There shall be stated separately long-term deposits and long-term prepayments. Any material item shall be disclosed separately.

**CURRENT ASSETS**

**5(A).** Current assets shall be classified under sub-heads appropriate to the company's affairs including, where applicable, the following, namely:\_\_\_

- (i) Stores, spare parts and loose tools distinguishing, where practicable, each from the other;
- (ii) stock- in-trade distinguishing between appropriate classifications;
- (iii) trade debts other than loans or advances, showing separately debts considered good and debts considered doubtful or bad;
- (iv) loans and advances, showing separately those considered good and those considered doubtful or bad;
- (v) trade deposits and short term prepayments and current account balances with statutory authorities;
- (vi) interest accrued;
- (vii) other receivables specifying separately the material items;
- (viii) financial assets, other than as mentioned in clauses(iii) to (vii) above, and cash and bank balances;
- (ix) tax refunds due from the Government; and
- (x) cash and bank balances, distinguishing between current and deposit accounts, where applicable.

**(B)** In the case of clauses (iii), (iv) and (viii) of sub-heads 5 (A) above the following particulars shall be stated separately, namely:\_\_\_

- (i) The aggregate amount due by directors, chief executive and executives of the company and any of the m severally or jointly with any other person; and
- (ii) aggregate amount due by related parties, other than in clause (i) of sub-head 5(B) above, names to be specified in each case.

**(C)** In case of clause (iii) of sub-head (5)(A) above there shall be shown under separate sub-heads the aggregate amount in respect of the following, namely:\_\_\_

- (i) Investments in related parties; and
- (ii) other investments.

**(D)** For the purposes of clause (i) and (ii) of sub-head (c) above, investments shall be shown under the head current assets, wherever applicable, indicating separately,\_\_\_

- (a) held to maturity investments;
- (b) available for sale investments; and
- (c) held for trading.

**(E)** Provision, if any, made for diminution in the value of or loss in respect of any current asset shall be shown as a deduction from the gross amount of the respective assets.

### **SHARE CAPITAL AND RESERVES**

**6.** Share capital and reserves shall be classified under the following subheads, namely:\_\_\_

**(i)** Issued, subscribed and paid up capital, distinguishing in respect of each class between,\_\_\_

- (a) shares allotted for consideration paid in cash;
- (b) shares allotted for consideration other than cash, showing separately shares issued against property and others (to be specified); and
- (c) shares allotted as bonus shares.

**(ii)** Reserves, distinguishing between capital reserves and revenue reserves.

### **SURPLUS ON REVALUATION OF FIXED ASSETS**

**7.** The surplus on revaluation of fixed assets shall be treated and shown as specified in section 235 of the Companies Ordinance, 1984 (XLVII of 1984).

### **NON CURRENT LIABILITIES**

**8(A)** Non-current liabilities shall be classified under appropriate sub-heads, duly itemized such as:

- (i)** long term financing;
- (ii)** debentures;
- (iii)** liabilities against assets subject to finance lease;
- (iv)** long term murabaha;

- (v) long term deposits; and
- (vi) deferred liabilities.

**(B)** Long term loans shall be classified as secured and unsecured, and under each class shall be shown separately:

- (i) loans from banking companies and other financial institutions, other than those as specified in clause (ii) below;
- (ii) loans from related parties; and
- (iii) other loans.

**(C)** Long-term deposits shall be classified according to their nature.

#### **CURRENT LIABILITIES**

**9(A)** Current liabilities and provisions shall, so far as they are appropriate to the company's business, be classified under the following sub-heads, namely:\_\_\_

**(i)** Trade and other payables, which shall be classified as:

- (a) creditors;
- (b) murabaha;
- (c) accrued liabilities;
- (d) advance payments;
- (e) payable to employee retirement benefit funds;
- (f) unpaid and unclaimed dividend; and
- (g) others ( to be specified, if material);

**(ii)** interest, profit, return or mark-up accrued on loans and other payables;

**(iii)** short term borrowings which shall be classified as:

- (a) short-term borrowings, distinguishing between secured and unsecured and between loans taken from:

- (i) banking companies and other financial institutions other than related parties;
- (ii) related parties; and
- (iii) others;
- (b) short-term running finance, distinguishing between secured and unsecured;
- (iv) current portion of long term borrowings;
- (v) current portion of long term murabaha; and
- (vi) provision for taxation, showing separately income tax and other taxes.

