IN THE NAME OF ALLAH ALMIGHTY, THE MOST MERCIFUL, MOST BENEFICENT

KHILJI & CO.
Chartered Accountants

BRIEF ON

COMPANIES (AMENDMENT) ORDINANCE, 2020

Plot 2, Mezzanine Floor, Khumrial Plaza, I&T Center Street 22, Sector G-8/4, Islamabad.
Tel: +92 51 2253303-6, Fax +92 51 2253307, Email: info@khilji.net.pk,
Website: www.khilji.net.pk

This document has been prepared to communicate our understanding of proposed **AMENDMENTS IN COMPANIES ACT 2017**. Although the highest standards of Professional Competence and Care has been followed regarding the showing of facts & figures in this Commentary. However, Khilji & Co, Chartered Accountants do not assume any responsibility as to the correctness, alteration or change of these fact & figures. Moreover, KCO should not be held responsible for any action taken / not taken on the basis of information contained in this document. The information provided in this document should only be used in conjunction with professional opinion from tax/ legal advisor and checked for updated position of law. This document as a whole or its any part should not be reproduced in any form without prior written approval from KCO. This document is distributed free of cost to our clients only. We humbly request our readers to please provide us the most valuable comments to make this more informative and useful. It has always been a pleasure to be of service to our clients.

PRELUDE

AMENDMENTS IN COMPANIES ACT 2017

Through Presidential Order dated April 30th, 2020

The President of Pakistan has approved amendments to Companies Act, 2017 through Companies (Amendment) Ordinance, 2020. These amendments are proposed by Securities and Exchange Commission of Pakistan (SECP) to promote ease of doing business, improve protection of minority shareholders and remove some anomalies noted in the provisions of the Act.

BOARD OF PARTNERS
May 12, 2020

1. Special Resolution — Section 2(66)

For Special resolution twenty-one days' notice specifying the intention to propose the resolution as a special resolution is required under the law. However, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

An amendment has been made whereby listed companies now requires written approval from Securities and Exchange Commission of Pakistan (SECP) for a resolution to be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

2. Start Up Company — Section 2(67A)

A new Clause 67A has been added to Section 2 of the Act which defines a "Startup Company" as under:

"Startup Company" *means a company that: -*

(a). is in existence for not more than ten years from the date of its incorporation or such other period or periods as may be specified; and

(b). has a turnover for any of the financial years since incorporation that is not greater than five hundred million rupees or such other amount or amounts as may be specified; and

(c). is working towards the innovation, development or improvement of products or processes or services or is a scalable business model with a high potential of employment generation or wealth creation or for such other purposes as may be specified; or

(d). such other companies or classes of companies as may be notified by the Commission:

Provided that a company formed by the splitting up or reconstruction of an existing company shall not be considered as a startup company;

3. Subscription Money payable **Section 17**

Subsection 2 of section 17 required that all moneys payable by a subscriber in pursuance of his undertaking in the memorandum of association against the shares be payable in cash within thirty days from the date of incorporation of the company. This requirement has been done away with and now such amount would be payable in such time, manner and condition as may be notified by the Commission.

Further, Sub section 3 of Section 17 has been deleted which required that receipt of subscription money from the subscribers is to be reported by the company to the registrar on a specified form within forty-five days from the date of incorporation of the company and should be accompanied by a certificate by a practicing chartered accountant or a cost and management accountant verifying receipt of the money so subscribed.

4. Common Seal **Section 23**

Section 23 which requires every company to have a Company's Common Seal has been deleted.

5. Alteration of articles **Section 38**

Number of days to submit altered copy of articles of association of the company, with the registrar have been reduced from 30 days to 15 days from the date of passing of the resolution.

6. Effect of revocation of licence **Section 43**

Section 43 states that on revocation of licence of a company under section 42 all the assets of the company after satisfaction of all debts and liabilities shall be transferred to another company licenced under section 42, preferably having similar or identical objects to those of the company.

