

Notification No. S.R.O. 323(I)/2002

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

S.R.O. 323(I)/2002.- In exercise of the powers conferred by section 10 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) read with section 20(4)(o) thereof, and in supersession of its notifications No.S.R.O.862(I)/2000 dated 6th December, 2000 and S.R.O. 183(I)/2001 dated 20th March, 2001, the Securities and Exchange Commission of Pakistan (the Commission), subject to such conditions and limitations as it may from time to time impose, hereby delegates the following powers and functions of the Commission to the Executive Directors of the respective Divisions, namely:-

1. Executive Director (Company Law Administration Division)

<u>S.No.</u>	<u>Relevant section of the Companies Ordinance, 1984</u>	Nature of power/function
1.	21(2)	To confirm alteration in the Memorandum of Association.
2.	21(3)	To dispense with the notice to persons likely to be affected by the alteration in the Memorandum.
3.	22	To make order confirming alteration in the Memorandum subject to terms and conditions.
4.	23	To adjourn the proceedings for an arrangement for purchase of interests of dissident members and to give other directions in the matter.
5.	24(3)	To extend time for filing of documents with the Registrar under this section.
6.	25	To revive order confirming alteration in the Memorandum.
7.	30(4)(b)	To hear appeal against order of the Registrar.

8.	37	To decide as to whether or not certain name of a company is in violation of the provisions of this section.
9.	42	To grant and revoke the licence.
10.	44	To approve the conversion of a public company into a private company.
11.	46	To grant relief from the consequences of default in complying with conditions constituting a company as a private company.
12.	84	To sanction issue of shares of private and non-listed companies at discount and to extend the time beyond sixty days after the date on which the sanction is issued.
13.	86	To allow a public non-listed company to raise its further capital without issue of right shares.
14.	195(1)	To accord approval for the grant of a loan to director of a private company or a non-listed public company, for specific purposes.
15.	206(3)	To accord approval for appointment of a sole purchase, sale or distribution agent of a private company or a non-listed public company.
16.	208	To relax the maximum limit of 30% in the case of non-listed company.
17.	251(2)	To allow private and non-listed public companies to with-hold or defer payment of dividend.
18.	252(6) & (8)	To appoint auditors and to fix their remuneration in case they are not appointed by a private or non-listed company and its directors within the prescribed period.
19.	254(7)	To appoint an auditor of a private or non-listed company in place of an unqualified/ disqualified person appointed by a company.
20.	263 & 265	To appoint inspectors to investigate into the affairs of private or non-listed public companies.

21.	264	To require the applicants requesting for investigation of non-listed companies to deposit security for payment of the costs of investigation.
22.	271	To apply to the Court for issue of an appropriate order against management of company, on the basis of findings of Inspector.
23.	275	To cause making of an application to the Court for winding up the company and/or for an order under section 290.
24.	276	To initiate proceedings for recovery of damages or property.
25.	277	To exercise all powers of the Commission regarding expenses of investigation and to get reimbursement.
26.	279	To impose restrictions on transfer of shares and debentures in certain cases and to initiate prosecution proceedings in the matter of private and non-listed public companies.
27.	289(5)	To hear appeals against the order of registrar refusing to register any circular regarding offer of a scheme of merger/amalgamation etc. involving the transfer of shares.
28.	309	To perform all functions and exercise all powers of the Commission under section 309, in the case of winding up of a private or non-listed public company.
29.	319	To apply to Court to stay winding up of a private or non-listed public company.
30.	326(5)	To take cognizance of any lapse, delay or other irregularity on the part of official liquidator.
31.	432(6)	To accord approval for payment of money kept under the Companies Liquidation Account.

32.	434	To make appointment of auditors and fix their remuneration, if no such appointment is made by the members or creditors.
33.	439(9)	To order restoration of the name of a defunct company.
34.	467	To accord special permission to take over or remove any original document from custody of registrar.
35.	472(1)	To make an order directing a private or non-listed company and its officers to make good the default and undo the irregularities.
36.	473	To direct a private or non-listed company to comply with the provisions of the Companies Ordinance during the pendency of the trial.
37.	478	To exercise the powers of a court under the Code of Civil Procedure in matters specified in this section.
38.	479	To issue a directive to the chief executive or other officer of the company to appear before him personally and answer the charges.
39.	484(2)	To review the order originally made by him.
40.	488	To grant relief in cases in which the powers have been delegated by the Commission.
41.	499	To accord approval subject to conditions in cases where powers of the Commission have been delegated.

