



**TRANSPARENCY
INTERNATIONAL-PAKISTAN**

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23rd October, 2017

TL17/1023/B

Mr. Shahid Khaqan Abbasi,
Prime Minister of Pakistan,
Prime Minister House,
Government of Pakistan,
Islamabad.

Sub: Complaint against SECP for not taking action to implement Section 456 of the Companies Act, 2017, Acceptance of advances by real estate companies engaged in Real Estate Projects

Dear Sir,

Transparency International Pakistan request the Prime Minister to kindly look into the role of SECP, in its deliberate act of not protecting the rights of public on their investment in Real Estate Projects.


The complaint is summarized below;

1. That in the Companies Act, 2017, Section 456, which relates to real estate companies engaged in real estate projects, has not been made effective, by inserting the following provision in Subsection (3) of Section (1) of the Act. **Annex-A.**

“Section 456 shall come into force on such date as notified by the Federal Government or an authority or person authorized by it.”

2. That SECP vide its letter to TI Pakistan dated 6th September 2017, has informed that;

“since no notification is issued by the Federal Government, therefore, section 456 is not applicable”. Annex-B.

3. That the Real Estate sector is being regulated in UAE, India and most other countries by keeping the deposits of the buyers in an Escrow Account to be spent on the project only, to protect buyer's rights & interest. Real Estate sector in Pakistan was also being regulated in Pakistan by SECP from 2003, vide the Notification No. SRO 954(1)/2003 dated October 1, 2003. **Annex-C.**
4. That after the new government came into power in 2008, SECP in September 2009, withdrew SRO 954(1)/2003.
5. That on 19th January 2012, the SECP, in the TI Pakistan's Suo Moto HRC No 38671-S/2011, informed the following to the Supreme Court: (**Annex-D**). 



b). That the Companies Ordinance, 1984 is an entity-based law. Accordingly, the real estate business is not being regulated by the Commission. Moreover, under the Constitution of Pakistan, this sector falls within the ambit of the Provinces and is not a Federal subject. Provincial governments have requisite legal framework and administrative machinery for the regulation of the housing and real estate societies/companies;

c). That a Notification No. SRO 954(I)/2003 dated October 1, 2003 was issued to bring the advances taken by real estate companies, automobile or other companies within the ambit of the Companies (Invitation and Acceptance of Deposits) Rules, 1987 (the rules). However, the Commission, in September 2009, and with the approval of the Federal Government, withdrew the aforesaid amendments made in the Rules as these were found impracticable and the Commission faced major impediment in their implementation owing to the fact that 'advances' in the real estate sector are actually pre-payments and not considered 'deposits';

However, the enactment of the Companies Act 2017 by the parliament proves & confirms that the SECP withdrawal in 2009 of SRO 954(1)/2003 dated October 1, 2003 was malafide. It was withdrawn on the pretext that under the Constitution of Pakistan, this sector falls within the ambit of the Provinces and is not a Federal subject. It was only a lame excuse given to the Supreme Court of Pakistan.

Protecting the millions of innocent of innocent citizens from the builder mafia who defraud the buyers, is the prime responsibility of the state. The Companies Act, 2017 Section 456 is an excellent step to safeguard the life savings of the people of Pakistan investing in real estate. .

The Prime Minister is requested to direct the relevant office of the Federal Government to issue the notification of the Federal Government, for Section 456 to come into force with immediate effect.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

With Regards,



Sohail Muzaffar

Chairman

Encl: Annex-A, B, C and D.

Copies forwarded for the information of the Registrar Supreme Court of Pakistan for the Chief Justice, to consider this application in the Moto HRC No 38671-S/2011, for the enactment and implementation of Section 456 of the Companies Act 2017.

