



Management Association of Pakistan

# **Companies Bill 2017**

## **A Brief Overview**

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**Management Association of Pakistan**  
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# Companies Bill 2017

## □ Introduction

- Companies Act - 1913
- Companies Ordinance - 1984
- Amendments in 1991, 1999 and 2002
- Justice Shafi ur Rahman – 1999
- Company Law Review Commission – 2005
- In-house Committee set up in April 2015
- Presentation to the Finance Minister



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# Companies Bill 2017

## □ Introduction

- Consultative Sessions
- Round table in all major cities
- Feed Back was duly considered
- Promulgation of Companies Ordinance 2016
- Rejection of the Companies Ordinance 2016 by the Senate
- Bill reviewed by the Standing Committee on Finance of National Assembly and approved the Bill with certain amendments recommended by the Committee



# Companies Bill 2017

- ❑ **Research done for various jurisdictions and best practices were ascertained**
- ❑ **New concepts were considered**
  - Companies' Global Register of Beneficial Ownership
  - Provisions regarding certain Specialized Companies
    - Free Zone Company
    - Real Estate Companies
    - Agriculture Promotion Companies
- ❑ **Conversion of Companies into LLP**



# Companies Bill 2017

## □ Objectives

- To undertake multi-dimensional reforms
- Robust Corporate Governance and Regulations
- Healthy growth of the Corporate enterprise
- Protection of Investors and Creditors
- Protection of investment
- Regulations to align with technological development



# Companies Bill 2017

## □ Summary of Significant Changes

The Bill significantly enhances SECP's authority and powers in relation to:

- investigation and related matters
- disqualification of directors
- the power to call for information
- mediation
- compromises
- arbitration
- arrangement and reconstruction
- general administrative functions



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## □ Summary of Significant Changes

Perhaps pursuant to the current negative publicity relating to offshore companies, disclosure and reporting requirements of related parties, especially foreign companies have been introduced or made more stringent. Compliance with some of the requirements might prove challenging in certain cases.



# Companies Bill 2017

## □ Summary of Significant Changes

In the backdrop of a stricter regulatory environment, matters relating to audit and financial reporting have been significantly streamlined with the International Standards on Auditing and International Financial Reporting Standards, respectively. In addition additional disclosure requirements have been identified in the Fourth and Fifth schedule. Overall this is a welcome move.





# Companies Bill 2017

## □ Summary of Significant Changes

In a positive development, a lot of filing, registration and winding up requirements have been simplified with a proactive thrust towards automation, i.e. e-filing. Particularly life has been generally made simpler for single member companies and companies with small capital.



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# Directors



# Companies Bill 2017

## ❑ Directors

- Protection to independent and non-executive directors Sec 181
- Director's duty to prepare Directors' Report and Statement of Compliance by companies other than private company having paid up capital not exceeding Rs. 3 million and not being subsidiary of a public company Sec 226
- Security clearance of shareholder and director Sec 461



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## ❑ Directors

- Manner of selection of independent directors of **listed companies**  
and maintenance of databank of independent directors Sec 166
- Chairman in a listed company and **Review Report** by the Chairman Sec 192
- Disqualification of directors **of a company** by the Commission Sec 172
- Loan to Directors Sec 182
- Nomination of Directors and terms to be approved by the  
Federal Government Secs 164 & 165



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# Auditors



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## □ Auditors

- Qualification of auditor in case of private companies having the capital exceeding one million but not exceeding three million

Sec 247

Sec 223 (5) Provisio

- Auditor's Report & Review of Compliance Statement by Directors

Sec 249 (8)



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# Dividend



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## □ Dividend

- Certain restrictions on **declaration**/payment of dividend Sec 240
- Unclaimed dividend to vest with Federal Government Sec 244
- Establishment of Investor Education Awareness Fund Sec 245





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# Filing & Supply of Documents



# Companies Bill 2017

## ❑ Filing & Supply of Documents

- Extension in filing of quarterly accounts by listed companies Sec 237
- Quarterly Financial Statements of listed companies only to be posted on the website Sec 237
- Filing of documents through **authorized** intermediaries Sec 455
- **Filing of un-audited authenticated financial statements by a private company not being a subsidiary of a public company having paid up capital not exceeding Rs.1 million** **Sec 234**
- Filing requirements under Sec 242 of Companies Ordinance 1984 required filing by private companies having paid up capital of Rs.7.5 million



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## □ Filing & Supply of Documents

- Filing of documents electronically Sec 471
- Supply of documents, information, notices to the members electronically Sec 473
- Acceptance of documents with late fee upto 2 years without any adjudication of the companies other than public interest company Sec 468



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# Voting & Resolution



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## □ Voting & Resolutions

- Members resolution through circulation Sec 149
- Voting through Postal ballot, e-ballot and attending meeting through video link Sec 2 (73)
- **Mandatory arrangement of video-link facility in a city where the shareholders having at least 10% share reside, if they so request** Sec 132 (2)



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# Mediation



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## Mediation

- Resolution of disputes through mediation Sec 277
- Mediation and Conciliation Panel Sec 276



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# Reporting





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## □ Reporting

- Financial Reporting Framework – Third Schedule Sec 225
- Statement of Compliance by the Board Sec 247
- IFRS Compliance Sec 225 (4)
- Interim Financial Statements of subsidiary closing (if year end difference is more than 3 months) Sec 228 (2)
- Financial year to coincide Sec 229
- Consolidated Financial Statements Sec 228



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# **Companies' Global Register of Beneficial Ownership**



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## ❑ Power of the Commission to require information from a foreign company

Sec 439

- The Commission may, at any time, call upon a foreign company to furnish information of shareholding including beneficial ownership or such other information or document, as may be required for the purposes of this Act or in connection with any inspection, inquiry or investigation and it shall be the duty of the company and its officers to furnish such information or document within specified time.



