

Press Release

ISLAMABAD: The National Assembly has passed the Finance Act, 2007 (the Act) on 23rd of June. The Act has amended various laws including the Companies Ordinance, 1984, (the Ordinance) being administered by Securities and Exchange Commission of Pakistan (SECP). Following are some of the major amendments made in the Ordinance.

Amendments in the definition of “document” and “Register”

The Ordinance provides for maintaining proper record in the form of books of accounts of all the transactions carried by the companies. In order to facilitate the companies in maintaining data in electronic form, the Act has amended various provisions of the Ordinance that deal with maintenance of record. For the said purposes, the definition of the term “Book and paper” has been enlarged to include documents on computer network, floppy, diskette, magnetic cartridge tape, CD-Rom or any other computer readable media. Likewise, a new definition of “Register” has been inserted by the Act in Section 2, Sub-section (1) Clause (30B), enabling the maintenance of register of members/ debenture holders on computer network, floppy, diskette, magnetic cartridge tape, CD-Rom or any other computer readable media.

Alteration of Memorandum of Association

The Act has omitted Sub-section (2) of Section 24 of the Ordinance that required filing of certified copy of the Order confirming alteration in the Memorandum and Articles of Association with the registrar concerned, in order to facilitate the companies. In a like manner Section 30 sub-section 1 required a Company to inter-alia state in the Memorandum of Association, the Province or the part of Pakistan not forming part of a Province, as the case may be, where the registered office of the company is to be situated. The Act has omitted the condition. In future SECP plans to have central data system throughout Pakistan and such change has been made as a step towards unification of data.

Certain relaxation in prohibition of purchase or grant of financial assistance by a company for purchase of its holding company’s shares

Previously, under Section 95 companies were totally prohibited from purchasing the shares of their holding companies. The Act has amended the section to enable a subsidiary to act as a trustee of the holding company provided the holding company is not beneficially interested under the Trust. The Act has also permitted a subsidiary to deal in shares of its holding company listed at the stock exchanges in the ordinary course of bonafide business of brokerage of shares. However, such subsidiary shall not be entitled to exercise the voting rights attached to such shares.

Time limit reduced for holding Annual General Meeting and Annual accounts and balance sheet

The Act has reduced the period of holding of AGM of all companies from four months to three months following the closure of its financial year. The reduction in the time limit for holding of AGM has been done to satisfy the reportedly long-standing demand of shareholders of companies to have quick oversight of financial data of the companies. The Act made a consequential amendment in Sub-section (1) of Section-233 of the

Ordinance thereby reducing the time for preparation and presentation of annual account from four months to three months. Consequential amendments have also been made wherein the period for granting extension of time by SECP or the Registrar of Companies for holding of AGM has been reduced from sixty days to thirty days.

Fresh election of directors in the event of substantial acquisition

The Act has inserted a new section that entitles the acquirer of 12.5% or more voting shares in a listed company to apply to SECP for requiring the company to hold fresh election of directors in the forthcoming annual general meeting of the Company. The said option of fresh election has been given as 12.5% voting shares are considered as substantial ownership in the stocks of the company that can affect the interests of the shareholders. However, the Act has put a restriction on the person on whose request election of Directors is to be held in as much that he/she can not sell or dispose of the shares for at least one year from the date of election of Directors of the company concerned.

Certain companies to have Secretaries and Independent Share Registrars

Section 204A has been amended whereby all listed companies are obliged to appoint an independent share registrar of the company possessing such qualifications and performing such functions as may be specified by SECP. The purpose of the amendment is that the secretarial task of handling transfer of shares and its record be undertaken by independent share transfer agents/share registrars in order to avoid disputes and conflicts.

Investments in associated companies and undertakings made subject to further regulatory intervention

Section 208 deals with investments in associated companies and undertakings. Previously under sub-section (4) banking companies, private limited companies, financial institutions and the companies whose principal business was acquisition of shares were exempt from the scope of this provision. This provision has been deleted by the Act, and instead SECP has been given power to give exemptions from the application of the prohibition imposed by said section. Further to this power SECP has issued a SRO on 13th of August 2007 notifying the classes of companies exempted. The said SRO has also been placed on the web-site of SECP for the information of the stakeholders. In order to deter alleged malpractices and conflict of interest in inter-group dealings penalty has been increased in Sub-section (3) by raising the fine from one million to ten million for default in compliance.

