



Securities and Exchange Commission of Pakistan

12TH FLOOR, NIC BUILDING, 63-JINNAH AVENUE, BLUE AREA, ISLAMABAD

PRESS RELEASE

FOR IMMEDIATE RELEASE

SECP CLARIFICATION

ISLAMABAD – 29 SEPTEMBER 2007: A spate of news items have been appearing in the National Press alleging that SECP's new proposed law the Draft Financial Services Commission Act (Draft FSC Act) is designed to take over banking regulations in Pakistan. Recently, SBP correspondence with SECP has also been printed in its entirety. It is therefore, imperative that SECP clarifies its position and state the facts as we see them. The issues raised by SBP are stated in Bold Print.

Draft FSC Act will bring banking sector within SECP's ambit

The major concern which has been raised by the State Bank and which has also been unfortunately reported in the newspapers on numerous occasions, is that Draft FSC Act attempts to bring within the ambit of the Commission, the banking sector currently regulated by the State Bank.

This fear of the State Bank is absolutely unfounded and baseless. The Commission has not even contemplated this move, let alone attempted to do so through formulation of the Draft FSC Act. The current Draft does not empower the Commission to regulate the Banking and money market services.

However, to bring an end to this controversy and to ease SBP fears, we have accepted the State Bank's suggestion that the definition of the term "Financial Services" provided in the Draft FSC Act, should expressly exclude the banking and money market services. We will also amend the Draft FSC Act appropriately where Federal Government will be competent to make amendments in the schedules to the Draft Law.

Changing the regulatory set up of the banking sector, or for that matter any sector, is the prerogative of the Government of Pakistan and not the Commission. Therefore State Bank's view that the Commission on its own is attempting to exceed its mandate is unjustified and also not possible.

By amending Schedule to FSC Act, BCO will be administered by FSC

We are unable to agree that just by amending a schedule to the Draft FSC Act, the Commission or the Federal Government would be able to change the entire regulatory framework of the banking business contained in numerous primary legislations. The legislations administered by the SBP e.g. Banking Companies Ordinance, 1962 (BCO), specifically mention that State Bank is the regulator and shall exercise the powers and authority contained therein. Our understanding is that

Media Enquiries:

Media and Public Relations Unit (Chairman's Secretariat)

PHONE: 051-9218593, 9207091, FAX: 9204915, E-MAIL: - asfandyar.khattak@secp.gov.pk



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unless these legislations are amended by the legislature, such a drastic change is not possible by a mere inclusion of BCO in the schedule to the FSC Act by FSCP.

As for the contention that the power to amend schedules amount to legislative function and can only be done by the Parliament, we would like to refer to section 505 of the Companies Ordinance, 1984 and also section 42 of the newly enacted Anti-Money Laundering Ordinance 2007. Most of the latter law is administered by the State Bank itself. Both these sections empower the Federal Government to amend the schedules to the aforesaid laws.

The Scheduled Banks should be expressly excluded from regulatory ambit of SECP

The State Bank should be aware that the Banks are outside the ambit of SECP only as far as their Banking business is concerned as the State Bank is the regulator of banking business. Where however the Banks are doing any particular business or activity which under law is regulated by SECP they fall in the jurisdictional ambit of SECP. For example those Banks which are listed have to comply with numerous laws and rules administered or supervised by SECP, e.g. Listing Regulations, Takeovers Ordinance, 2002, Underwriters Rules, and also those provisions of the Companies Ordinance, 1984 which are not in consistent with the BCO. This is the position of the law and regulatory framework as it stands today and FSC law does not propose any change in this set up. Therefore either the State Bank has not understood this framework or is proposing to change the current set up.

The term Financial Services Commission is misleading

The Draft FSC Act has been proposed and drafted by ADB Consultants keeping in view the expanded mandate already given to the Commission by the Government of Pakistan. The Commission, it should be appreciated, no longer only regulates 'securities' and 'exchanges' but the entire corporate sector in the country, minus banking and money market services. The Draft FSC Act has been formulated to overcome the shortcomings of the SECP Act, 1997 which was not drafted for this expanded mandate.

For above reasons, the name Securities and Exchange Commission is considered to be misleading and hence the name Financial Services Commission was proposed by ADB Consultants.

Powers of the Policy Board

The State Bank has also commented upon the constitution and powers of the Policy Board of the proposed Commission. However, these comments contradict each other. On one hand, it is stated that the Policy Board powers have been enhanced to the extent that the autonomy of the Commission becomes meaningless, and on the other hand it is proposed that the Policy Board should be empowered to 'superintend' the affairs of the Commission.

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The primary function of the Policy Board is to advise the Commission on matters of policy. This is very clearly stated in the Draft FSC Act. The Board does not and cannot superintend the functions and affairs of the Commission. The powers granted to the Policy Board under the draft FSC Act are identical to the powers currently available to the Policy Board, barring two additional powers/functions which are proposed to be given to the Policy Board under the Draft FSC Act. These are (i) supervision of the internal audit of the Commission, and (ii) managing disciplinary proceedings against Commissioners. These have been proposed after detailed internal consultation/discussion and are given in the interest of transparency and good order.

