

# Memorandum on Companies Ordinance, 2016

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## MEMORANDUM ON COMPANIES ORDINANCE, 2016

### 1. INTRODUCTION

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The Companies Ordinance, 2016 (the “**2016 Ordinance**”) was promulgated on 11 November 2016 and repealed the Companies Ordinance, 1984 (the “**1984 Ordinance**”), save for the provisions appearing in Sections 282A to 282N of the 1984 Ordinance relating to Non-Banking Finance Companies. This memorandum outlines the material changes brought about by the 2016 Ordinance.

Please note that this memorandum is being circulated for information purposes only and as such, is not to be construed as comprehensive legal advice. Should the readers require any clarification to the provisions of this memorandum, they are requested to contact us at the details mentioned on the website.

Please find annexed to this memorandum the following documents:

1. ‘Insertions’ made by the 2016 Ordinance with no corresponding provisions in the 1984 Ordinance;
2. ‘Deletions’ from the 1984 Ordinance with no corresponding provisions in the 2016 Ordinance; and
3. ‘Modifications’ to provisions of the 1984 Ordinance.

Please note that the extent to which a section from the 2016 Ordinance has not been covered in any of the above, there has been no change to the corresponding provision in the 1984 Ordinance.

### 2. TERMS USED

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“**Commission**” means the Securities and Exchange Commission of Pakistan.

“**Company**” means a company formed and registered under the 2016 Ordinance or the company law, and “**company law**” means the repealed Companies Act, 1913 (VII of 1913) and Companies Ordinance, 1984 (XLVII of 1984).

“**Notification**” means a notification published in the official Gazette and the expression “**notify**” shall be construed accordingly.

“**Prescribed**” means prescribed by rules made by the concerned Minister-in-Charge of the Federal Government under the 2016 Ordinance.

“**Specified**” means specified through regulations made under the 2016 Ordinance.

### 3. DIRECTORS

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- (a) Under the 1984 Ordinance there were no restrictions on the number of directorships that could be held by a person. Section 155 (*Number of directorships*) of the 2016 Ordinance

however has introduced a restriction on the number of directorships held by a person in listed companies (other than in a listed subsidiary) to seven. The 2016 Ordinance does not however include a mechanism/procedure to be followed by directors to comply with this provision.

- (b) In addition to the criteria under the 1984 Ordinance pertaining to the eligibility of a person for the appointment of a director of a company, such person is now also required to hold a National Tax Number as per the provisions of Income Tax Ordinance, 2001 (XLIX of 2001) (See Section 153 (*Ineligibility of certain persons to become a director*) appearing in the document titled *Modifications*).
- (c) Where a member acquires the requisite shareholding to elect a director on the board of a company (not being a listed company) after the election of directors has already taken place, such member may require the company to hold fresh elections. The board is required to, upon receipt of the requisition, hold such elections within one month of the receipt of such requisition (See Section 162 (*Fresh elections of directors in case of unlisted companies*) appearing in the document titled *Insertions*).
- (d) Under the 1984 Ordinance, only directors of a public company were required to file their consent to act as directors with the Commission. With the promulgation of the 2016 Ordinance, any person appointed or nominated as a director or chief executive of a company representing to hold such office is required to give his consent in writing to the company for such appointment or nomination, and such consent is required to be filed with the registrar within fifteen (15) days thereof (See Section 167 (*Consent to act as director to be filed with the company*) appearing in the document titled *Modifications*).
- (e) Section 204 (*Duties of directors*) of the 2016 Ordinance lists the duties of directors, stating that a director of a company shall:
- act in accordance with the articles of the company;
  - act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees the shareholders the community and for the protection of environment;
  - discharge his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
  - not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
  - not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company; and
  - not assign his office and any assignment so made shall be void.

The Commission may specify additional duties and roles of directors. Note that no corresponding provision appeared in the 1984 Ordinance.

