

[AS PASSED BY THE NATIONAL ASSEMBLY]

A

BILL

further to amend the Companies Act, 2017

WHEREAS it is expedient to amend the Companies Act, 2017 (XIX of 2017), for the purposes hereinafter appearing;

It is hereby enacted as follow:-

1. Short title and commencement.—(1) This Act shall be called the Companies (Amendment) Act, 2021.

(2) It shall come into force at once.

2. Amendment of section 2, Act XIX of 2017.— In the Companies Act, 2017 (XIX of 2017), hereinafter called as the said Act, in sub-section (1),-

(a) in clause (49), in sub-clause (a), after the words “shares” the expression “, save as otherwise provided under this Act” shall be inserted; and

(b) after clause (67), the following new clause shall be inserted, namely:-

“(67A) “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 re-construction of an existing company shall not be considered as a startup company;".

3. Amendments of section 6, Act XIX of 2017.— In the said Act, in section 6, in sub-section (2), in clause (e), after the word "documents" the words "or any category or classes of documents" shall be inserted.

4. Amendment of section 17, Act XIX of 2017.— In the said Act,—

(a) for sub-section (2), the following shall be substituted, namely:-

"(2) All moneys payable by a subscriber in pursuance of his undertaking in the memorandum of association against the shares subscribed shall be a debt due from him and be payable in such time, manner and condition as may be notified by the Commission."; and

(b) sub-section (3) shall be omitted;

(c) in sub-section (4), after the word "section" the words "direction given by the registrar" shall be inserted.

5. Amendment of section 18, Act XIX of 2017.— In the said Act, in section 18, in clause (b), for the expression "company, having perpetual succession and a common seal" the words "company and having perpetual succession" shall be substituted.

6. Omission of section 23, Act XIX of 2017.— In the said Act, section 23 shall be omitted.

7. Amendment of section 31, Act XIX of 2017.— In the said Act, in section 31, in clause (c), for the expression "and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, his nationality and his" the expression ", nationality," shall be substituted.

8. Amendment of section 37, Act XIX of 2017.— In the said Act, in section 37, in clause (c), for the expressions "and father's name or, in the case of a

married woman or widow, her husband's or deceased husband's name in full, his nationality and his" the expression ", nationality," shall be substituted.

9. Amendment of section 62, Act XIX of 2017.— In the said Act, in section 62, in sub-section (1), for the expression "common seal of the company or under official seal, which must be facsimile of the company's common seal," the expression "signature of authorized officer of the company as may be specified" shall be substituted.

10. Amendment of section 83, Act XIX of 2017.— In the said Act, in section 83,-

(a) in sub-section (1),-

(i) for the words "further share capital" the words "further shares" shall be substituted;

(ii) in clause (a),-

(I) after the words "shares held by" the words "such members through" shall be inserted; and

(II) in sub-clause (iv). for the colon at the end a semi colon shall be substituted and thereafter the proviso shall be omitted;

(iii) for clause (b), the following shall be substituted, namely:-

"(b) in case of public company and subject to approval of the Commission, to any person on the basis of a

special resolution either for cash or for consideration other than cash:

Provided that the value of any non-cash asset, net worth of undertaking, service, benefit or intellectual property shall be determined by a valuer";

- (iv) after clause (b), substituted as aforesaid, the following new clause shall be added, namely:-

"(c) in case of a private company and subject to its articles and special resolution, to any person, either for cash or for consideration other than cash on such conditions and requirements as may be notified.";

- (b) in sub-section (2),-

- (i) after the expression "sub-section (1)" the words "shall be" shall be inserted; and

- (ii) for the words "shall be" the word "and" shall be substituted;

- (c) for sub-section (3), the following shall be substituted, namely:-

"(3) The letter of offer, referred to in sub-section (2), shall be accompanied by a circular duly signed by all directors or an officer of the company authorised by them in this behalf on such form as may be specified containing material information about the affairs of the company, latest statement of the accounts and the necessity for issue of further capital:

Provided that a copy of such circular shall also be filed with the registrar simultaneously at the time it is dispatched to the shareholders." ;
and

- (d) in sub-section (4),-
 - (i) for the words "loan has", the expressions "any loan or finances have" shall be substituted;
 - (ii) after the words "loan or", the expressions "finances or" shall be inserted; and
 - (iii) for the words "does", the expression "or finances" shall be substituted; and
- (e) in sub-section (5), after the words " rate of interest" the words "or profit" shall be inserted.

11. Insertion of new section 83A, Act XIX of 2017.— In the said Act, after section 83, amended as aforesaid, the following new section shall be inserted, namely:-

"83A. Employees' stock options.— Notwithstanding anything contained in section 83 or any other provision of this Act, a 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.”.

12. Amendment of section 86, Act XIX of 2017.— In the said Act, in section 86, sub-section (1) shall be omitted.

13. Amendment of section 88, Act XIX of 2017.— In the said Act, in section 88,-

- (a) in sub-section (1), the word “listed” shall be omitted;
- (b) in sub-section (2), for the full stop at the end, a colon shall be substituted and thereafter the following provisos shall be added, namely:-

“Provided that shares purchased by an unlisted public company or a private company shall be cancelled and not be held as treasury shares:

Provided further that cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of section 89 and such shares shall be cancelled in such form and manner as may be specified.”; and

- (c) in sub-section (9), the words “either through a tender offer or” shall be omitted.