### **CONTINGENCIES AND COMMITMENTS**

**10.** There shall be added a footnote to the balance-sheet, showing separately,\_\_\_

- (i) aggregate amount of any guarantees given by the company on behalf of any related party and where practicable, the general nature of the guarantee;
- (ii) where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for or a statement that such an estimate can not be made;and
- (iii) any other commitment, if the amount is material, indicating the general nature of the commitment.

### **PART III. \_\_ REQUIREMENTS AS TO PROFIT AND LOSS ACCOUNT**

**1.** The profit and loss account shall be so drawn up as to disclose separately the manufacturing, trading and operating results. In the case of manufacturing concern, the cost of goods manufactured shall also be shown.

**2.** The profit and loss account shall disclose all material items of income and expenses including the following, namely:\_\_\_

**(A)** The turnover and showing as deduction therefrom trade discount and sales tax.

**(B)** Expenses, classified according to their function under the following sub-heads, along with additional information on their nature, namely:\_\_\_

- (i) Cost of sales;
- (ii) distribution cost;

(iii) administrative expenses;

(iv) other operating expenses; and

(v) finance cost.

**(C)** Other operating income, which shall include the following, namely:\_\_\_

(i) Income from financial assets;

(ii) income from investments in and debts, loans, advances and receivables to each related party; and

(iii) income from assets other than financial assets.

**(D)** Finance cost shall show, inter alia, separately the amount of interest on borrowings from related parties, if any.

**(E)** Other information relating to the following, namely:\_\_\_

(i) Debts written off as irrecoverable distinguishing between trade debts, loans, advances and other receivables; and

(ii) provisions for doubtful or bad debts distinguishing between trade debts, loans, advances and other receivables.

**(F)** The aggregate amount of auditors' remuneration, showing separately fees, expenses and other remuneration for services rendered as auditors and for services rendered in any other capacity and stating the nature of such other services. In the case of joint auditors, the aforesaid information shall be shown separately for each of the joint auditors.

**(G)** In the case of donations where any director or his spouse has interest in the donee, the names of such directors, their interest in the donee and the names and address of all donees shall be disclosed.

**3.** There shall be stated by way of a note the respective amounts included in items (E) (i) and (ii) of paragraph 2 of this Part for:

(i) debts due by directors, chief executive, and executives of the company and any of them severally or jointly with any other person; and

(ii) debts due by related parties (other than in clause (i) above).

**4.** The following shall be stated by way of a note, namely:\_\_\_

**(i)** The aggregate amount charged in the financial statements in respect of the directors, chief executive and executives by the company as fees, remuneration, allowances,

commission, perquisites or benefits or in any other form or manner and for any services rendered, and shall give full particulars of such aggregate amounts separately for the directors, chief executive and executives together with the number of such directors and executives, under appropriate heads, such as,\_\_\_

- (a) fees;
- (b) managerial remuneration;
- (c) commission or bonus, indicating the nature thereof;
- (d) reimbursable expenses which are in the nature of a perquisite or benefit;
- (e) pension, gratuities, company's contribution to provident, superannuation and other staff funds, compensation for loss of office and in connection with retirement from office;
- (f) other perquisites and benefits in cash or in kind stating their nature and, where practicable, their approximate money values; and
- (g) the amounts, if material, by which any items shown above are affected by any change in an accounting policy.