2. Executive Director (Securities Market Division)

(a)

<u>S.No.</u>	<u>Relevant section of the Companies Ordinance, 1984</u>	Nature of power/function

1.	53(2)	To allow a prospectus to be issued more than thirty days before the date on which the subscription list is due to open.
2.	57	Approval of prospectus.
3.	62	Approval of the Commission for sale of shares or debentures to general public by a person holding more than ten per cent of the shares or debentures.
4.	62A	Approval for issue of securities by a company outside Pakistan.
5.	67(1)	To specify the minimum amount for which application can be made by a person in response to a prospectus.
6.	67(2)	To prescribe the form of application for subscription to shares or debentures.
7.	76(6)	To approve a financial institution for appointment as transfer agent.
8.	82(1)	To prescribe maximum rate of commission to be paid to a person in connection with issue of shares and debentures.
9.	82(3)	Power to specify the rate of brokerage.
10.	84	To sanction issue of shares of listed companies at discount at a rate not exceeding ten per cent and to extend the time beyond sixty days after date on which the sanction is issued.
11.	209(5)(b)	To approve a scheduled bank or a financial institution in the context of the provisions exempting a company from holding investments in its own name.
12.	224(2)	To order deposit of tenderable gain.
13.	246(1)	To require companies to submit additional statements and reports.
14.	478	To exercise the powers of a court under Code of Civil Procedure in matters specified in this section.

15.	479	To issue a directive to the chief executive or other officer of the company to appear before him personally and answer the charge.
16	481	To direct company prosecutor to present an appeal against the order of acquittal.
17.	483	To direct that the whole or any part of the fine imposed shall be applied towards payment of cost of proceedings; rewarding the person on whose information the fine recovered; and payment of compensation to an aggrieved party.
18.	484(2)	To review the order originally made by him.
19.	488	To grant relief in cases in which the powers have been delegated by the Commission.
20.	499	To accord approval subject to conditions in cases where powers of the Commission have been delegated.

(b)

<u>S.No.</u>	<u>Relevant section of the SECP Act, 1997</u>	<u>Nature of power/function</u>
1.	20(4)	owers and functions of the Commission.
2.	20(5)	To accord approval in the matter of – (a) all public companies incorporated in Pakistan which intend to issue or offer for sale securities in markets outside Pakistan or to list such securities on a Stock Exchange outside Pakistan, in each case, whether directly or through an intermediary;

		<p>(b) all bodies corporate incorporated outside Pakistan which or persons who intend to issue or offer for sale, securities to the public in Pakistan or to list such securities on a Stock Exchange; and</p> <p>(c) All bodies corporate incorporated outside Pakistan which are already listed on a Stock Exchange, for the listing of and quotation for any additional securities.</p>
3.	29	power to conduct investigations and appoint investigating officers.
4.	32	power to call for information from any person.

(c)

<u>S.No.</u>	<u>Relevant section of the Securities and Exchange Ordinance, 1969</u>	<u>Nature of power/function</u>
1.	6(1)	authorize a person to inspect the books of accounts maintained by directors, officers and members of a stock exchange.
2.	6(3)	require any information about the affairs of a stock exchange or relating to directors, officers and members about their business on the exchange.
3.	7	<p>“(i) To take cognizance of the contraventions of any of the provisions of the Ordinance and, in case of default, may, by order in writing, suspend the transaction of any business on the stock exchange for a period specified in the Ordinance and also suspend or remove an officer or member from his office, or membership of the Stock Exchange, under clauses (a) & (d) of sub-section (1) of section 7 of the Ordinance.</p> <p>(ii) To process and recommend to the</p>