This Clause has been amended slightly and now assets can be so transferred to ant other not for profit entity registered under any law for the time being in force.

7. Conversion of status of unlimited company as limited company and vice-versa **Section 48**

If a company's status has been converted and approved by the Commission by an order in writing, a copy of memorandum and articles of association as altered is required to be submitted with the registrar within 15 days from the date of such order.

8. Return as to Allotment **Section 70**

The number of days to file return of the allotment of shares with registrar are reduced from 45 days to 30 days from the date of allotment.

Further, the requirement for Auditor Certificate / Report has been withdrawn. Now a declaration from Chief Executive that the amount of consideration has been received in full by the company and shares have been issued to each allottee will be submitted to Registrar with Return of allotment.

9. Restriction on transfer of shares by the members of a private company Section 76

A proviso to sub section 5 has been added requiring a member of a private company selling his shares to any other person to ensure that as a result of such sale, the limit of maximum number of members for a private company is not be exceeded.

Further, Commission's powers to specify the mechanism to determine the price of shares has been withdrawn by omitting sub section 6.

10. Transfer to nominee of a deceased member Section 79

Sub section 3 of section 79 restricts that a member of the company can only nominate his relatives, namely, a spouse, father, mother, brother, sister and son or daughter.

A proviso has been added to relax such restriction in case of absence of any of the relatives. Such shareholder is entitled to nominate any other person.

11. Further Issue of Capital Section 83

Existing provisions of Section 83 were silent about further issue of share capital in case of private limited companies in case of issuance other than right.

A new Clause "C" has been added to Section 83(1) for private companies' requirements for further issue of share capital in case of issuance other than right. It states that a private company, if its articles authorizes, by passing a special resolution may offer further issue of shares to any person for cash or in-kind consideration. The Commission is authorized to notify conditions and other requirements in this regard.

12. Employee Stock Option Scheme **Section 83A**

New section 83A has been added for Employee Stock Option Scheme for clarity purposes and with a wider scope. Previously this was included as a proviso to Section 83(1a(iv) of the Act and was restricted to public companies only.

Now every company may, under the authority of special resolution, issue shares in accordance with its articles under employees' stock option in accordance with such procedure and subject to such conditions as may be specified.

13. Purchase by Company of its own shares **Section 86 & 88**

Existing provisions of Companies Act only allow a listed company to purchase its own shares. Now this prohibition for purchase of its shares for non-listed companies has been withdrawn by amending Section 86 and 88. Now all companies can purchase their own shares after compliance with the requirements of Section 88 and regulation specified in this regard.

Further, Sub section 2 of Section 88 provides that shares purchased by the company may either be cancelled or held as treasury shares. A proviso has been added to sub section 2 limiting the said option for unlisted public company and private company to only cancellation of such shares and reduction of shares capital accordingly. Cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of section 89

14. Annual return **Section 130**

The companies were not required to file annual return in case there is no change of particulars in the last annual return filed with the registrar. This relaxation has been withdrawn now and now every company is required to file annual return every year.

15. Annual General Meeting **Section 132**

Condition for listed companies to hold AGM in nearest city of registered office is omitted. Now listed companies can only hold AGM in town in which registered office is situated or on any other place with permission of the Commission.

16. Extra Ordinary General Meeting **Section 133**

21 days notice of meeting as in case of AGM is also required for any extra ordinary general meeting of shareholders of a listed company. An amendment has been made whereby in case of an emergency affecting the business of a listed company, on an application made by the company the Commission can authorize such meeting at a shorter notice.

17. Notice of resolution **Section 140**

Voting power in the company to give notice of a resolution which they propose to be considered at the meeting has been reduced from 10% to 5%.

18. Ineligibility of certain persons to become director **Section 153**

Holding a National Tax Number as per the provisions of Income Tax Ordinance, 2001 is one of requirement for a person to become eligible to become director of a company. It has been provided now that this condition is not applicable for foreign national who is not required to hold National Tax Number under the provisions of the Income Tax Ordinance, 2001.