Power to freeze bank accounts

The Commission is empowered under its current jurisdiction to investigate very serious offences like fraud, deceit, insider trading and market manipulation etc, which may involve large sums of public money. Any investigation which does not finally recover defrauded public money would be quite a futile exercise. It is for this reason that the Commission has proposed that power to freeze accounts should be available during the process of investigation. It is important to note that this power will be exercised by the independent Financial Services Tribunal and not by the Commission itself. Similar powers are available to Securities and Exchange Board of India (SEBI). In Pakistan, NAB has powers to freeze accounts. It is pertinent to note that SBP appointed receivers of companies and firms under section 43AA of the BCO have the power to freeze bank accounts of these entities.

Power to call for information and examination

It is clarified that the Commission already has the power to call for information from any person under our current laws, which is a much wider term and includes schedule banks and other entities. In fact, any person who refuses to provide information or fails to appear before the investigation officer appointed by SECP today, is punishable with 1 year imprisonment under section 32 of the SECP Act, 1997. There is therefore nothing new in the draft Act.

FSC and its investigators will exercise powers of the Civil Court and proceedings before them will be judicial proceedings

Once again, it is pointed that these powers already exist in the various laws which the Commission currently administers and therefore there is nothing new in the Draft FSC Act. The said powers are limited procedural powers during investigations and proceedings for calling for information, summoning and examining witnesses, compelling discovery of documents, receiving evidence on affidavit, etc. necessary to arrive at the facts so that a considered decision may be taken.

Similarly, proceedings before the Commission are considered judicial for only two purposes, i.e. where a person gives false evidence in any proceedings and secondly if

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a person disrespects the adjudicating officer. These are standard powers and are present in nearly all similar laws.

We may also refer to section 31 of the BCO where the State Bank has similar powers.

Recovery of penalty as arrears of land revenue is against spirit of financial laws

Once again this power to recover penalty as arrears of land revenue exist in laws currently being administered by the Commission. State Bank has similar powers under section 25B of BCO.

The penalties proposed in the Draft FSC Act are very high

In our view, the current penalties provided for offences contained in the existing laws administered by the Commission which include fraud, deceit, insider trading, market manipulation to name a few, are paltry and therefore do not act as deterrent. Keeping in view that the Commission has been tasked with protection of the general public and investors, the proposed penalties under the new law should be high enough to act as a deterrent. Secondly, these are maximum penalties and the Commission or the courts may award lesser punishment depending on the facts of the case. In our view the proposed penalties are not high.

The proposed Tribunal under the FSC Act cannot be given so many powers

The jurisdiction for offences contained in various laws currently administered by the Commission is spread amongst different judicial and quasi-judicial forums e.g. the High Court, the Sessions Court, the Modaraba Tribunal, the Insurance Tribunal, the Appellate Bench of the Commission etc. Also, presently it is nearly impossible to successfully prosecute serious offenders who have committed complex financial irregularities due to numerous reasons, among which the most common one is lack of expertise and skills of the adjudicators.

To us, hence, it is only natural that where we have special tribunals for the banking business, Modaraba business and Insurance business, we should also have specialized tribunals for the financial sector. We may clarify here that the Financial Services Tribunal is only being set up under the Draft FSC Act and will not be under any kind of control of the Commission. The Tribunal will be totally independent and only the funding will be provided by the Commission. Also the appointment of members of the Tribunal will be made by the Federal Government and the Policy Board as opposed to the Commission.

Process of Consultation

It has also been stated that the Draft FSC Act has not been shared with the stakeholders including the State Bank. Please note that the Draft FSC Act is still 'work in progress'. In that spirit it was sent to the Policy Board to get input from the members who represent a cross section of the society including the SBP. Once discussed at the Policy Board level, any comments received would have been discussed and agreed and the final draft passed on to the Ministry of Finance for

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their comments, views and review. Once cleared by the Ministry of Finance, only then would the law be in a state where it could be shared with the other stakeholders and the public. Sharing an un-finalized and un-approved draft with the stakeholders would be premature and would result in negative reaction as we have recently witnessed. Therefore the Commission is following its long established practice of formulation and introduction of new laws.

FSC Act will destabilize the financial sector and create chaos

These comment and are totally uncalled for. In our view the State Bank has itself caused anxiety in the financial sector by unnecessarily creating this controversy over a non-issue. This controversy would never have arisen if the State Bank had treated the draft law as such, and not taken offence where none was intended. If in the spirit of our working relationship, the State Bank had sought our views on its concerns, this controversy would never have arisen. After all the purpose of sharing the draft with the Policy Board members was just that.

It is pertinent to mention here that the decision to formulate the Draft FSC Act was taken when, as part of the Financial Markets Development Program (FMGP) funded by the ADB, numerous deficiencies were identified in the current regulatory framework for the Non Banking financial sector and the Capital Markets, including the SECP Act, 1997. It is in furtherance of this exercise that the draft Futures Act, the draft Securities Act, the Draft FSC Act are being developed, and a new NBFC law is also on the anvil. SECP has put in a lot of effort, time and resources in revamping the regulatory framework in the interest of the financial and capital markets.

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