		Commission for taking action against a director of the Stock Exchange so as to suspend or remove him from his office under clause (d) of sub-section (1) of section 7 of the Ordinance and also for taking action in terms of clauses (b) & (c) of sub-section (1) of the said section 7, against a Stock Exchange or its governing body."
4.	9	To allow listing or delisting of securities and to order for suspension of trading of any security.
5.	10	Direct the compulsory listing of a security.
6.	15(b)	Assess and take penal action against the persons involved in insider trading.
7.	19	Prevent a person to communicate or disclose to any other person, the information possessed by the former person.
8.	20	Issue prohibitory orders to a person engaged or about to be engaged in an act contrary to the provisions of this Ordinance.
9.	21	To order for conducting enquiries.
10.	22	Take cognizance of irregularities against the defaulters.
11.	23	Proceed against a person for civil liabilities.
12.	24	Proceed against a person allegedly involved in fraudulent acts under section 17.
13.	25	Take cognizance of the offences and to report the matter to the court.
14.	32A	To regulate a central depository company.
15.	32B	To regulate credit rating companies.
16.	34	To give the regulations of stock exchanges and to issue necessary directions for making any regulations, and also to amend and/or rescind any regulation of a stock exchange.

3. Executive Director (Enforcement Division)

<u>S.No.</u>	<u>Relevant section of the Companies Ordinance, 1984</u>	<u>Nature of power/function</u>
1.	158(1)	To grant extension in period for holding AGM of listed companies beyond the due date.

2.	158(2)	To allow a listed company to hold a particular meeting at a place other than the town in which the registered office of the company is situate.
3.	195(1)	To accord approval for the grant of a loan to director of a listed company, for specific purposes.
4.	206(3)	To accord approval for appointment of a sole purchase, sale or distribution agent of a listed company.
5.	231(1)	To inspect the books of accounts and other papers of a company.
6.	233(1)	To grant extension in the period for laying the annual accounts of a listed company in the AGM beyond the due date.
7.	236(2)(b)	To exempt a company from the disclosure in the directors' report of the changes concerning the nature of the business of a company during a financial year.
8.	237(11)	To exempt a company from the provisions of this section concerning the preparation of the annual accounts of holding company and its subsidiaries.
9.	238(2)	To exempt a holding company or its subsidiaries to hold an AGM within the relevant calendar year under specific circumstances.
10.	251(2)	To allow a listed company to withhold or defer payment of dividend.
11.	252(6) & (8)	To appoint auditors and to fix their remunerations in case they are not appointed by a listed company and its directors within the prescribed period.
12.	263 & 265	To appoint inspectors to investigate into the affairs of a listed company.
13.	264.	To require the applicants requesting for investigation of listed companies to give security for payment of the costs of investigation.

14.	279	To impose restrictions on transfer of shares and debentures in certain cases and to initiate prosecution proceedings in the matter of a listed company.
15.	309	To perform all functions and exercise all powers of the Commission under section 309, in the case of a listed company.
16.	319	To apply to Court to stay winding up of a listed company.
17.	472(1)	To make an order directing a listed company and its officers to make good the default and undo the irregularities.
18.	473	To direct listed companies to comply with the provisions of the Companies Ordinance during the pendency of the trial.
19.	478	To exercise the powers of a court under Code of Civil Procedure in matters specified in this section.
20.	479	To issue a directive to the chief executive or other officer of the company to appear before him personally and answer the charge.
21.	484(2)	To review the order originally made by him.
22.	488	To grant relief in cases in which the powers have been delegated by the Commission.

23. To enforce compliance with the provisions of the Companies Ordinance, 1984 relating to annual and half yearly accounts of listed companies, particularly, under the following provisions of the Ordinance:-

- i) Section 53: Disclosure requirements of the prospectus.
- ii) Section 57: Compliance with the commitments/ undertakings made by the management in the prospectus and conditions imposed by the Commission.
- iii) Section 83: Utilization of the balance under "share premium account".
- iv) Section 84: Issue of shares at discount duly approved by the Commission.