[AS PASSED BY THE MAJLIS-E-SHOORA (PARLIAMENT)]

An

ACT

to reform and re-enact the law relating to companies and for matters connected therewith

WHEREAS it is expedient to reform company law with the objective of facilitating corporatization and promoting development of corporate sector, encouraging use of technology and electronic means in conduct of business and regulation thereof, regulating corporate entities for protecting interests of shareholders, creditors, other stakeholders and general public, inculcating principles of good governance and safeguarding minority interests in corporate entities and providing an alternate mechanism for expeditious resolution of corporate disputes and matters arising out of or connected therewith;

It is hereby enacted as follows:-

PART I

PRELIMINARY

1. Short title, extent and commencement.— (1) This Act may be called the Companies Act, 2017.

(2) It extends to the whole of Pakistan.

(3) This Act shall come into force at once, except section 456 which shall come into force on such date as the Federal Government or an authority or person authorized by it may, by notification in the official Gazette, appoint.

2. Definitions.— (1) In this Act, unless there is anything repugnant in the subject or context,-

- (1) “**advocate**” shall have the same meaning as assigned to it in section 2 of the Legal Practitioners and Bar Councils Act, 1973 (XXXV of 1973);
- (2) “**alter**” or “**alteration**” includes making of additions or omissions without substituting or destroying main scheme of the document;
- (3) “**articles**” mean the articles of association of a company framed in accordance with the company law or this Act;
- (4) “**associated companies**” and “**associated undertakings**” mean any two or more companies or undertakings, or a company and an

455. **Filing of documents through intermediaries.**—(1) A person may, for the purpose of filing of documents under this Act, avail services of intermediary as may be specified.

(2) An intermediary intending to provide services in terms of sub-section (1) must possess the requisite qualification and be registered with the Commission in the manner as may be specified.

(3) The registration as intermediary under this section shall be liable to be cancelled by the Commission on such grounds and in such manner as may be specified after providing an opportunity of being heard.

456. **Acceptance of advances by real estate companies engaged in real estate projects.**—(1) Notwithstanding anything contained in this Act or any other law, any company which invites advances from public for real estate project shall comply with the provisions of this section in addition to those provided in the other provisions of this Act.

(2) A company engaged in real estate project shall—

- (a) not announce any real estate project, unless it has obtained the approval of the Commission and all necessary approvals, permissions or NOCs etc., of the concerned authorities required as per applicable general, special and local laws, having jurisdiction over area under which the real estate project is being developed or undertaken to the satisfaction of the Commission and subject to such additional disclosure requirements as may be notified;
- (b) not make any publication or advertisement of real estate projects, unless it has obtained the approval of the Commission and all necessary approvals, permissions or NOCs etc., of the concerned authorities required as per applicable general, special and local laws, having jurisdiction over area under which the real estate project is being developed or undertaken to the satisfaction of the Commission and subject to such additional disclosure requirements as may be notified;
- (c) not accept any advances or deposits in any form whatsoever against any booking to sell or offer for sale or invite persons to purchase any land, apartment or building, as the case may be, in any real estate project or part of it, unless it has obtained the approval of the Commission and all necessary approvals, permissions or NOCs, of the concerned authorities required as per applicable general, special and local laws, having jurisdiction over area under which the real estate project is being developed or undertaken to the satisfaction of

the Commission and subject to such additional disclosure requirements as may be notified;

- (d) not accept a sum against purchase of the apartment, plot or building, as the case may be, as an advance payment from a person without first entering into a written agreement for sale with such person except nominal fee for application;
- (e) maintain and preserve such books of account, records and documents in the manner as may be specified;
- (f) deposit any sum obtained from the allottees, from time to time, in a separate escrow account opened in the name of the project as may be specified;
- (g) comply with any directions notified by the Commission and accounting framework as may be notified; and
- (h) do or not to do any act or activity as may be specified.

(3) For the purposes of this section the escrow accounts shall be dedicated exclusively for carrying out the project and no attachment shall be imposed on the payment of such escrow accounts for the benefit of creditors of the real estate company except for the purpose of project and the real estate company shall recognize its income in accordance with International Financial Reporting Standards notified by the Commission.