**(ii)** In the case of sale of fixed assets, if the book value of the asset or assets exceeds in aggregate fifty thousand rupees, particulars of the assets and in aggregate,\_\_\_

- (a) cost or valuation, as the case may be;
- (b) the book value; and
- (d) the sale price and the mode of disposal (e.g. by tender or negotiation) and the particulars of the purchaser.”

**FIFTH SCHEDULE**

*(See section 234)*

**REQUIREMENT AS TO BALANCE SHEET AND PROFIT AND LOSS  
ACCOUNT OF NON-LISTED COMPANIES****PART I - GENERAL**

1A. All Medium-Sized and Small-Sized companies as defined in this Schedule shall follow the Accounting and Financial Reporting Standards for Medium-Sized Companies and Small-Sized Companies, whichever is applicable, in regard to accounts and preparation of balance sheet and profit and loss account as are specified for the purpose by the Commission under sub-section (3) of section 234 of the Companies Ordinance, 1984 (XLVII of 1984).

1B. The requirements contained in this Schedule shall apply to all un-listed companies unless otherwise specified.

2. In this Schedule, unless there is anything repugnant in the subject or context, -

- (i) "capital reserve" includes capital redemption reserve, capital repurchase reserve account, share premium account, profit prior to incorporation or any reserve not regarded free for distribution by way of dividend;
- (ii) "debts" includes loans and advances and other receivables where it relates to amounts written off and provisions for doubtful and bad debts;
- (iii) "economically significant company" means a company which has:
  - (a) turnover in excess of Rs. 1 billion, excluding other income;

- (b) number of employees in excess of 750;
- (c) total borrowings (excluding trade creditors and accrued liabilities) in excess of Rs. 500 million:

Provided that in order to be treated as economically significant any two of the criterion mentioned in (a), (b) and (c) above have to be met. The criteria followed will be based on the previous year's audited financial statements. Companies can be excluded from this category where they do not fall under the aforementioned criteria for two consecutive years;

- (iv) "Medium-Sized Company" means a company that:
  - (a) is not a listed company or a subsidiary of a listed company;
  - (b) has not filed, or is not in the process of filing, its financial statements with the Securities and Exchange Commission of Pakistan (SECP) or other regulatory organization for the purpose of issuing any class of instruments in a public market;
  - (c) does not hold assets in a fiduciary capacity for a broad group of outsiders, such as a bank, insurance company, securities broker/dealer, pension fund, mutual fund or investment banking entity;
  - (d) is not a public utility or similar company that provides an essential public service;
  - (e) is not economically significant on the basis of criteria defined in clause (iii);
 and
  - (f) is not a Small-Sized Company on the basis of criteria defined in clause (vii);
- (v) "related party" shall mean an entity that :-
  - (a) directly or indirectly through one or more intermediaries:
    - (i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and fellow subsidiaries);
    - (ii) has an interest in the entity that gives it significant influence over the entity; or
    - (iii) has joint control over the entity;
  - (b) the party is an associate of the entity;

- (c) the party is a joint venture in which the entity is a venturer;
  - (d) the party is a member of the key management personnel of the entity or its parent;
  - (e) the party is a close member of the family of any individual referred to in (a) or (d);
  - (f) the party is an entity that is controlled, jointly controlled or significantly influenced by, or for which significant voting power in such entity resides with, directly or indirectly, any individual referred to in (d) or (e); or
  - (g) the party is a post-employment benefit plan for the benefit of employees of the entity, or of any entity that is a related party of the entity;
- (vi) "revenue reserve" means reserve that is normally regarded as available for distribution through the profit and loss account, including general reserves and other specific reserves created out of profit and unappropriated profit i.e. credit balance of profit and loss account after appropriations for the period to the date of balance sheet;
- (vii) "Small-Sized Company" means a company that:
- (a) has a paid up capital plus undistributed reserves (total equity after taking into account any dividend proposed for the year) not exceeding Rs. 25 million;
  - (b) has employees not exceeding two hundred and fifty at any time during the year; and
  - (c) has annual turnover not exceeding Rs. 250 million, excluding other income:

Provided that in order to qualify as a Small-Sized Company, all of the above-mentioned conditions must be satisfied;

- (viii) "turnover" means the gross income exclusive of trade discount shown on invoice of bills, derived from sale of goods or from rendering, giving or supplying services or benefits or from execution of contracts;
- (ix) any word or expression used herein but not defined in the Ordinance or this Schedule or Accounting and Financial Reporting Standards for Medium-Sized Companies and Small-Sized Companies issued by the Institute of Chartered Accountants of Pakistan or International Financial Reporting Standards issued by International Accounting Standards Board shall be assigned the meaning as under the generally accepted accounting principles.

3. The following shall be disclosed in the financial statements, namely: -

- (i) All material information necessary to make the financial statements clear and understandable;
- (ii) change in an accounting policy that has material effect in the current year or may have a material effect in the subsequent year together with reasons for the change and the financial effect of the change, if material;

4. The general nature of any credit facilities available to the company under any contract, other than trade credit available in the ordinary course of business, and not availed of at the date of the balance sheet shall be disclosed in financial statements.

5. Any penalty in terms of money or otherwise imposed under any law by any authority shall be disclosed in the first annual report furnished after the imposition of the penalty. If, as a result of any appeal, revision, petition, or review application, such penalty is reduced, enhanced or waived, the original penalty imposed shall nevertheless be disclosed, and the fact of any reduction, enhancement or waiver shall be disclosed, in the first financial statements furnished after such reduction, enhancement or waiver.

6. Where any property or asset, acquired with the funds of the company, is not held in the name of the company, or is not in the possession and control of the company, this fact shall be stated; and the description and value of the property or asset, the person in whose name and possession or control it is held shall be disclosed.

7. If any loan or advance has been granted or debt allowed on terms softer than those generally prevalent in trade or any relief or concession allowed in matters of interest, repayment, security or documentation, details with reasons thereof shall be stated along with the nature of interest of the company or its directors or other officers.

8. The figures in the financial statements may be rounded off to the nearest thousand of rupees.

## **PART II - REQUIREMENTS AS TO BALANCE SHEET NON-CURRENT ASSETS**

1. Non-current assets, other than investments, shall be classified under appropriate sub-heads, duly itemized such as:

### **(i) Property, plant and equipment:**

- (a) land (distinguishing between free-hold and leasehold);
- (b) buildings (distinguishing between buildings on free- hold land and those on leasehold land);

- (c) plant and machinery;
- (d) furniture and fittings;
- (e) vehicles;
- (f) office equipment;
- (g) capital work in progress indicating significant item wise details;
- (h) development of property; and
- (i) others (to be specified).

**(ii) Intangible:**

- (a) goodwill;
- (b) brands names;
- (c) computer software;
- (d) licenses and franchises;
- (e) patents, copyright, trade marks and designs; and
- (f) others (to be specified).

**LONG-TERM INVESTMENTS**

2(A). There shall be shown under separate sub-heads the aggregate amount in respect of the following, namely: -

- (i) investments in related parties; and
- (ii) other investments.

(B) A company which is not a Small-Sized Company shall, for the purposes of clauses (i) and (ii) of sub-head 2(A) above, also disclose investments under the head long term investments, indicating separately,

- (a) held to maturity investments, which are not due to mature within next twelve months; and

(b) available for sale investments, which are not intended to be sold within next twelve months, and

(c) market value of listed securities and book value of unlisted securities as per their latest available financial statements.

### **LONG-TERM LOANS AND ADVANCES**

3(A). There shall be shown under separate sub-heads, distinguishing between considered good and considered bad or doubtful, aggregate amounts respectively of the company's, -

(i) loans and advances to related parties; and

(ii) other loans and advances.