19. Term of office of directors **Section 161**

The term of office of director as provided in section 161 is three years. Proviso to sub section 1 which stated that term of office of directors of a company limited by guarantee and not having share capital may be a period of less than three years as provided in the articles of association of a company has been deleted and a new proviso added which states that the term of office of directors of a trade organization may be a period of less than three years as provided in the Trade Organizations Act, 2013 (II of 2013).

20. Consent to act as director **Section 167**

The consent given by an individual to be appointed or nominated as director or chief executive of the company was required to be filed with the registrar within fifteen days. The condition has been omitted not and now such consent given to the company is required to be annexed to the relevant form reporting the appointment of director or the chief executive.

21. Disqualification of directors by the Commission **Section 172**

Section 172(1) states various circumstances under which, the Commission may pass disqualification order against a person to hold the office of a director of a company for a period up to five years beginning from the date of order. Following circumstances have been deleted from the list.

f. *the affairs of the company of which he is a director have been conducted in a manner which has deprived the shareholders thereof of a reasonable return;*

m. *the person has entered into a plea bargain arrangement with the National Accountability Bureau or any other regulatory body;*

o. that it is expedient in the public interest so to do;

22. Passing of resolution by the directors through circulation **Section 179**

Condition of circular resolution to be signed by all directors has been omitted. Written approval of all the directors shall be valid and effectual.

23. Protection to independent and non-executive directors. **Section 181**

In order to make directors of listed company or a public sector company act more responsibly and vigilantly, Section 181 which related to protection to independent directors and non-executive directors has been omitted.

24. Loans to directors **Section 182**

Section 182 prohibits loans to director of a company, of its holding company, or to any of his relatives. A new proviso has been added which states that this prohibition shall not apply to the loan provided to the chief executive or the whole-time director subject to the condition that the loan is granted under a scheme approved by the members of the company.

25. Power of Board **Section 183**

Section 183(3) has been amended whereby special resolution has been made mandatory before board of a company do any of the following:

(a) sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing; and
(b) sell or otherwise dispose of the subsidiary of the company;
(c) remit, give any relief or give extension of time for the repayment of any debt outstanding against any person specified in sub-section (1) of section 182.

26. Appointment of Chief Executive **Section 186 & 187**

An important change has been made whereby Federal Government power to appoint Chief Executive of public sector company has been withdrawn. The chief executive of public sector company shall be appointed by Board of directors of such company.

27. Financial statements **Section 223**

Private company having the paid-up capital not exceeding one million rupees are not required to have financial statement audited from the auditor. An exception has been made whereby it has been stated that this relaxation shall not be applicable on private company which is a public interest company or a subsidiary or holding company of a public company.

28. Contents of directors' report **Section 227**

In case of public company or a private company which is a subsidiary of a public company, Director's Report now require disclosure with respect to remuneration package of each of the directors and chief executive including but not limited to salary, benefits, bonuses, stock options, pension and other incentives.

Further, in case of listed company it has been made mandatory that business review section of the directors' report must include the legitimate reasons for not declaring dividend despite earning profits and future prospects of dividend, if any.

29. Approval and authentication of Financial Statements **Section 232**

Requirement for private company having a paid up capital not exceeding one million rupees that the financial statement shall be accompanies with an affidavit executed by the chief executive if the accounts are signed by him or by any of the directors if the accounts has been signed by two directors that the financial statements have been approved by the board has been deleted.

30. Copy of Financial Statements to be forwarded to the registrar Section 233

Private company having the paid up capital not exceeding ten million rupees is not required to file financial statements together with reports and documents with the registrar. It has been now clarified that this relaxation shall not apply to public interest company or a subsidiary or a holding company of a public company.

31. Filing of unaudited financial statements Section 234

Requirement for private company, not being a subsidiary of public company, having the paid up capital not exceeding one million rupees for filling with the registrar of authenticated financial statements, whether audited or not, has been omitted.