(4) The Commission shall provide copy of any returns or information submitted by real estate company free of cost to the concerned authority, on their request, to enable such authority to regulate real estate project under its jurisdiction in accordance with the applicable laws.

(5) The conditions laid down under this section shall be in addition to and not in derogation of requirement of law and concerned authority under whose jurisdiction the project is being undertaken by the real estate company shall continue to exercise its authority in a manner provided in the relevant law.

(6) Any person who contravenes the provisions of this section shall be guilty of an offence which is liable to a penalty of level 3 on the standard scale.

Explanations.—For the purposes of this section the-

- (i) expression “real estate project” shall include projects for the development and construction of residential or commercial

buildings or compounds and shall not include other construction project;

- (ii) expression "authority" shall include authority created or prescribed under any law which has powers to give permission for planning and development of real estate project in specific area.

457. **Agriculture Promotion Companies.**—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any person, having its Principal line of business related to produce for agriculture promotion or managing produce as collateral or engaged in any activity connected with or related to any Produce or other related activities may establish Agriculture Promotion Company under this section in such form and manner and subject to such terms, conditions and limitations as may be specified.

Explanation.—For the purpose of this section:

- (a) "Agriculture Promotion Company" includes a Producer Company or a Collateral Management Company involved in Produce or any other company or class of companies or corporate body or any other entity as the concerned Minister-in-Charge of the Federal Government may, by notification in the official Gazette specify as Agriculture Promotion Company under this section;
- (b) "Produce" means—
- (i) produce of farmers, arising from agriculture (including animal husbandry, forest products, re-vegetation, bee raising and farming plantation products), or from any other activity or service which promotes the farming business; or
- (ii) any product resulting from any of the above activities, including by-products of such products;
- (iii) any activity which is intended to increase the production of anything referred to in above sub-clauses or improve the quality thereof;

(2) Producer Company means any company, with or without share capital, formed under this section by farmers and engaged in any activity connected with or related to any Produce including the following matters-

- (a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of produce of the members or import of goods or services for their benefit;



SECP

Securities and Exchange Commission of Pakistan
Company Law Division
(Corporatization & Compliance Department)

No. CLD/CCD/Misc/2016/156
September 6, 2017,

✓ Mr. Sohail Muzaffar,
Chairman,
Transparency International Pakistan,
4-C, Mezzanine Floor, Khayaban-e-Ittehad,
Phase VII, Defense Housing Authority,
Karachi.

Subject: KMC 1,1000,000 Tons Garbage lifting, costing Rs. 10 Billion by Bahria Town, at the cost of FBR evaded Tax

Dear Sir,

This is in reference to your letter dated August 30, 2017 addressed to the Chairman National Accountability Bureau and copied to us on the subject mentioned above.

2. Transparency International Pakistan (TIP) in its above mentioned letter referred section 456 of the Companies Act, 2017 (the Act) and alleged violation of section 456 by the Bahria Town (Pvt) Limited (the Company). In this regard it is to inform that the Act was promulgated on May 30, 2017 however, as per sub-section (3) of section (1) of the Act, section 456 shall come into force on such date as notified by the Federal Government or an authority or person authorized by it. Since, no such notification has been issued so far by the Federal Government, therefore, section 456 of the Act is not applicable in the instant matter. Remaining matters as pointed out pertains to FBR.

3. We remain available to assist you with any further assistance/query, if so desired.

Regards,

Shaukat Hussain
Registrar of Companies

Copy to:

- (i) Chairman, National Accountability Bureau,
- (ii) Secretary to the Prime Minister, Islamabad.
- (iii) Chief Secretary, Sindh, Karachi
- (iv) Registrar, Supreme Court of Pakistan, Islamabad.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
COMPANY LAW DIVISION
(REGISTRATION DEPARTMENT)

ANNEX-C.