(B) Information on terms and conditions, securities obtained and any other material information shall be disclosed.

(C) Provision, if any, made for bad or doubtful loans and advances shall be shown as a deduction under each sub-head of paragraph 3(A).

### **LONG-TERM DEPOSITS AND PREPAYMENTS**

4. There shall be stated separately long-term deposits and long-term prepayments.

### **CURRENT ASSETS**

5(A). Current assets shall be classified under sub-heads appropriate to the company's affairs including, where applicable, the following, namely: -

(i) stores, spare parts and loose tools distinguishing, where practicable, each from the other;

(ii) stock-in-trade distinguishing between appropriate classifications;

(iii) trade debts other than loans or advances, showing separately debts considered good and debts considered doubtful or bad;

(iv) loans and advances, showing separately those considered good and those considered doubtful or bad;

(v) trade deposits and short term prepayments and current account balances with statutory authorities.

- (vi) interest accrued;
- (vii) other receivables
- (viii) financial assets, other than as mentioned in clauses (iii) to (vii) above, and cash and bank balances;
- (ix) tax refunds due from the Government; and
- (x) cash and bank balances, distinguishing between current and deposit accounts, where applicable.

5(B). A company which is not a Small -Sized Company shall, in the case of clauses (iii), (iv) and (viii) of sub-head 5 (A) above, also state the following particulars, namely: -

- (i) the aggregate amount due by directors and chief executive and executives of the company and any of them severally or jointly with any other person; and
- (ii) aggregate amount due by related parties, other than in clause (i) of subhead

5(B) above; names to be specified in each case.

5(C). A company which is not a Small-Sized Company shall, in case of clause (iv) of sub-head (5)(A) above, also disclose under separate sub- heads the aggregate amount in respect of the following, namely: -

- (i) investments in related parties; and
- (ii) other investments.

5(D). A company which is not a Small-Sized Company, for the purposes of clause (i) and (ii) of sub-head 5(C) above, shall also disclose investments under the head current assets, wherever applicable, indicating separately: -

- (i) held to maturity investments;
- (ii) available for sale investments; and
- (iii) held for trading.

5(E). Provision, if any, made for diminution in the value of or loss in respect of any current asset shall be shown as a deduction from the gross amount of the respective asset.

## **SHARE CAPITAL AND RESERVES**

6. Share capital and reserves shall be classified under the following subheads, namely: -

- (i) Issued, subscribed and paid up capital, distinguishing in respect of each class between:-
  - (a) shares allotted for consideration paid in cash;
  - (b) shares allotted for consideration other than cash, showing separately shares issued against property and others (to be specified); and
  - (c) shares allotted as bonus shares.
- (ii) Reserves, distinguishing between capital reserves and revenue reserves.

#### **SURPLUS ON REVALUATION OF FIXED ASSETS**

7. The surplus on revaluation of fixed assets shall be treated and shown as specified in section 235 of the Companies Ordinance, 1984 (XLVII of 1984).

#### **NON CURRENT LIABILITIES**

8(A). In the case of a company which is not a Small-sized company non-current liabilities shall be classified under appropriate sub-heads, duly itemized such as:

- (i) long term financing;
- (ii) debentures;
- (iii) liabilities against assets subject to finance lease;
- (iv) long term murabaha;
- (v) long term deposits; and
- (vi) deferred liabilities.

8(B). Long term loans shall be classified as secured and unsecured. In the case of a company which is not a Small-sized company, under each class, it shall also disclose separately:

- (i) loans from banking companies and other financial institutions, other than those as specified in clause (ii) below;
- (ii) loans from related parties; and
- (iii) other loans.

8(C). Long-term deposits shall be classified according to their nature.