- (f) A company is barred from making a loan to its directors and providing a guarantee or security in connection with a loan made to its directors, unless the members of the company have accorded their approval through a resolution. Listed companies are also required to obtain the approval of the Commission prior to making such loan (See Section 182 (*Loans to directors: requirements of members approval*) appearing in the document titled *Modifications*).
- (g) Section 196(3) of the 1984 Ordinance restricts the board of a public company from disposing of an undertaking or sizeable part thereof unless approved by a general meeting. Section 183(3) of the 2016 Ordinance, however, applies to all companies and has further defined the term “undertaking” and “sizeable part”. (See Section 183 (*Powers of the Board*) appearing in the document titled *Modifications*).

#### ***Independent Directors and Non-Executive Directors***

- (a) An independent director to be appointed under any law is required to be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any institute, body or association, as may be notified by the Commission. The responsibility of exercising due diligence before selecting a person from the data bank as an independent director lies with the company making such appointment. An independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest (See Section 166 (*Manner of selection of independent directors and maintenance of databank of independent directors*) in the document titled *Insertions*). No notification has been issued by the Commission as of the date of this memorandum.
- (b) Section 181 (*Protection to independent and non-executive directors*) of the 2016 Ordinance provides that an independent director and a non-executive director will be liable in respect of acts and omissions by a listed company or a public sector company which had occurred with such director’s knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently.
- (c) A non-executive director means a person on the board of the company who (i) is not from among the executive management team and may or may not be independent; (ii) is expected to lend an outside viewpoint to the board of a company; (iii) does not undertake to devote his whole working time to the company and not involved in managing the affairs of the company; (iv) is not a beneficial owner of the company or any of its associated companies or undertakings; (v) does not draw any remuneration from the company except the meeting fee.

#### 4. OTHER OFFICERS

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- (a) Section 192 (*Chairman in a listed company*) of the 2016 Ordinance provides that the board of a listed company is required to appoint a chairman from among the non-executive directors within fourteen (14) days from the date of election of directors. The chairman will hold office for a period of three (3) years unless he earlier resigns, becomes ineligible, disqualified under the 2016 Ordinance, or removed by the directors. Clients to note that the chairman and the chief executive must not be the same individual except where provided for under any other law.
- (b) The first chief executive of the company is to be determined by the subscribers to the memorandum and his/her name will need to be submitted along with the documents for incorporation of the company (see Section 186 (*Appointment of first chief executive*) appearing in the document titled *Modifications*).
- (c) The first auditors of a company are now required to be appointed within three (3) months of the date of incorporation. A member(s) having ten percent of shareholding in the company shall be entitled to propose any auditor for appointment. Any casual vacancy of an auditor shall be filled by the board within thirty days, provided where the auditors are removed during their tenure, the board shall appoint the auditors with prior approval of the Commission. Further, every company shall within fourteen days from the date of an appointment of an auditor, send to the registrar intimation, together with the consent in writing of the auditor concerned (see Section 246 (*Appointment, removal and fee of auditors*) appearing in the document titled *Modifications*).
- (d) A company's auditor is obligated to submit to the registrar, within fourteen (14) days of its appointment, a copy of the consent letter given to the company. An auditor shall conduct the audit and prepare a report in compliance with the requirements of International Standards on Auditing as adopted by the Institute of Chartered Accountants of Pakistan. The auditors are obligated to form an opinion as to whether adequate accounting records have been kept by the company and whether the company's financial statements are in agreement with the according records and returns (see Section 249 (*Duties of auditors*) appearing in the document titled *Modifications*).

#### 5. MEETINGS

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##### Voting

Section 144 (*Poll through secret ballot*) of the 2016 Ordinance introduces the concept of polling through secret ballot. Where a poll is demanded on any resolution, it may be ordered by the chairman of the meeting of his own motion to be taken by secret ballot, and shall be ordered to be taken by him on a demand made in that behalf by the members present in person, through video-link or by proxy, where allowed, and having not less than one-tenth of the total voting power.