No. CLD/CO. 88/1/2002

Islamabad, October 15, 2003

CIRCULAR NO. 26 OF 2003

Attention is invited to SRO 954 (I)/2003 dated October 01, 2003 notifying the amendments made in the Companies (Invitation and Acceptance of Deposit) Rules, 1987 that bring the advances taken by real estate companies, automobile or other companies within the ambit of the Rules. Now, the real estate companies, automobile or other companies that collect deposits through schemes advertised in the electronic or print media or by any other means as an advance against the promise to supply the property or commodity, at some future date, are directed to comply with the provisions of said Rules. Some of the features of these Rules are enumerated below for guidance.

- (1) A company cannot invite directly or through any other person any deposit unless such deposits are invited in accordance with the Companies (Invitation and Acceptance of Deposits) Rules, 1987.
- (2) Banking companies or such other class of companies as specified by the Commission is exempt from the provisions of section 88 and rules made thereunder.
- (3) The deposits accepted renewed or retained by a company under the provisions of section 88 of the Ordinance and the rules shall not exceed the limit of twenty five percent of the aggregate of the paid up capital and free reserves of a company.
- (4) No company shall utilize the deposits received for financial assistance to any other person.
- (5) Any company that accepts deposits shall invest or deposit in prescribed liquid assets of atleast ten percent of its deposits maturing during the next calendar year.
- (6) Every company intending to invite deposits shall issue an advertisement including therein a statement showing the financial position of the company on the authority and in the name of the board of directors of the company.
- (7) The provision of the Companies Ordinance, 1984 relating to prospectus shall be applicable to such an advertisement issued by a company inviting deposits.

- (8) The advertisement issued in accordance with the rules shall be valid until the expiry of six months from the date of closure of the financial year.
- (9) The advertisement to be issued by a company requires prior approval of the Commission. A company not making advertisement and intending to invite deposits otherwise, in the manner permissible under these rules has to file a statement in lieu of advertisement.
- (10) A private company is allowed to invite and accept deposits from persons not exceeding twenty persons with the prior approval of the Commission.
- (11) The company shall send to every depositor a statement containing specified particulars and information within six months of the close of the accounting year.
- (12) Every company, which has accepted or renewed the deposit, shall maintain register(s) at its registered office regarding specified particulars of each depositor separately.
- (13) No company shall employ an agent for soliciting or collecting deposits or pay any commission of brokerage to any one on deposits received by it.
- (14) The company shall file with the registrar and the Commission a return in Form-II every year.
- (15) The Commission may exempt any company from the application of above said Rules after consultation with the concerned Trade Association duly licensed and registered under the Trade Organizations Ordinance, 1961.
- (16) The schemes advertised by the companies to accept and retain deposits under the rules encompass any marketing campaign launched by a company itself, or by someone else on its behalf, through the print or electronic media or by any other means inviting or soliciting the general public or any section thereof through a notice, circular, advertisement or other communication to apply for the purchase of a property or commodity or any other product against payment in full or in part, whether or not described as a deposit, if:
 - (a) the property or commodity is not in possession of the company at the time when the notice, circular, advertisement or communication is issued; or
 - (b) it offer sale a product for which the company does not have adequate production facility; or

(c) It contains a promise for a gift or reward or some unusual incentive so as to prompt an early booking.

- (17) A company which invites deposits in contravention to the law is punishable with fine which may extend to twenty thousand rupees and a company which accepts deposits in contravention to the law is punishable with fine not less than the amount of deposit so accepted. Moreover, every officer of the company, which is in default, shall be punishable with imprisonment for a term which may exceed to two years and shall also be liable to fine.

3. The real estate and automobile companies are directed to comply with the provisions relating to prospectus and deposits contained in the Companies Ordinance, 1984 and the Companies (Invitation and Acceptance of Deposits) Rules, 1987 and not to make advertisements in electronic or print media except with the prior approval of the Commission for which application shall be furnished in the forms set out as Annexure-I and Annexure-II respectively.

