



15 June, 2020

TL2020/0615/1B

Azam Khan Sahib,
Principal Secretary to the Prime Minister,
Government of Pakistan,
PM House,
Islamabad

(For the kind attention of the Honorable Prime Minister)

Sub: Serious objections on Companies (Amendment) Ordinance, 2020 () dated 30th April 2020, deleting provisions against interest of Pakistan, and many undue benefit companies. .

Dear Sir,

Transparency International Pakistan has received a complaint rising some serious objections on the Companies (Amendment) Ordinance, 2020 () dated 30th April 2020, deleting various provisions in the said ordinance against which deletion causes serious prejudice to the public at large and is against the norms of business in commercial/corporate activities in Pakistan giving undue benefit to the wrong doers.

The complainant has raised serious objections on below mentioned 10 Sections out of over 127 sections, purportedly amended by Companies (Amendment) Ordinance 2020. The Complainant has serious reservations as these ten amendments are against the norms of honest business activities and violates the rights of the genuine share holders, giving GoP funds to Companies, and supporting benami foreign assets/account holders. .

| S. No. | Companies Act, 2017 | Companies (Amendment) Ordinance, 2020 | Complainant's complain and suggestions |
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| 1 | Section 172 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.. | Section 172 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 | This will allow persons who have admitted committing corruption, and convicted under NAO 1999, to be appointed as Director., which amounts to perpetuating the wrong doings and no where in the World such practice is |



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| | | National Accountability Bureau or any other regulatory body; | allowed. The directors in companies which deprived its shareholders reasonable return, to become Director in a new company. |
| 2 | Section 182 prohibits loans to director of a company, of its holding company, or to any of his relatives. | Section 182A 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 | Taking personal Loan from a Company is Conflict of Interest. The Section 182A shall be deleted. It appears that Chief Executive and Directors have been facelifted for their wrong doings. |
| 3 | Section 186 & 187 Appointment of Chief Executive Section 186 & 187 (4) Notwithstanding anything contained in this section, the Government shall have the power to nominate chief executive of a public sector company in such manner as may be specified | Subsection 4 of Section 186 & 187 have been deleted., and the power of the Federal Government to appoint Chief Executive of public sector company appears to have been Withdrawn. | It is a universal principle, that majority share holder has right to appoint Managing Director. This is an illegal Section and shall be deleted as it violates the Fundamental rights of the Share Holders/Board of Director. |
| 4 | Section 244 titled "Unclaimed shares, Modaraba certificates and dividend to vest with the Federal Government" | This 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 | Public unclaimed funds always belong to Government. Section 31 of Banking Ordinance 1962, unclaimed funds are to be given to SBP, who is responsible to return it to the claimant whenever claimed. Over Rs 40 Billion are such unclaimed funds.. This substitution needs to be deleted. |



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| 5 | Section 245. Establishment of Investor Education and Awareness Fund | Section 245 is deleted. | This is against companies obligations towards society. Section 245 needs to be restored. |
| 6 | Section 282. Powers of Commission to facilitate reconstruction or amalgamation of companies. | Powers of Commission given to Court , section is re Witten as Provisions for facilitating reconstruction and amalgamation of companies | Giving powers of SECP to Court, is against common sense.. Prior to Court Case, Regulator shall have provision to resolve facilitating reconstruction and amalgamation. Section 282 shall be restored. |
| 7 | 452. Companies' Global Register of Beneficial Ownership. (1) Every substantial shareholder or officer of a company incorporated under the Company law, who is citizen of Pakistan within the meaning of the Citizenship Act, 1951 (II of 1951), including dual citizenship holder whether residing in Pakistan or not having shareholding in a foreign company or body corporate shall report to the company his shareholding or any other interest [or any change thereof]203 as may be notified by the Commission, on a specified form within thirty days of holding such position or interest. | Amended that less than 10% foreign holding by citizen is not to be declared to SECP. (1) Every substantial shareholder or officer of a company incorporated under the Company law, who is citizen of Pakistan within the meaning of the Citizenship Act, 1951 (II of 1951), including dual citizenship holder whether residing in Pakistan or not having shareholding in a foreign company [of ten percent or more] or body corporate shall report to the company his shareholding or----- or interest. | Section 452 shall be restored. Not declaring less than 10% share holding in foreign company, will allow benami account holders to run Company in Pakistan and may cause Money laundering. |
| 8 | Section 456 Acceptance of advances by real estate companies engaged in real estate projects. | Application of Section 456 was held in abeyance since the promulgation of Companies Act, 2017. This whole section has now been deleted. | 1. In 2003, vide Notification No. SRO 954(1)/2003 dated October 1, 2003 this section was added. 2. In 2008, after new govt. took over, this Section was deleted |



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| | | | <p>on demand of megs builders.</p> <p>3. In 2007 this section was added in Companies Act 2017. But SECP did not implement by not asking for issue of Notification for three years.</p> <p>4. This must be restored, and Notified, till a new Real Estate Regulation and Development Act is passed,</p> |
| 9 | <p>459. Quota for persons with disabilities in the public interest companies.- Every public interest company, employing one hundred or more employees shall ensure special quota for employment of persons with disabilities of two percent or such higher percentage as may be specified or required under the applicable Federal and Provincial law:</p> | <p>Section 459 deleted, Thereby denying mandatory job opportunities to disabled persons .</p> | <p>This is against Government policy and serious dent on Human Right in Pakistan in addition to violation of Fundamental rights of disabled person. To protect the rights of disabled Section 459 shall be restored.</p> |
| 10 | <p>Section 461. Security clearance of shareholder and director. Section 461 The Commission may require the security clearance of any shareholder or director or other office bearer of a company or class of companies as may be notified by the concerned Minister-in-charge of the Federal Government[Omitted]..</p> | <p>Section 461 is deleted/</p> | <p>Section 461 shall be restored. How can Indian or Israeli Citizen be allowed by SECP to run a company in Pakistan. This is against the interest of Pakistan and may be a serious security concern.</p> |

Transparency International Pakistan has following comments on these ten amendments in Companies Act 2017.

All the ten sections indicated by the complainant prima facia are not in the National Interest, and shall be amended to their original sections on Companies Act 2017 immediately.



Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption, and achieve against Zero tolerance against Corruption,

With Regards,

Sohail Muzaffar,
Chairman

Transparency International Pakistan

Copies forwarded for the information with request to take action under their mandate to:

1. Chairman NAB, Islamabad.
2. Adviser to PM, Ministry of Finance, Islamabad
3. Registrar Supreme Court Of Pakistan, Islamabad.