### General Meetings

- (a) Every company is required to hold an annual general meeting within sixteen (16) months (as opposed to eighteen (18) months under the 1984 Ordinance) from the date of its incorporation and thereafter once in every calendar year within a period of four (4) months following the close of its financial year. Further, a listed company must provide the facility of video-link to its members at least seven days prior to the date of the meeting enabling them to participate in its annual general meeting where such members residing in a city who hold ten percent of the total paid up capital or such other percentage as may be specified have demanded the same, and such entitlement of the members is required to be mentioned in the notice sent for such general meeting (See Section 132 (*Annual General Meeting*) and Section 134 (*Provisions as to meetings and votes*) appearing in the document titled *Modifications*).
- (b) A notice of general meeting is now also required to be sent to every director of the company. Further, members of a company may participate in the meeting personally, through video-link or by proxy, and on a poll, votes may be given either personally or through video-link or by proxy or through postal ballot in a manner and subject to the conditions as may be specified (See Section 134 (*Provisions as to meetings and votes*) appearing in the document titled *Modifications*).
- (c) For all businesses to be transacted at a general meeting deemed to be special (See Section 134 (2) (*Provisions as to meetings and votes*) appearing in the document titled *Modifications*), the members of a private company or a public unlisted company (having not more than fifty members), may pass a resolution (ordinary or special) by circulation signed by all the members for the time being entitled to receive notice of a meeting. Such resolution is not required to be passed unanimously by the members, and it shall be as valid and effectual as if it had been passed at a general meeting of the company duly convened and held (See Section 149 (*Passing of resolution through circulation*) appearing in the document titled *Insertions*).

### Board Meetings

- (a) Section 176 (*Proceedings of the board*) of the 2016 Ordinance provides that if at any time there are not enough directors to form a quorum to fill a casual vacancy, all the remaining directors will be deemed to constitute a quorum for this limited purpose. (See Section 176 (*Proceedings of the board*) appearing in the document titled *Modifications*).
- (b) Section 179 (*Passing of resolution by the directors through circulation*) of the 2016 Ordinance provides that a resolution in writing signed by all the directors or the committee of directors for the time being entitled to receive notice of a meeting of the directors or committee of directors will be as valid and effectual as if it had been passed at a meeting of the directors or the committee of directors duly convened and held. Such resolution is required to be noted at a subsequent meeting of the board or the committee thereof, as the

case may be, and made part of the minutes of such meeting. Note that a directors' agreement to a written resolution, passed by circulation, once signified, may not be revoked.

## 6. PUBLIC INTEREST COMPANIES

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Pursuant to Section 216 (*Company deemed to be a public interest company in certain circumstances*) of the 2016 Ordinance, a company shall be deemed to be a company with public interest if its ordinary shares are owned by such number of persons as may be specified and whose assets exceed the value specified. Such companies will be required to comply with any further requirements as may be specified by the Commission. Clients should be aware that in the event a company is categorized as a public interest company by the Commission, the Commission is entitled to, in the circumstances specified in Section 172 of the 2016 Ordinance, make a disqualification order against a director of such a company for a period up to five (5) years. (See Section 172 (*Disqualification Orders*) appearing in the document titled *Insertions*). Note that the Commission has not as of the date of this memorandum "specified" the requirements under this Section 172.