- v) Section 195: Loans to directors.
- vi) Section 196: Proper exercise of the powers of the directors.
- vii) Section 208: Investment in associated companies.
- viii) Section 230: Maintenance of books of accounts by the companies including the maintenance of cost accounts records as prescribed by the Commission.
- ix) Section 234: Disclosure requirements of the accounts and observance of the International Accounting Standards.
- x) Section 235: Revaluation of fixed assets and utilization of the balance under, "Surplus on Revaluation of Fixed Assets Account".
- xi) Section 236: Proper disclosure in the directors' report.
- xii) Section 237: Legal requirements with regard to the annual accounts of the holding company and its subsidiaries.
- xiii) Section 245: Half yearly accounts of listed companies.
- xiv) Section 255: Audit and audit report.

4. Executive Director (Specialized Companies Division)

<u>S.No.</u>	<u>Relevant section of the Modaraba Companies and Modaraba Ordinance, 1980</u>	Nature of power/function
1.	19(4) & (5)	ear appeal against the order of Registrar (Modaraba) regarding the cancellation of registration of a modaraba company.
2.	20(2)	ord approval of the action of Registrar to – (i) appoint an administrator to take over and manage the modaraba in place of the modaraba company for such period as the Registrar may specify; (ii) require the modaraba company to carry out such changes in the management and procedure as may be specified; and

		(iii) remove the modaraba company and appoint another modaraba company in its place to manage the modaraba.
3.	22(2)	appeal against the decision of Registrar to wind up a modaraba.

4. All the powers and functions under the provisions of the Companies Ordinance, 1984 and other corporate laws as may be applicable to the specialized companies.
5. All the powers and functions to regulate the 'specialized companies' under the rules governing them.
6. Power to conduct the cost audit and appointment of cost auditor under section 258 of the Companies Ordinance, 1984.
7. All the powers for permission of registration, grant, renewal and cancellation of licence to all the specialized companies within the jurisdiction of Specialized Companies Division under the relevant laws, rules and regulations except for modaraba companies and modarabas.
8. All the powers for prescribing the reports and returns to be submitted by the specialized companies at (i) above, to the Commission.
9. To grant licence to NBFIs to undertake leasing business with the approval of Chairman.
10. To prescribe periodical returns to be submitted to the Commission and the periodical statements to be circulated to the members and other authorities.

In addition to above, the following powers and functions of the Commission shall also be delegated to the Executive Director concerned, namely:-

- (i) To perform all functions and to exercise all the powers of the Commission under the rules framed under different Laws being administered by the Commission.
- (ii) To exercise all adjudicatory powers under the relevant laws and to take cognizance of the offences.
- (iii) To impose a fine (other than fine in addition to, or in lieu of, imprisonment) as provided for any offence, contravention of, or default in complying with any provisions of the Companies Ordinance, 1984 (the Ordinance), under section 476(1)(c) thereof.
- (iv) To hear appeal against the order of Registrar or of any officer authorized by the Commission under section 477(1)(b) of the Ordinance.
- (v) To exercise the powers of a court under the Code of Civil Procedure in matters specified in section 478 of the Ordinance.
- (vi) To issue directive to the chief executive or other officer of the company to appear before him personally and answer the charges under section 479 of the Ordinance.

- (vii) To order for payment of compensation in cases of frivolous or vexatious prosecutions under section 482 of the Ordinance.
- (viii) To direct that the whole or any part of the fine imposed shall be applied towards payment of cost of proceedings; rewarding the person on whose information the fine recovered; and payment of compensation to an aggrieved party under section 483 of the Ordinance.
- (ix) To grant relief in cases in which the powers have been delegated by the Commission under section 488 of the Ordinance.
- (x) To make necessary orders and to impose penalty for wrongful with-holding of property of the company under section 493 of the Ordinance.
- (xi) To award punishment for non-compliance of the orders passed in pursuance of the power delegated and to prosecute the offender in a court under section 495 of the Ordinance.
- (xii) To hear an appeal against the penalty order of the Registrar under section 32(2) of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980:

Provided that in case the post of Executive Director is vacant in a Division or incumbent is not available at the place of his duty, the powers and functions delegated to him under this notification, shall be exercised by the concerned Commissioner:

Provided further that the powers delegated above, shall be exercised concurrently by the Chairman of the Commission.”

No.ED/SECP-9/2000

(Mohammed Hayat Jasra)
Executive Director (Law)