14. Amendment of section 137, Act XIX of 2017.— In the said Act, in section 137, in sub-section (3), in clause (b), the words “be under its seal or” shall be omitted.

15. Amendment of section 140, Act XIX of 2017.— In the said Act, in section 140, in sub-section (2), for the word “ten”, occurring first, the word “five” shall be substituted.

16. Amendment of section 179, Act XIX of 2017.— In the said Act, in section 179,-

- (a) in sub-section (1), for the words "signed by all" the words "approved by majority of" shall be substituted; and
- (b) in sub-section (4), for the word "signified" the word "approved" shall be substituted.

17. Amendment of section 201, Act XIX of 2017.— In the said Act, in section 201, in sub-section (1), in clause (a), the words "and may affix common seal of the company" shall be omitted.

18. Amendment of section 203, Act XIX of 2017.— In the said Act, in section 203,-

- (a) in sub-section (1), the words "that has a common seal" shall be omitted;
- (b) in sub-section (2), for the words "must be facsimile of the company's common seal, with the addition on its face of" " the words "must add on the face of it" shall be substituted;
- (c) sub-section (3) shall be omitted;
- (d) in sub-section (4), the expression " , by writing under its common seal," shall be omitted; and
- (e) in sub-section (7), the expression "as if it had been sealed with the common seal of the company" shall be omitted.

19. Amendment of section 227, Act XIX of 2017.— In the said Act, in section 227,-

(a) in sub-section (2),-

- (i) in clause (k), after the word "adequacy" the word "of" shall be inserted; and
- (ii) in clause (l), the word "and" at the end shall be omitted and thereafter, the following new clause shall be inserted, namely:-

"(la) 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; and"; and

(b) in sub-section (3),-

- (i) in clause (c), the word "and" at the end shall be omitted;
- (ii) in clause (d), for the full stop, the expression "; and" shall be substituted and thereafter the following new clause (e) shall be inserted, namely:-

"(e) the legitimate reasons for not declaring dividend under section 240 despite earning profits and future prospects of dividend, if any.>"; and

(c) for sub-section (6), the following shall be substituted, namely:-

"(6) Whoever contravenes any of the provisions of this section shall---

- (a) in respect of a listed company, be punishable with a penalty of level 2 on the standard scale; and
- (b) in respect of any other company, be punishable with a penalty of level 1 on the standard scale.”.

20. Omission of section 234, Act XIX of 2017.— In the said Act, section 234 shall be omitted.

21. Amendment of section 287, Act XIX of 2017.— In the said Act, in section 287, for clause (a), the following shall be substituted, namely:-

“(a) the termination, setting aside or modification of any agreement or award compensation, however arrived including but not limited to between the company or any other company or any director, including the chief executive or any other officer, wherein the Court concludes that such agreement suffers from conflict of interest on the part of any director or the Board or any such agreement or contract is prejudicial to the interest of members upon such terms and conditions as may, in the opinion of the Court, be just and equitable in all the circumstances;”.

22. Amendment of section 337, Act XIX of 2017.— In the said Act, in section 337, in sub-section (1), in clause (b), the expression “, and for that purpose, to use, when necessary, the company’s seal;” shall be omitted.

23. Amendment of section 435, Act XIX of 2017.— In the said Act, in section 435,-

(a) in sub-section (1), for clause (d) and (e), the following shall be substituted, namely:-

- “(d) a return showing the full present and former names and surnames, present and former nationality, full address in Pakistan and such other particulars, as may be specified, of the principal officer of the company in Pakistan by whatever name called; and
- (e) the full present and former names and surnames, full addresses and such other particulars as may be specified of some one or more persons resident in Pakistan authorised to accept on behalf of the company service of process and any notice or other document required to be served on the company together with his consent to do so; and”;

(b) in sub-section (2), in clause (a), after the words “each director” the words “and chief executive” shall be inserted; and

(c) after sub-section (3), the following new sub-section (4) shall be added, namely:-

“(4) The registrar shall maintain a register of foreign companies on paper or in any electronic form under this Act in such form and manner as may be specified.”.

24. **Insertion of section 458A, Act XIX of 2017.—** In the said Act, after section 458, the following new section shall be inserted, namely:-

“458A. Measures for greater ease of doing business.— Notwithstanding anything contained in this Act or in any other law for the time being in force, 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 startup 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 cybersecurity, 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;

Provided that the Commission may take such other measures prior to the issuance of regulations as it may deem fit through guidelines, policy papers, frameworks or any other modes or mechanisms.”.

STATEMENT OF OBJECTS AND REASONS

COMPANIES (AMENDMENT) BILL 2020 (V OF 2020)

The Companies (Amendment) Bill 2020 (V of 2020) suggested various amendments to Companies Act 2017 (XIX of 2017). The Companies Act 2017 was promulgated on May 31st 2017. The Securities and Exchange Commission of Pakistan in consultation with all major stakeholders and in line with International best practices proposed various amendments in the Companies Act, 2017 which mainly relates to protection of minority investors, Ease of Doing Business in Pakistan, Introducing an enabling regulatory framework to facilitate "Startups" for the promotion of businesses relating to innovation and technology and to improve overall business climate in the country and to remove other anomalies/ambiguities in the Companies Act, 2017.

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