Sd/-
(NAZIR AHMAD SHAHEEN)
Additional Registrar of Companies

Distribution

1. Chief Executives of all listed automobile companies.
2. The Institute of Chartered Accountants of Pakistan, Karachi.
3. The Institute of Cost and Management Accountants of Pakistan, Karachi.
4. All Pakistan newspapers Association of Pakistan, Karachi.
5. Chairman, PTV Corporation, Islamabad.
6. All CROs.
7. The Media Coordinator, SEC, Islamabad.
8. Development authorities of major cities.

BEFORE THE HONORABLE SUPREME COURT OF PAKISTANHRC No. 38671-S/2011REPORT OF THE SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN ON THE COMPLAINT FILED BY SYED ADIL GILANI, ADVISOR, TRANSPARENCY INTERNATIONAL-PAKISTAN, 5-C, 2ND FLOOR, KHAYABAN-E-ITTEHAD, PHASE VII, DEFENCE HOUSING AUTHORITY, KARACHI - IN THE MATTER OF M/S BAHRIA TOWN (PVT.) LIMITED

The Commission respectfully submits that:

1. M/s Bahria Town (Pvt.) Limited (the "Company") was registered as a private company limited by shares on January 14, 1997 with the Company Registration Office, Islamabad, of the Securities and Exchange Commission of Pakistan (the "Commission") under the provisions of the Companies Ordinance, 1984 (the "Ordinance"). The registered office of the Company is situated at Bahria Town, Phase I, Rawalpindi.
2. Syed Adil Gilani (the "Complainant"), vide his instant complaint made before the Honorable Chief Justice of Pakistan, has brought to his attention an alleged fraudulent scheme (Margalla Enclave, Islamabad) advertised by the Company in national newspapers on September 19, 2011 with the caption that the selling price of plots is less than half the price of plot offered by Capital Development Authority's scheme "Margalla Retreat".
3. Consequently, CDA published a public warning in national newspapers on September 21, 2011, highlighting that neither any land is available or owned by any private housing scheme, nor CDA has issued NOC to any new private housing scheme in or around sector E-11. CDA also informed/warned the general public, in their own interests, that they should not purchase/invest in any new housing scheme without prior verification from the CDA.
4. From the foregoing, the Complainant has indicated that the said act of advertisement by the Company regarding the scheme may be violation of Securities and Exchange Ordinance, 1969 as the Company is registered with SECP. Section 17(d) (Prohibition of Fraudulent Acts, etc.) of the said Ordinance has been referred which, *inter-alia*, stipulates that no person shall, for the purpose of inducing, dissuading, effecting, preventing or in any manner influencing or turning to his advantage, the sale or purchase of any security, directly or indirectly; induce any person by deceiving him to do or omit to do anything which he would not do or omit if he were not so deceived.
5. The Complainant has further requested that all such alleged fraudulent practices by builders/developers, as confirmed by CDA vide the public warning, has to be stopped once and for all by regulatory bodies, including the SECP.

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6. The subject complaint was examined and our comments/feedback on the same are given hereunder:

- a) Section 17(d) of the Securities and Exchange Ordinance, 1969 is applicable in the instances of fraudulent or deceptive sale or purchase of security, which is not relevant in the complaint under reference. Further, a perusal of the definition of the term "security" given vide section 2(l)¹ of the Securities and Exchange Ordinance, 1969 clearly manifests that the said provision is not applicable in the instant matter.
- b) Pursuant to the receipt of the complaint, comments were called from the Company vide Commission's letter dated January 2, 2012, and in reply, the Company sought extension by January 16, 2012, which was allowed.
- c) Comments of the Company on the complaint were received vide its letter dated January 16, 2012 and it was observed that the Company has failed to provide a detailed response on the issue pertaining to the Margalla Enclave Housing Scheme despite availing extension in the period for filing of its comments. The Company in its reply submitted that the said project has neither been sold nor marketed by the Company. It was also informed that a comprehensive response on this issue would be submitted later-on. Detailed response on other issues raised in the complaint, not pertinent to this Commission, have been provided vide the said letter. Copies of the aforesaid correspondence has been enclosed as *Annexure "B"*.
- d) Further, contrary to its claim that the said project has neither been sold nor marketed by the Company, a perusal of the website of the Company on January 16, 2012 showed that the detailed particulars of the scheme were duly appearing on the link http://www.bahriatown.com/index.php?option=com_content&task=view&id=37&Itemid=87 (copy of web-page attached as *Annexure "C"*). However, the application form download link was not found to be working.
- e) The aforesaid link was again visited on January 18, 2012, and it was observed that the particulars of the said scheme have since been removed from the webpage whereas these were appearing on January 16, 2012 (copy of web-page attached as *Annexure "D"*).