## 7. SHARES

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- (a) Subscribers of shares are now required to pay in cash all moneys in respect of shares that they have subscribed to, within thirty (30) days of the incorporation of a company. The receipt of such subscription money is required to be reported by the company to the Commission within forty-five (45) days of the incorporation of the company, accompanied by a certificate by a practicing chartered accountant or a cost and management accountant verifying receipt of such subscription money (See Section 17 (*Effect of memorandum and articles*) appearing in the document titled *Modifications*).
- (b) Section 72 (*Issuance of shares in book-entry form*) of the 2016 Ordinance provides that all companies having share capital are required to have shares in book-entry form only. All existing companies are required to replace their physical shares with book-entry form in a manner as may be specified and subject to any extension by the Commission, within a period not exceeding four years from the commencement of the 2016 Ordinance.
- (c) Several restrictions have been imposed in respect of the power of a company to issue shares at a discount (See Section 82 (*Power to issue shares at a discount*) appearing in the document titled *Modifications*). Note that the previous requirement of authorizing such issuance by a resolution at a general meeting has been changed to an authorization by a special resolution.
- (d) The procedure for issuing further shares in a company (previously governed by Section 86 of the 1984 Ordinance) has been modified, such that the letter of offer of shares circulated by the directors to existing shareholders is required to allow the members at least 15, but not more than 30 days to accept such offer, before such offer is deemed to be declined. If the existing members decline the whole or any part of the shares offered to the members, the



directors may allot such shares in such manner as they deem fit, within a period of 30 days from the close of the offer, or within such extended time (not exceeding 30 days) with the approval of the Commission (*See Section 83 (Further issue of capital)* appearing in the document titled *Modifications*).

- (e) A company may pay a dividend either in cash or in kind, however, only out of its profits. The payment of dividend in kind shall only be in the shape of shares of listed company held by the distributing company (see Section 241 (*Dividend to be paid only out of profits*) appearing in the document titled *Modifications*).

### ***Allotment of Shares***

- (a) The timeline for a company to file with the Commission a return in respect the allotment of its shares has changed from thirty (30) days to forty-five (45) days. Note that where shares allotted as paid up in cash, companies are further required to submit along with the return of allotment, a report from its auditor to the effect that the amount of consideration has been received in full by the company and shares have been issued to each allottee. Where shares are allotted as paid up otherwise than in cash, companies must submit along with the return of allotment, a copy of the document evidencing the transfer of non-cash asset to the company, or a copy of the contract for technical and other services, intellectual property or other consideration, along with copy of the valuation report (verified in the specified manner) for registration in respect of which that allotment was made (*See Section 70 (Return as to allotments)* appearing in the document titled *Modifications*).
- (b) Companies are now required to issue certificates of shares or other securities within thirty (30) days after the allotment of any of its shares or other securities as opposed to the previous requirement of ninety (90) days, and to ensure delivery of the certificates to the person entitled thereto at his registered address (*See Section 71 (Limitation of time for issue of certificates)* appearing in the document titled *Modifications*).
- (c) Companies are required to issue a duplicate of certificates of shares or other securities, within thirty (30) days instead of the earlier requirement of forty-five (45) days from the date of application, if the original is proved to have been lost or destroyed, or having been defaced or mutilated or torn, is surrendered to the company (*See Section 73 (Issue of duplicate certificates)* appearing in the document titled *Modifications*).

### ***Transfer of Shares***

- (a) With respect to transfer of shares by members of a private company, Section 76 (*Restriction on transfer of shares by the members of a private company*) of the 2016 Ordinance provides that a member of a private company desirous to sell any shares held by him is required to intimate to the board his intention through a notice. On receipt of such notice, the board shall, within a period of ten days, offer those shares for sale to the members in proportion to their existing shareholding. The letter of offer for sale specifying the number of shares to which the member is entitled, price per share and limiting a time, within which the offer, if

not accepted, be deemed as declined, shall be dispatched to the members. If the whole or any part of the shares offered is declined or is not taken, the board may offer such shares to the other members in proportion to their shareholding. If all the members refuse to accept the offer or if any shares are left over, the shares may be sold to any other person as determined by the member, who initiated the offer. Note that the mechanism to determine the price of shares shall be such, as may be “specified”. Note further, no such provision appeared in the 1984 Ordinance. (See Section 76 (*Restrictions on transfer of shares by the members of a private company*) appearing in the document titled *Insertions*).