32. Directors not to withhold declared dividend Section 243

Section 243(2) lists certain cases whereby Commission may grant permission on an application made by the company to withhold or defer payment of dividend. Time limit for filling of such application by the company has been curtailed from 45 days to 15 days from the date of declaration of dividend.

33. Unpaid dividend account Section 244

Section 244 titled "Unclaimed shares, Modaraba certificates and dividend to vest with the Federal Government" is substituted by new section titled "Unpaid Dividend Account" which now require companies to deposit unpaid or unclaimed amount to a separate profit bearing account, and profit over which shall be used for Corporate Social Responsibility Initiatives and specified purposes by the Commission. Important points of the section are described below:

- Transfer of total amount of dividend which remains unpaid or unclaimed within fifteen days from the date of expiry of the prescribed period of payment of dividend.
- dividend for the purpose of this section means the dividend payable in cash.
- within a period of ninety days of making any deposit of the amount, the company is required to prepare a statement containing the names, the last known addresses, number of shares held, the amount of unpaid dividend to be paid to each shareholder and such other particulars as may be specified and place it on the website of the company.
- The company shall make payment to the bonafide claimant within a period of thirty days from the date of submission of claim with the company. No claimant shall be entitled to any amount except his unclaimed dividend amount.
- The amount of profit generated from the account maintained by the company under this section shall be used by the company for its corporate social responsibility initiatives and specified purposes.
- The company shall make appropriate disclosures in its financial statements and in respect of unpaid dividend account providing therein details of amounts transferred into such account, claims received and settled, profits generated from such account and utilization of such profits during a financial year.

34. Establishment of Investor Education and Awareness Fund Section 245

Section 245 which contained provisions relating to establishment of "Investor Education and Awareness Fund" has been omitted.

35. Qualification and disqualification of auditors Section 247

For a public company or a private company having paid up capital of Rs. 3 Million or more, only Chartered Accountants or having valid practicing license or a Firm of Chartered Accountants were qualified to be appointed as auditors of such company.

This limit of paid up capital has been increased from Rs. 3 million to Rs. 10 Million.

36. Mediation and Conciliation Panel Section 276

Section 276 dealing with provisions relating to mediation and conciliation panel has been omitted.

37. Compromise with creditors and Provisions for facilitating reconstruction and amalgamation of Companies Section 279 to 287

Commission's powers relating to compromise with creditors, schemes of reconstruction and mergers have been High Court for all Companies. Previously, such powers were exercised by Court for such
companies or class of companies or having such capital, as were specifically notified.

38. Handling of unclaimed dividends and undistributed assets **Section 417**

Section 417 has been completed amended and it has been prescribed that in case of company being wound up, any unclaimed dividend or undistributed assets would be handled by liquidator in the manner as prescribed.

Previously such amounts were to vest with the Federal Government by depositing the same in the account maintained under deleted Section 244.

39. Inactive Company **Section 424**

Concept of Inactive Companies has been omitted.

40. Striking off the name of a foreign company by the registrar **Section 443 A**

New section has been added empowering the Registrar to strike-off the name of the Foreign Company, after provision of an opportunity of being heard if;

1) the permission by relevant authority is cancelled,

2) Company cease to operate due to revocation of license granted by Commission,

3) Company has acted against interest, sovereignty and integrity of Pakistan, carrying any fraudulent or prohibited activities, failure to maintain proper books of account, acting not in accordance with the requirements of the charter, statute or memorandum and articles of the company etc.

41. Companies' Global Register of Beneficial Ownership **Section 452**

It has been clarified that a person holding 10% or more in a foreign company or body corporate shall report to the company his shareholding or any other interest for purpose of maintaining Companies' Global Register and submission to registrar. Previously, no percentage was mentioned.

42. Acceptance of advances by real estate companies engaged in real estate projects. **Section 456**

Application of Section 456 was held in abeyance since the promulgation of Companies Act, 2017. This whole section has now been omitted.