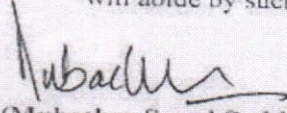
¹ Definition of "security" as given under section 17(d) of the Securities and Exchange Ordinance, 1969

"security" includes-

- (i) any stock, transferable share, scrip, [Modaraba Certificate], note, debenture, debenture stock, [participation term certificate] bond, investment contract, [forward or futures contract], and reorganization certificate or subscription, and, in general, any interest or instrument commonly known as a "security" and, any certificate of deposit for, certificate of interest or participation in, temporary or interim certificate for, receipt for, or any warrant or right to subscribe to or purchase, any of the foregoing but does not include currency or any note, draft, bill of exchange or banker's acceptance or any note which has a maturity at the time of issuance of not more than twelve months, exclusive of days of grace, or any renewal thereof whose maturity is likewise limited;
- (ii) any Government security as defined in the Securities Act, 1920 (X of 1920);
- (iii) any bonus entitlement voucher issued by the State Bank of Pakistan in accordance with any scheme announced by the Commission; and
- (iv) Commodity Futures Contract;

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7. The complaint has been examined vis-à-vis the reply of the Company and it has been observed that the subject matter does not appear to fall under the regulatory purview of this Commission due to the following:
- a). That the complaint pertains to the marketing of a housing scheme by the Company without having any approval in place from the concerned developmental authority, i.e. CDA in the instant case, and the Commission has no powers to take cognizance of such matter;
 - b). That the Companies Ordinance, 1984 is an entity-based and not an activity-based law. Accordingly, the real estate business is not being regulated by the Commission. Moreover, under the Constitution of Pakistan, this sector falls within the ambit of the Provinces and is not a Federal subject. Provincial Governments have requisite legal framework and administrative machinery for the regulation of the housing and real estate societies/companies;
 - c). That a Notification No. SRO 954(I)/2003 dated October 1, 2003 was issued to bring the advances taken by real estate companies, automobile or other companies within the ambit of the Companies (Invitation and Acceptance of Deposits) Rules, 1987 (the Rules). However, the Commission, in September 2009, and with the approval of the Federal Government, withdrew the aforesaid amendments made in the Rules as these were found impracticable and the Commission faced major impediment in their implementation owing to the fact that 'advances' in the real estate sector are actually pre-payments and not considered 'deposits';
 - d). That the Commission has, jointly with the State Bank of Pakistan, time and again launched awareness campaigns against fraudulent companies/non-corporate entities/individuals, dubious real estate schemes and projects, by publishing advertisements in print media, (copies of advertisements attached as *Annexure "E"*); and
 - e). That such cases involving failure of real estate companies to develop their schemes in line with the relevant regulations do not fall within the jurisdiction of the Commission, and rather falls under the purview of the concerned developmental authority.
8. In view of the aforesaid position, it is submitted that the instant complaint does not appear to fall within the jurisdiction of the Commission. However, the Honorable Chief Justice of Pakistan may make such directions as deemed appropriate in the matter, and the Commission will abide by such directions in letter and spirit.


(Mubasher Saeed Saddozai)
Director (RL&A)
Securities & Exchange Commission of Pakistan,
Islamabad.

Dated: January 19, 2012