- (b) The Commission may require transferors and transferees of shares of such companies as may be notified by the Commission to appear before an agent licensed by the Commission to record their statements in respect of such transfer, and the agent will forward a certified copy of such statements to the company in the form and manner as may be specified. (See Section 467 (*Approval of transfer of shares by the agents licenced by the Commission*) appearing in the document titled *Insertions*).
- (c) Where issued shares or *modaraba* certificates, or declared dividends by a company or a *modaraba* respectively, or any other instrument or amount remain unclaimed or unpaid, the company is required to give three months’ notice to the shareholders, certificate holders or owners, as the case may be, to file their claim to the same (See Section 244 (*Unclaimed shares, modaraba certificates and dividend to vest with Federal Government*) appearing in the document titled *Insertions*). Where no claim is made to the company in respect of the foregoing, the company is required to:
  - (i) in case of sum of money, deposit any unclaimed or unpaid amount to the credit of the Federal Government; and
  - (ii) in case of shares or *modaraba* certificates or other instrument, report and deliver to the Commission such shares or *modaraba* certificates or other instrument and the Commission shall sell such instrument in the manner and within such period as may be specified and deposit the proceeds to the credit of Federal Government.

## 8. FILINGS

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- (a) Section 452 (*Companies’ Global Register of Beneficial Ownership*) of the 2016 Ordinance requires every substantial shareholder or officer of a company incorporated after the promulgation of the 2016 Ordinance having ten percent or more shares in a foreign company or body corporate to report to the company his beneficial ownership or any other percentage or interest as may be notified by the Commission, on a specified form within thirty days of holding such position or interest. The company is required to submit such information received by it during the year to the registrar along with the annual return on a specified form. In addition to a corporate shareholder making such disclosure to the company in which it is a shareholder, such corporate shareholder is also obligated to make

the same disclosure to the Commission along with its annual return. No form, as of the date of this memorandum, has been specified by the Commission.

- (b) Section 455 (*Filing of documents through intermediaries*) of the 2016 Ordinance requires that where a company is availing the services of an intermediary for the purpose of filing documents with the Commission, such intermediary must possess the requisite qualification and must seek registration with the Commission in a manner as may be specified. No manner has been specified as of the date of this memorandum. An “intermediary” is defined as a person acting as a service provider in relation to the sending, receiving, storing or processing of the electronic communication or the provision of other services in relation to it.

## 9. PENALTIES

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- a) Monetary penalties appearing in individual sections of the 1984 Ordinance have been removed in their entirety. Instead, the 2016 Ordinance has introduced a standard scale of penalty for offences under the Ordinance, reproduced below:

<b>Level</b>	<b>Limit of penalty</b>	<b>Per day penalty during which the default continues</b>
1	Upto Rs.25,000	Upto Rs.500
2	Upto Rs.500,000	Upto Rs.1,000
3	Upto Rs.100 million	Upto Rs.500,000

The penalties shall be imposed in the manner outlined in Section 479 (*Adjudication of offences and standard scale of penalty*) of the 2016 Ordinance, appearing in the document entitled *Insertions*.

- b) Where any document required to be filed or registered with the registrar is presented after the expiry of the prescribed period, the registrar on payment of the fee as specified, may accept the same:
- (i) within three months, a fee equivalent to two times;
  - (ii) within six months, a fee equivalent to three times;
  - (iii) within one year, a fee equivalent to four times;
  - (iv) within two years, a fee equivalent to five times;

of the prescribed fee payable in respect thereof (see Section 468 (*Acceptance of documents presented after prescribed time*) appearing in the document titled *Modifications*).

- c) A penalty for false statement, falsification, forgery, fraud and deception, has been introduced. Such false statement, falsification, forgery, fraud and deception are punishable by imprisonment which shall not be less than one year but which may extend to seven years and shall also be liable to a fine which may extend to three times the amount involved in the offence (See Section 496 (*Penalty for false statement, falsification, forgery, fraud, deception*) appearing in the document titled *Modifications*).
- d) If a company or any other person contravenes or fails to comply with any provision of the 2016 Ordinance for which no punishment is provided, the company and every other officer of the company who is in default shall be liable to a penalty of level 3 on the standard scale (See Section 500 (*Penalty for carrying on ultra vires business*) appearing in the document titled *Modifications*).