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- **A foreign company in this respect shall be company as defined in the Companies Bill 2017 as follows:**

**Sec 2 (35)**

- **“foreign company” means any company or body corporate incorporated outside Pakistan, which –**
  - a) has a place of business or liaison office in Pakistan whether by itself or through an agent, physically or through electronic mode; or**
  - b) conducts any business activity in Pakistan in any other manner as may be specified;**



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Certification of Shariah compliant companies and Shariah compliant securities

Sec 451

- **The company shall appoint Shariah Advisor or Audit who meets the requirement of fit and proper criteria as may be specified. Further, the person appointed shall have 180 days to meet the requirement**
- **Person in contravention with the above shall be liable to a penalty upto level 3 on standard scale**
- **The above requirements are not applicable on banking and other companies who are required to follow shariah governance framework.**



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## ❑ Companies' Global Register of Beneficial Ownership

Sec 452

- Substantial shareholder or officer of a company incorporated in Pakistan **who is a citizen of Pakistan** having 10 percent or more shares **or any other interest** in a foreign company or body corporate has obligation to report to the company, his beneficial ownership on a specified form within 30 days of holding such position or interest.
- SECP may notify any other percentage or interest for such reporting.
- Company will submit collective information to Registrar along with the annual return.



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- Foreign company for this purpose shall mean a company or body corporate incorporated or registered in any form outside Pakistan regardless of the fact that it has a place of business or conducts its business activities or has a liaison office in Pakistan
- The investment in securities or other interest as may be notified by SECP held by a company in a foreign company or body corporate shall also be reported by the company to the Registrar along with the annual return.
- Special return on a specified form shall be reported to the Registrar within 60 days from the commencement of this Act.



# Companies Bill 2017

- **“Beneficial ownership of shareholders or officers of a company”** Sec 2 (7)  
means ownership of securities beneficially owned, held or controlled by any officer or substantial shareholder directly or indirectly, either by:
  - (a) him or her;
  - (b) the wife or husband of an officer of a company, not being herself or himself an officer of the company;
  - (c) the minor son or daughter of an officer where “son” includes step-son and “daughter” includes step-daughter; and “minor” means a person under the age of eighteen years;
  - (d) in case of a company, where such officer or substantial shareholder is a shareholder, but to the extent of his proportionate shareholding in the company;





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## ❑ Companies' Global Register of Beneficial Ownership

Sec 452

- “**control**” in relation to securities means the power to exercise a controlling influence over the voting power attached thereto: Sec (2 (7))
- Further that in in case the substantial shareholder is a non-natural person, only those securities will be treated beneficially owned by it, which are held in its name.
- “**substantial shareholder**”, in relation to a company, means a person who has an interest in shares of a company: Sec 2 (7)
  - (a) the nominal value of which is equal to or more than ten percent of the issued share capital of a the company; or
  - (a) which enables the person to exercise or control the exercise of ten percent or more of the voting power at a general meeting of the company;



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## Real estate companies engaged in real estate projects

Sec 456

- Any company which invites advances from public for real estate projects shall comply with the provision of this section in addition to the other provisions in the law.

This section shall only come into force on such date as notified by the Federal Government or any other authority in the official gazette.



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# General



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## □ General

- Restriction on layers of holding in subsidiary companies Sec 2 (68)
- Mechanism for transfer of shares in private companies Sec 76
- Prohibition on invitation of deposits Sec 84
- **Records of resolutions and meetings of the board is required to be kept for at least 10 years in physical form and permanently in electronic form** Sec 178
- Related party transactions Sec 208
- Company deemed to be a public interest company in certain circumstances Sec 216
- Classification of Companies Sec 224 - 3<sup>rd</sup> Schedule
- Establishment of Investor Education and Protection Fund Sec 245



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# Companies Bill 2017

## □ General

- Jurisdiction over scheme of arrangements and exemption from stamp duty Sec 282
- **Management by Administrator on application by a creditor / creditors having interest equivalent to an amount not less than 60% of the paid up capital of the company** **Sec 291**
- Rehabilitation of sick Public Sector Companies Sec 292
- Grounds for winding up Sec 301 (e)
- Panel of provisional manager and liquidator Sec 315 (1)
- Easy Exit of a defunct company Sec 426
- Valuation by Registered Valuers Sec 460
- Destruction of physical record Sec 472



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## ❑ Issues for Consideration

- Need for providing summary powers to SECP as applicable in case of Courts.
- Electronic Registration of Charges and security interests.
- Registration of Pledge.
- Premium for Professional Indemnity Insurance for Directors (Non-Executive and Independent) to be considered as 'business expense'.
- Transfer of Shares of private companies subject to Agreements and Articles need to be further relaxed.
- Waiver of notice be allowed for right shares as is provided for special resolutions.



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## ❑ Issues for Consideration

- Principle line of business – Long winded object clause.
- Dividend in kind – Restriction to listed company shares in case of dividend in kind needs to be revisited.
- Defaulted Debts – Swap Debt equities / conversion into equity as per options in agreements require special procedures.
- Number of Directors should be allowed to be changed mid-term with the consent of all shareholders.
- Free float capital and no par value concept needs to be considered.
- The powers and role of SECP as per Bill would require a planned capacity building to facilitate implementation.



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*Thank  
you*

A close-up image of a fountain pen nib, gold in color, with a black barrel, positioned at the end of the word 'you' in the cursive text.

**Presenter:  
Syed Masoud Ali Naqvi**