**CURRENT LIABILITIES**

9. Current liabilities and provisions shall, so far as they are appropriate to the company's business, be classified under the following sub- heads, namely: \_\_

- (i) Trade and other payables, which shall be classified as:
  - (a) creditors;
  - (b) murabaha;
  - (c) accrued liabilities;
  - (d) advance payments;
  - (e) payable to employee retirement benefit funds;
  - (f) unpaid and unclaimed dividend; and
  - (g) others (to be specified, if material);
- (ii) interest, profit, return or mark-up accrued on loans and other payables;
- (iii) short term borrowings which shall be classified as:
  - (a) short-term borrowings, distinguishing between secured and unsecured. A company which is not a Small-sized Company shall also classify between loans taken from:
    - i. banking companies and other financial institutions other than related parties;
    - ii. related parties; and
    - iii. others;
  - (b) short-term running finance, distinguishing between secured and unsecured;
  - (iv) current portion of long term borrowings;
  - (v) current portion of long term Murabaha; and
  - (vi) provision for taxation, showing separately income tax and other taxes.

## **CONTINGENCIES AND COMMITMENTS**

10. In case of a company which is not a Small-sized company there shall be added a footnote to the balance-sheet, showing: -

- (i) aggregate amount of any guarantees given by the company on behalf of any related party and where practicable, the general nature of the guarantee;
- (ii) where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for or a statement that such an estimate can not be made;
- (iii) any other commitment, if the amount is material, indicating the general nature of commitment.

## **PART III – REQUIREMENTS AS TO PROFIT AND LOSS ACCOUNT**

1. The profit and loss account shall be so drawn up as to disclose separately the manufacturing, trading and operating results. In the case of manufacturing concern, the cost of goods manufactured shall also be shown. 2(A). The profit and loss account shall disclose all material items of income and expenses including the following, namely: -

- (i) The turnover and showing as deduction therefrom trade discount and sales tax.
- (ii) Expenses, classified according to their function under the following subheads, along with additional information on their nature, namely: -
  - (a) cost of sales;
  - (b) distribution cost;
  - (c) administrative expenses;
  - (d) other operating expenses; and
  - (e) finance cost.
- (iii) Other operating income, which shall include items such as:-
  - (a) Income from financial assets;
  - (b) income from investments in debts, loans, advances and receivables from each related party; and

(c) income from assets other than financial assets.

The above items shall be sub-classified appropriately if amount is material. 2(B). In the case of a company which is not a Small-sized company, it shall also disclose separately the amount of interest on borrowings from related parties, if any.

2(C). Other information relating to the following, namely:-

- (i) Debts written off as irrecoverable distinguishing between trade debts, loans, advances and other receivables; and
- (ii) provisions for doubtful or bad debts distinguishing between trade debts, loans, advances and other receivables.

3. A company which is not a Small-sized company shall state the following by way of a note, namely:-

- (i) The aggregate amount charged in the financial statements in respect of the directors and chief executive by the company as fees, remuneration, allowances, commission, perquisites or benefits or in any other form or manner and for any services rendered, and shall give full particulars of such aggregate amounts separately for the directors and chief executive together with the number of such directors, under appropriate heads, such as, -
  - (a) fees;
  - (b) managerial remuneration;
  - (c) commission or bonus, indicating the nature thereof;
  - (d) reimbursable expenses which are in the nature of a perquisite or benefit;
  - (e) pension, gratuities, company's contribution to provident, superannuation and other staff funds, compensation for loss of office and in connection with retirement from office;
- (f) other perquisites and benefits in cash or in kind stating their nature and, where practicable, their approximate monetary values; and
- (g) the amounts, if material, by which any items shown above are affected by any change in an accounting policy.”