New provisions introduced for special audit

A new Section 234A has been inserted with the objective to enable SECP to order a special audit of the company on an application made by members holding not less than 20% voting rights in a company or by the SECP on its own motion. Moreover, if special audit has been ordered on application of members, then fifty percent expenses of the audit shall be borne by the members and fifty percent shall be borne by the company.

Copy of balance-sheet to be forwarded to the Registrar by certain private limited companies as well

Previously, all private limited companies were exempt from filing a copy of their financial statements with the Registrar of Companies. By virtue of the said amendment this exemption is now available only to private limited companies which have a paid-up capital of less than 7.5 million rupees. This has been done in order to enhance financial reporting by private companies having a high capital base.

Certain restrictions on declaration of dividend

The Act has imposed certain restrictions on declaration of dividend by inserting a new proviso in Section 248. By virtue of the amendment, unrealized gain on investment property shall not be available to be utilized, directly or indirectly, by way of dividend or bonus. This has been done to stem the trend whereby the companies were declaring dividend on the basis of re-valuation of properties and without actually realizing the gains.

Certain payables not to be construed as auditor's debts to render him ineligible for appointment

The Act has inserted a new Sub-section (3A) in Section 254 to provide relaxation in the criteria of disqualification of auditors stipulated in Sub-section (3). Now an auditor shall not be deemed to be indebted to the company if he (a) owes a sum of money not exceeding five hundred thousand to a credit card issued; or (b) owes a sum to a utility company in form of unpaid dues for a period not exceeding ninety days.

Provisions relating to establishment and regulation of Non-Banking Finance Companies

In addition to the above the Act has rectified, rationalized, clarified and enlarged the scope of existing Part VIIIA in respect of establishment and regulation of Non-Banking Finance Companies and related entities. The Act, while recognizing the growing needs of financial sector, has introduced a new term "notified entities". By virtue of new insertion Federal Government shall have the power to notify an entity to carry on certain class of business that is not covered in existing provisions of the sub-section (a) of Section 282.A.

Previously, SECP did not have the power to make regulations, the Act has given specific powers to SECP to issue regulations for regulating NBFC's and notified entities. Moreover, SECP has been given the powers to issue such directives, circulars, codes, notifications and guidelines as are necessary to carry out the purposes of regulating Part VIII of Companies Ordinance.

Moreover, SECP has been given power to impose maximum fine of fifty million in case of violation of any provision of the Part VIIIA of Companies Ordinance that was not in existence previously.

The Act has also empowered SECP for the rehabilitation of NBFC's and notified entities that are facing financial or operational problems. By virtue of this insertion SECP can

approve rehabilitation plan for the revival of NBFC's and notified entities and any violation with respect to the implementation of the plan approved by SECP is subject to imposition of maximum fine of ten million. The Act has inserted certain uniform terminologies to harmonize Section 282A to 282N of the Companies Ordinance.

Notice of resolution to wind up voluntarily

The Act has omitted the requirement of publication in the official gazette notice of resolution to wind-up voluntarily from Sub-section (1) of Section 361, in order to facilitate and provide for lesser requirements for the companies which intend to close their businesses voluntarily.

Maximum limit of fines increased

The Act has also raised maximum limit of fine that can be imposed under various provisions so that the companies may be obliged to the compliance of the provisions of the Ordinance. By virtue of increase in fine, compliance ratio is expected to be increased.

Power to make regulations and to issue directives, circulars, guidelines etc. by the SECP

The Act has inserted two new sections 506-A and 506-B enabling the SECP to issue regulations, directives, prudential requirements, codes, guidelines, circulars or notifications for carrying out the purposes of the Ordinance and in addition to existing rules.

(This Press Release is meant for information to the stakeholders and general public)