43. Measures for greater ease of doing business **Section 458A**

New Section 458A titled "Measures for greater ease of doing business" has been inserted for promoting ease of starting and doing business relating to innovation and technology.

It states that the Commission may implement measures for providing greater ease of doing business, improving regulatory quality and efficiency and facilitating innovation and the use of technology in conducting business by the corporate sector, including but not limited to-

(a) formalizing existing practices through regulations and implementing other measures for attaining international standards of regulatory quality and efficiency for greater ease of doing business;

(b) specifying modes and procedures for enabling greater ease of entry into and exit from the market to start-up companies;

(c) constituting special task groups from the corporate sector for encouraging the use of financial technology in the conduct of business;

(d) creating environments for testing and examining the impact of innovation, new processes or technologies outside the existing regulatory framework including but not limited to crowdfunding, digital assets, open application programming interface (APIs), smart contracts, cloud based solutions and allowing the establishment and use of regulatory sandboxes;

(e) encouraging the use of technology for providing and meeting regulatory reporting requirements, risk assessment, customer due diligence, the issuance of suspicious

transaction reports, keeping records and such other requirements as may be specified to meet anti-money laundering and counter-terrorism financing standards;

(f) improving regulatory compliance and specifying proportionate data-driven standards for the corporate sector to take measures for cyber-security, data sovereignty and algorithm supervision;

(g) specifying exemptions and incentives under the prevailing laws with the object of fostering innovation, promoting startups and entrepreneurship ecosystem in line with international best practices;

(h) improving regulatory monitoring, reporting and compliance requirements; and

(i) prescribing such other frameworks as may be notified by the Commission for stimulating innovation and financial inclusion in the conduct of business by the corporate sector through the use of financial technology, regulatory technology and supervisory technology:

44. Section 459 relating to “Quota for persons with disabilities in the public interest Companies”, **Section 460** relating to “Valuation by registered valuers” and **Section 461** relating to “Security clearance of shareholder and director” have been omitted.

45. Review and revision **Section 479A**

A new section has been inserted regarding review and revisions of order issued by the Commission as was provided in the previous Companies Ordinance, 1984.

It states that any order passed by the registrar or an officer exercising powers of the Commission shall be subject to revision by the Commission upon application being made by any aggrieved person or the registrar within sixty days from the date of such order and the order of the Commission in revision shall be final.

Further, Commission or the registrar may, upon an application being made to it within sixty days from the date of any order passed by it otherwise than in revision as above, or if its own motion, review such order; and such order in review shall be final.

46. Penalty for false statement **Section 496A**

A new section has been inserted to provide civil penalty for providing false statement to the Commission. It states that such person shall be liable to a penalty of level 2 on the standard scale.

47. Various amendments made in various section of the Companies Act 2017 replacing the words "Minister-in-charge of the Federal Government" with the words "Federal Government".

THANKING NOTE

Lastly, it is matter of true privilege for Khilji & Co, Chartered Accountants, to thank all its team members for their contributions during preparation of this document. It was really helpful to have all inputs. KCO considers itself extremely fortunate to have this highly capable, dedicated and exemplary team.

It has been a monumental effort for all team members contributing through their services and expertise to make this document possible in such a short span of time. We hope and believe that this document would assist our clients and team members in better understanding and evaluation of the Budget proposals.

We always strive to improve our quality of services and feedback on this document would be of great help in achieving this goal.

HEAD OFFICE
Plot 2, Mezzanine Floor, Khumrail Plaza, I&T Center Street 22, Sector G-8/4, Islamabad.
+92 51 2253303-6
BRANCH OFFICE I
Plot No 16, Second Floor, Sector A, Iqbal Boulevard, DHA, Phase II, Islamabad.
BRANCH OFFICE II
Flat No. 203, 2nd Floor, Creative House, Phase 3 Chowk, Main Jamrud Road, Peshawar.
+92 91 5611714
Email: **info@khilji.net.pk** **Web:** **www.khilji.net.pk**