<sup>137</sup>**SIXTH SCHEDULE**  
(See sections 466 and 470)

**TABLE OF FEES TO BE PAID TO THE REGISTRAR AND THE COMMISSION**

I. By a company having a share capital:-	Rs.
<sup>138</sup> [(1) For registration of a company whose nominal share capital does not exceed Rs. 100,000. a fee of	2,500
(2) For registration of a company whose nominal share capital exceeds 100,000 rupees, a fee of two thousand five hundred rupees, along with an additional fee to be determined according to the amount of nominal share capital as follows, namely:-	
(i) For every 100,000 rupees of nominal shares capital or part of 100,000 rupees, after the first 100,000 rupees, upto 5,000,000 rupees, a fee of	500
(ii) For every 100,000 rupees of nominal share capital or part of 100,000 rupees, after the first 5,000,000 rupees, a fee of	250
Provided that for registration of a company the total amount of fee to be paid shall not exceed ten million rupees.]	
(3) For registration of an increase in the share capital made after the first registration of the company, an amount equal to the difference between the amount which would have been payable on registration of the company by reference to its capital as increased and amount which would have been payable by reference to its capital immediately before the increase, calculated at the rates given under clause 2.	
(4) For registration of any existing company, except such companies as are by the Ordinance exempt from payment of	

<sup>137</sup> Amended vide SRO 756(I)/2000 dated 19<sup>th</sup> October, 2000.

<sup>138</sup> Serial No. (1) and (2) and entries relating thereto substituted by Notification No. SRO 1095(I)/2003, dated December, 2003

fees in respect or registration under this Ordinance, the same fee as is charged for registering a new company.

- |   |   |         |
|---|---|---------|
| (5)   | For filing, registering or recording a document by the Ordinance required or authorized to be filed, registered or recorded, other than the particulars of mortgage/charge or other interest created by a company; or the memorandum or the abstract required to be filed with the registrar by a receiver or the statement or other document required to be filed with registrar by the liquidator in a winding up, a fee of | 200     |
| (6)   | For filing, registering or recording a document relating to a mortgage or charge mortgage/charge required under the Ordinance, a fee of   | 5,000   |
| (7)   | For making a record of any fact by this Ordinance authorised or required to be recorded by the registrar, a fee of  | 200     |
| II. By a company not having a share capital, other than a company registered under a licence granted under section 42:- |   |         |
| (1)   | For registration of a new company, a fee of   | 20,000  |
| (2)   | For registration of any existing company, except such a company, which is, by the Ordinance, exempted from payment of fees in respect of registration under the Ordinance, the same fee as charged for registering a new company.   |         |
| (3)   | For filing, registering or recording any document by the Ordinance required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement or other document required to be filed with the registrar by the liquidator in a winding up, a fee of   | 200     |
| (4)   | For making a record of any fact by this Ordinance authorised or required to be recorded by the registrar, a fee of  | 20<br>0 |
| III. By a company registered under a licence granted under section 42:—   |   |         |
| (1)   | For grant of licence, a fee of  | 5,000   |
| (2)   | For registration, a fee of  | 25,000  |

(3)	For filing, registering or recording any document by this Ordinance required or authorised to be filed, registered or required, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement or other document required to be filed with the registrar by the liquidator in winding up, a fee of	200
(4)	For making record of any fact by the Ordinance authorised or required to be recorded by the registrar, a fee of	200
IV.	By a company established outside Pakistan which has a place of business in Pakistan:-	
(1)	For filing, registering or recording any document by the Ordinance required or authorised to be filed, registered or recorded, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement or other document required to be filed with the registrar by the liquidator in a winding up, a fee of	200
(2).	For making a record of any fact by this Ordinance authorised or required to be recorded by the registrar, a fee of	200
V.	For inspecting documents kept by the registrar in respect of a company or inspecting any register kept by him in relation to companies, a fee of	200
VI.	(a) For a certified copy of the certificate of incorporation or a certificate of commencement of business or a certificate of registration of mortgage or charge, a fee of	50
	(b) For a certified copy or extract of any other document or register, calculated at the rate, per page or fractional part thereof required to be copied, a fee of	20
	(c) For providing list of companies, a fee calculated at the rate per data field, subject to a minimum fee of five hundred rupees, a fee of <sup>139</sup>	Rs. 2 per data field
	(d) For a Corporate Registration and Compliance System generated company profile, per company, a fee of	Rs.100

