

Mar 14, 2002

SEC Finalizes Recommendations for Amendments in Companies Ordinance, 1984

The Securities and Exchange Commission of Pakistan (SEC) has finalized its recommendations for amending the Companies Ordinance 1984, with a view to update the law and to remove the practical difficulties experienced in its enforcement. The SEC has sent draft of the amending Ordinance to the Ministry of Finance for obtaining approval of the Cabinet before its implementation.

The SEC has undertaken a comprehensive review of the Companies Ordinance, 1984, which was long over due as it was found deficient in many respects to meet the current problems in the corporate sector in the changed scenario. For this purpose, the SEC appointed a committee in January 2001, which reviewed the 1984 Ordinance thoroughly. The committee made an objective study of the said law and submitted its report wherein a number of amendments in the Ordinance, were recommended.

The proposed amendments were widely circulated, inviting suggestions from professional accounting bodies, trade organizations, stock exchanges and legal experts. The proposals were also placed on the Commission's website and released to the press. A roundtable conference of the corporate experts, professionals, businessmen and representatives of stock exchanges and trade organizations was also held in Lahore for seeking their point of view about the proposed amendments. The comments received from the professional bodies, legal experts and other relevant quarters were considered and appropriate changes were made in the draft law.

The suggested amendments mainly relate to introduction of the concept of single members of private companies and reduced number of directors of public companies, providing right of appeal against refusal of transfer of shares by the directors, empowering the SEC to rectify the register of mortgage to be maintained by the registrar and companies, reduction in period to present annual audited accounts in annual general meetings of companies, providing copies of minutes of meetings to the directors, appointment of qualified company secretary by listed companies, streamlining and simplifying the provisions relating to investment in associated companies, quorum of listed companies, winding up of the companies, removal of auditors, preparation of accounts of subsidiaries of listed companies and consolidation of accounts to bring it in conformity with International Accounting Standards. The amendments would help in smooth working of the Commission, development of corporate sector, stabilizing the stock market, protection of interest of investors and removing certain abnormalities.

Main features of the draft Companies (Amendment) Ordinance are:

(i) Formation of single member company:

Presently for the formation of a private company at least two members are needed. There is a proposal to introduce the new concept of single member company (SMC) in Pakistan. The main rationale behind the establishment of "SMC" is to encourage the use of the corporate structure by small businesses and sole proprietorships. The privileges of limited liability and independent legal status would, no doubt, afford better protection of the interests of such businesses and provide incentive to incorporate. (Section 15)

(ii) Reduction in minimum number of members and directors of unlisted public companies:

The minimum number of seven persons to form a public company is proposed to be reduced to three, keeping in view the practical difficulties being faced by promoters to associate a large number of persons at the stage of formation of a company. However, listed companies shall be required to have at least seven directors. (Section 15/174)

(iii) Appeal against refusal of transfer of shares by the directors:

The existing provisions of the Ordinance do not provide any relief to the shareholders if the transfer is refused by the directors without valid grounds. Therefore, right of appeal to the Commission against such refusal has been provided. (Section 78-A)

(iv) Rectification of Registrar of Mortgage:

Considering practical difficulties in getting extension from the High Court, powers to grant extension have been entrusted to the Commission. (Section 131)

(v) Reduction in period to present annual audited accounts in annual general meetings:

In order to keep informed the shareholders at the earliest about the affairs of companies, amendments have been proposed to hold annual general meetings for consideration and approval of audited accounts within a period of four months instead of six months of close of accounts. Moreover, extension period has been curtailed from three to two months. (Sections 158/233)

(vi) Quorum of listed companies:

To provide for larger representation, quorum of general meeting of a public listed company is being increased from three members to ten members present in person representing not less than 25% of total voting power either of their own account or as proxies. (Section 160)

Providing copies of minutes of meetings of the Board of Directors:

The amendment is proposed with a view to furnish the directors with the minutes of the proceedings of the meeting. (Section 173)

Appointment of company secretary:

To improve the efficiency in the management of listed companies, appointment of whole time secretary possessing qualification to be prescribed by the Commission would be mandatory. (Section 204-A)

Investment in associated companies:

Existing provisions are changed to streamline, simplify and clear ambiguity. Discretionary powers of the Commission to grant relaxation in certain cases have also been done away with. (Section 208)

Removal of auditors:

Since the law did not provide for removal of auditors appointed in the annual general meetings of companies, change is suggested to remove the auditors through a special resolution. However, when auditors are removed by the companies, the Commission shall appoint a person as auditor to fill the vacancy. (Section 252)