

MEMORANDUM ON THE COMPANIES (APPOINTMENT OF LEGAL ADVISERS) (AMENDMENT) ACT, 2017

1. INTRODUCTION

The Companies (Appointment of Legal Advisers) (Amendment) Act, 2017 (the “**Amendment Act**”) received the assent of the President on 9 February 2017, and has been published in the official Gazette of Pakistan on 13 February 2017. The Amendment Act amends various provisions of the Companies (Appointment of Legal Advisers) Act, 1974 (the “**Act**”).

This memorandum outlines the changes brought about by the Amendment Act. Note that pursuant to the Amendment Act, any company meeting the following criteria is required to appoint a legal adviser: (a) a company formed and registered under the Companies Ordinance 1984 (the “**Ordinance**”) and having a paid-up capital of more than PKR 7,500,000 (Rupees Seven Million Five Hundred Thousand), (b) a company limited by guarantee; or (c) an association registered under Section 42 of the 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.

2. NEW PROVISIONS

The following terms have been inserted in Section 2 (*Definitions*) of the Act by the Amendment Act:

“**Commission**” means the Securities and Exchange Commission of Pakistan established under section 3 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997)

“**Ordinance**” means the Companies Ordinance, 1984 (XLVII of 1984)

“**Registrar**” shall have the same meaning as is assigned to it in the Ordinance

Further to the above, a new Section 7A has been inserted which introduces penalties for making false statements in any return or document required by or for the purpose of any provision of the Act. Section 7A is reproduced below:

“**7A. Penalty for false statement.** Whoever, in any return or document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two hundred thousand rupees or with both.”

3. MATERIAL CHANGES TO THE ACT

Definition of “company”

Previously, the Act was expressed to apply to companies formed and registered under the Companies Act 1913, having a paid-up capital of at least PKR 500,000 (Rupees Five Hundred Thousand), companies limited by guarantee and associations registered under Section 26 of the Companies Act 1913.

Pursuant to the Amendment Act, the definition of a “company” to which the Act applies has now been amended to refer to companies formed and registered under the Ordinance, having a paid-up capital of more than PKR 7,500,000 (Rupees Seven Million Five Hundred Thousand), companies limited by guarantee and associations registered under Section 42 of the Ordinance.

Appointment of Legal Adviser

Section 3(1) of the Act provides for legal advisers to be appointed by companies on retainership to advise such companies in the performance of their functions and the discharge of their duties in accordance with the law. The Amendment Act has amended this section such that legal advisers have to act as aforementioned in accordance with the law and further, *“in accordance with the terms and conditions of any agreement entered into by and between the company and the legal adviser, or required by law or prescribed by any rules, regulations governing the company”*.

In addition to the foregoing, while the Act previously allowed any advocate to be appointed as legal adviser, the Amendment Act has restricted such appointment to advocates of the High Court.

Retainer

Section 4 of the Act previously provided for the retainer fee of legal advisers to be no less than PKR 1200 (Rupees One Thousand Two Hundred) per month, whereas the same has been amended by the Amendment Act to now read as no less than PKR 5000 (Rupees Five Thousand) per month, or such higher amount as may be notified by the Federal Government in the official Gazette.

Penalty, Adjudication of Offence and Appeal

Section 7 of the Act provides for penalties in respect of any contravention of the provisions of the Act, or any rules or regulations made thereunder. Previously, where there had been such a contravention by a company, the penalty was restricted to the “manager or other officer responsible for the conduct of [the company’s] affairs”. The penalty prescribed under the Act was “simple imprisonment for a term which may extend to three months or with fine, or with both.” Note that the jurisdiction to try an offence punishable under the Act rested with a magistrate of the first class or any court superior to that of such magistrate.

The Amendment Act has substituted Section 7 such that the jurisdiction to try an offence under the Act now rests with the Securities and Exchange Commission of Pakistan (the “**Commission**”). Further, pursuant to Section 7, a penalty for non-contravention may now be imposed on the company, in addition to the manager and other officers of the company. Note that the new penalties are monetary in nature, and the previous penalty of imprisonment under this section has been removed.

Section 7 of the Act, as substituted, provides that any person who contravenes any provision of this Act or rules or regulations made thereunder shall be guilty of an offence and shall be liable to a penalty to be imposed by the Commission as the following:

“(a) In the case of an individual including directors of the company, such sum which may extend to one hundred thousand rupees; and

(b) In the case of a company, such sum which may extend to two hundred thousand rupees.”

Further to the above, Section 7 of the Act, as substituted, provides that any penalty imposed by the Commission under this provision shall be payable to the Commission, and may be recovered as

provided under Section 162 of the Securities Act, 2015. It further provides that any person aggrieved by any order of the Commission or an officer authorized in this behalf, may appeal to the Appellate Bench of the Commission under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997. The Commission however would issue a show cause notice to the respective company before adjudicating on the alleged contravention or failure to comply with the requirements of the Act by any respective person or company, and will be required to ensure that reasonable opportunity of being heard has been given to such defaulting person or company.

Section 7 of the Act, as substituted, further provides that the respective courts shall continue with the pending proceedings of any prosecutions filed under Section 7 of the Act prior to the passing of the Amendment Act, and may impose penalties as provided under Section 7 as substituted.