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<sup>139</sup> Inserted by SRO 188 (I)/2005

VII.	For any application submitted to the registrar or the Commission under the Ordinance:-	
	(a) by a member of the company or any other person having dealings with the company, a fee of	200
	(b) by any creditor of the company, a fee of	500
	(c) by or on behalf of the company, a fee of	500
VIII.	(a) For an application to the registrar for information about the position of any proposed name, a fee of	200
	(b) For an application to the registrar seeking approval for change of name, a fee of	1,000
IX	For an application to the Commission seeking permission to establish a leasing company, a non-refundable processing fee of	100,000
X	For an application to the Commission seeking permission to establish a company other than a leasing company, a non-refundable fee of	25,000
XI	For an application to the Commission seeking approval to issue prospectus, a non-refundable fee of	25,000
XII	For an application to the Commission seeking confirmation of the alteration in the memorandum, a fee of	5,000
XIII	For an application seeking extension in the prescribed period for holding annual general meeting;	
	(a) by a public company, a fee of	15,000
	(b) by a private company, a fee of	5,000]

**SEVENTH SCHEDULE**

*(See section 508)*

**ENACTMENTS REPEALED**

<b>Year</b>	<b>No</b>	<b>Subject or Short Title</b>	<b>Extent of repeal</b>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
1913	VII	The Companies Act, 1913	The whole.
1918	VI	The Companies (Foreign Interests) Act, 1918	The whole
1930	VIII	The Companies (Amendment) Act, 1930	The whole
1958	X	The Undesirable Companies Act, 1958	The whole

1969	XVII	The Securities and Exchange Ordinance. sections 11 to 15 1969	
1972	President's Order No.	The Companies (Managing Agency and Election of Directors) Order, 1972	The whole.
	2		
1972	V	The Companies (Shifting of Registered Office) Ordinance, 1972	The whole.

### **EIGHTH SCHEDULE**

*(See section 509)*

#### **AMENDMENT OF ORDINANCE. XVII OF 1969**

As from the commencement of this Ordinance, the following amendments shall be made in the Securities and Exchange Ordinance. 1969 (XVII of 1969), namely:—

- (a) in section 9. in sub section (1), for the word “fourteen”, twice occurring, the word “sixty” shall be substituted;
- (b) in section 21, for subsections (1) and (2) the following shall be substituted, namely:—

“(1) The Federal Government may, on its own motion or on representation of not less than one-fifth in number of the members of the Stock Exchange or, in the case of the business or any transaction mentioned in clause (b), on the representation of the Stock Exchange or any person interested in or affected by such business or transaction, at any time by order in writing, cause an enquiry to be made by any person appointed in this behalf into—

- (a) the affairs of, or dealings in any Stock Exchange; or
- (b) the dealings, business or any transaction in securities by any broker, member, director or officer of a Stock Exchange.

(2) Where any inquiry under sub-section (1) has been undertaken every past or present member, director, manager or other officer of the Stock Exchange to which the enquiry relates, and every other person who has had any dealing in the course of his business with such Stock Exchange or with the director, manager or officer thereof, shall furnish such information and documents in his custody or power or within his knowledge relating to or having a bearing on the subject-matter of the enquiry as the person conducting the enquiry may require”; and

- (c) section 28 shall be renumbered as sub-section (1) of that section and, after sub-section (1) renumbered as aforesaid, the following new sub-section shall be added, namely:-

“(2) Where the Federal Government has, under sub-section (1), directed that any of its powers and functions shall be exercised or performed also by any specified authority, such authority may, by notification in the official Gazette direct that any of the said powers and functions may, subject to such limitations, restrictions or conditions, if any, as it may from time to time impose, be exercised or performed by any officer of the authority specified by it.”