## 10. SCHEME OF ARRANGEMENT

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The provisions relating to facilitating reconstruction or amalgamation of companies grant the Commission, as opposed to the High Court of the jurisdiction, the powers to sanction the same. The Commission may by order sanction the compromise or arrangement or by a subsequent order make provision for further matters. A copy of the order of the Commission is also required to be filed with the registrar at the Commission. It should be noted that under the 1984 Ordinance, an order of the High Court sanctioning a compromise or arrangement, had no effect until such time as a copy of the same was filed with the registrar at the Commission. Under the 2016 Ordinance, however, the order of the Commission takes effect from the date that it is passed, and not from the date that a copy of the same is filed with the registrar.

Section 284(3) of the 2016 Ordinance provides that notwithstanding anything contained in the Stamp Act, 1899, as a result of sanctioning by the Commission, no stamp duty shall be payable on transfer to the transferee company of the whole or any part of the undertaking, and of the property of any transferor company. While regulation of companies is a power vested with the Federation pursuant to the Constitution of Pakistan, it should be noted that stamping is a provincial subject, within the legislative domain of the provinces (and not the Federation). Art.144 of the Constitution of Pakistan does allow the Federation to legislate for one or more Provinces (if the Provinces pass a resolution to such effect). In this case, we are not aware of the fact that any of the provinces requested the Federation to pass Section 284(3) of the 2016 Ordinance. As such, there is a risk that the provinces ignore the provision appearing in Section 284(3) of the 2016 Ordinance and require stamp duty to be paid on an order passed by the Commission, pursuant to which assets are being transferred by a company. It may therefore be expedient for companies proceeding to reconstruct or amalgamate pursuant to the provisions of the 2016 Ordinance, to seek the requisite exemption to be incorporated in the Stamp Act, 1899, as applicable in each of the provinces of Pakistan.

A primary reason for companies proceeding to transfer assets and liabilities by way of a scheme of arrangement under the 1984 Ordinance was for the benefit available under Section 97A of the Income Tax Ordinance, 2001 which provided that no gain or loss shall be taken to arise from the disposal of assets by way of a scheme of arrangement pursuant to the 1984 Ordinance if *inter alia* the scheme of arrangement is approved by the High Court, the State Bank of Pakistan or the Commission, as the case may be. The reference to the word “Commission” in Section 97A of the Income Tax Ordinance, 2001 is in our view, a reference to the Scheme of Arrangement for Non-Banking Finance Companies (“NBFC”) under Section 282L of the 1984 Ordinance. The Collector of Income Tax may, however, take the view that for Scheme of Arrangements relating to companies (other than NBFCs) the Scheme still needs to be approved by the High Court in order to enable the carve out of Section 97A to apply. Companies should therefore take a tax opinion from their tax advisors or, for further clarity, require their tax advisors to seek a written clarification from Federal Board of Revenue, that even though a Scheme of Arrangement for companies other than NBFCs is not approved by the High Court, but is, instead, approved by the SECP, the provisions of Sections 97A will be applicable.

By virtue of the fact that the order is now passed by the Commission (and not the High Court), there is a risk that the relevant officer (appointed pursuant to the land revenue act applicable in each province of Pakistan) may refuse to enter the details of a transferee company in the record of rights until such time as the order of the Commission (pursuant to which “property” including immovable property is transferred) is “registered” pursuant to the Registration Act, 1908. In order to mitigate the risk of the same happening, companies proceeding with transfer of assets pursuant to schemes of arrangement under the 2016 Ordinance should seek an exemption on payment of registration charges for the registration of the order of the Commission, under Section 17 of the Registration Act, (which registration would be required to effectuate the transfer of any immovable property).

## 11. MISCELLANEOUS

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- (a) Under Section 22 (*Publication of name by a company*) of the 2016 Ordinance, all companies are required to display their name in English and Urdu, and their incorporation number, outside the registered office and every office or the place in which its business is carried on, and a certified copy of incorporation at every place of business of the company.
- (b) Section 26 (*Business and objects of a company*) of the 2016 Ordinance provides that every company is required to mention its “principal line of business” in its memorandum of association, and the same is required to be commensurate with the name of the company. In the event of any change to the same, the company is required to report the change to the Commission within thirty (30) days from the date of change. **“Principal line of business”** means the business in which substantial assets are held or substantial revenue is earned by a company, whichever is higher.

- (c) A pledge on any movable property of the company, previously excluded from registration, is now required to be registered with the Commission (See Section 100 (*Requirement to register a mortgage or charge*) appearing in the document titled *Modifications*).
- (d) Section 208 (*Related Party Transactions*) of the 2016 Ordinance provides that a company may enter into any contract or arrangement with a related party only in accordance with the policy approved by the board, subject to such conditions as may be specified, with respect to sale, purchase or supply of any goods or materials; selling or otherwise disposing of, or buying, property of any kind; leasing of property of any kind; availing or rendering of any services; appointment of any agent for purchase or sale of goods, materials, services or property; and such related party's appointment to any office or place of profit in the company, its subsidiary company or associated company. Where a majority of the directors are interested in any of the above transactions (and therefore cannot meet the requisite quorum), the matter shall be placed before the general meeting for approval as special resolution. (See Section 208 (*Related party transactions*) of the 2016 Ordinance appearing in the document titled *Insertions*).
- (e) Section 234 (*Filing of unaudited financial statements*) of the 2016 Ordinance provides private limited companies having a paid up capital not exceeding one million rupees or such other amount of paid up capital as may be notified by the Commission, to file duly authenticated financial statements, whether audited or not, with the registrar within thirty (30) days from the holding of such meeting.
- (f) Any company carrying on business in Pakistan is barred from appointing any sole purchase, sale or distribution agent without the approval of the Commission (see Section 196 (*Bar on appointment of sole purchase and sale agents*) appearing in the document titled *Modifications*). It would appear, therefore, that in addition to seeking an exemption from the Competition Commission of Pakistan in respect of “prohibited agreements” under Section 4 of the Competition Act, 2010, a company may also need to take permission from the Commission.
- (g) The definition of “investments” as defined in Section 199 (*Investments in associated companies*) of the 2016 Ordinance has been amended to include the term “guarantees”. A pre-condition to investment by way of loans or advances is an agreement recording the investment in writing. Such agreement shall *inter alia* include terms and conditions specifying the nature, purpose, period of the loan, rate of return and the repayment schedule for principal and return in accordance with the approval of the members in the general meeting. Further, the Commission has the power to specify the return on investment, which shall be recovered on a regular basis failing which the directors shall be personally liable to make the payment. Further the directors are now obligated to certify that the investment has been made after due diligence and that the borrowing company is able to repay the loan. The company is now also obliged to keep a register of investments in associated companies and undertakings (See Section 199 (*Investments in associated companies*) appearing in the document titled *Modifications*).

- (h) The circumstances in which a company may be wound up by a Court have been expanded. The additional circumstances include: if the company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding two consecutive financial years; if the company has acted against the interest, sovereignty and integrity of Pakistan, the security of the State and friendly relations with foreign states; and, has conceived or brought forth for, or is has been carrying on, unlawful or fraudulent activities (See Section 301 (*Circumstances in which a company may be wound up by Court*) of the document titled *Modifications*).
- (i) The Commission may by a written notice require a foreign company and any of its present or past directors, officers or auditors or a person who is directly or indirectly the beneficial owner of its equity securities to furnish the information about the shareholding in the company at any point in time and such other information and document as may be directed, as may be specified in the notice (See Section 439 (*Power of the Commission to require information of beneficial owners of a foreign company*) of the document titled *Insertions*).