

Securities and Exchange Commission of Pakistan,
Head Office, Jinnah Avenue, Blue Area,
Islamabad

Re: Comments on the Proposed Amendments to the Companies Act, 2017

We greatly appreciate the Board of Investment and Securities and Exchange Commission of Pakistan's ("SECP" or the "Commission") efforts in promoting ease of business, as reflected in the various proposed amendments to the Companies Act, 2017 (the "Companies Act") incorporated in the Concept Paper issued by the SECP on January 13, 2026. With a view to augmenting such efforts, we submit our comments thereon.

SR. NO.	SECTION NO.	HMCO VIEWS / PROPOSED CHANGES / CLARIFICATIONS	RATIONALE
1.	Section 2(1)(49)	<p><u>Proposed Change:</u></p> <p>Deletion of the concept of 'public company'. The Companies Act should effectively have two categories of companies limited by shares, i.e. private companies and listed companies.</p>	<p>It is noted that, following the omission of the restriction limiting private companies to a maximum of fifty (50) members, the substantive distinction between private companies and public unlisted companies has significantly reduced.</p> <p>We have had to unnecessarily convert companies from private to public unlisted and from public unlisted to private, to ensure compliance. For example, where the restrictions in section 86(2) applicable to public unlisted companies were not aligned with the commercial arrangement of the shareholders, we were required to undertake a conversion of such a public unlisted company to a private one. Conversely, where the transfer restrictions and the procedure provided in section 76 (applicable to private companies) were not compatible with the commercial arrangement of the shareholders, we were required to undertake a conversion of a private company to a public unlisted one. Please see our comments in S. No. 5 below, with respect to section 76.</p>

			<p>This change will promote ease of business as the more onerous provisions applicable to unlisted public companies can be replaced with those applicable to private companies.</p> <p>Should this reform be adopted, corresponding amendments would be required to provisions throughout the Companies Act referring to public companies.</p>
2.	<p>Section 26</p> <p><i>(Business and objects of a company)</i></p>	<p><u>Proposed Change:</u></p> <p>Deletion of:</p> <ul style="list-style-type: none"> (i) the provisions relating to the sector in which the company operates, and (ii) reporting requirements with the SECP. 	<p>While we appreciate the omission of the requirement for companies to set out detailed objects in their memorandum of association, an approach that historically requires companies to adopt long-winded and overly broad objects clauses to avoid violations of their memorandum, the proposed framework does not fully achieve the intended flexibility.</p> <ul style="list-style-type: none"> (i) In place of the earlier requirement to specify a “principal line of business”, the draft now introduces the concept of a “sector”, which adopts a substantially similar definition, namely by reference to the holding of substantial assets or the earning of substantial revenue. It is understood that the SECP intends to adopt classifications based on the International Standard Industrial Classification (ISIC). However, notwithstanding this change in terminology, the underlying regulatory approach remains unchanged. Companies are still required to specify, in their constitutional documents, the sector in which they intend to operate. <p>Accordingly, much like the earlier concept of “principal line of business”, the requirement continues to impose a mandatory disclosure and reporting obligation in respect of a company’s business activities. Also, if a sector-specific regulator requires the company to only undertake activities that are licensed by them, such regulators may, as part of its licensing regime, require a company to operate within the scope of its license.</p>

			<p>Modern corporate law frameworks in several jurisdictions, including the United Kingdom, Australia, and New Zealand, have adopted a fundamentally different approach. These jurisdictions have enacted provisions granting corporations complete autonomy, effectively conferring upon them the contractual capacity of natural persons. As a result, companies are permitted to have unrestricted objects by default, unless they voluntarily elect to impose restrictions through their constitutive documents.</p> <p>Certain jurisdictions, such as Australia, have gone further by expressly providing that even where a company acts contrary to its stated objects or constitutional restrictions, the validity of such an act is not affected as a matter of law.</p> <p>(ii) Furthermore, the inclusion of a proviso requiring companies to obtain SECP approval before undertaking any business activity that is subject to licensing or regulatory approval under applicable law creates further restrictions with respect to the ease of doing business. In our view, any transition by a company into a regulated sector, particularly where such a sector is regulated by an authority other than the SECP, should not require SECP approval.</p>
3.	<p>Section 60 <i>(Numbering of Shares)</i></p>	<p><u>Proposed Change:</u></p> <p>The proposed proviso requiring listed companies to “issue share certificates electronically” should be reconsidered. Instead, the law should mandate that shares of listed companies be issued and maintained only in book-entry (dematerialized) form through a central depository system and prohibit issuance of</p>	<p>The proposed requirement for listed companies to issue “electronic share certificates” creates ambiguity because the term is undefined and may suggest a digital document existing alongside dematerialized records.</p> <p>This approach is inconsistent with section 72, which already mandates issuance and maintenance of shares in book-entry form from a notified date. In practice, ownership of listed company shares is recorded and evidenced through the central depository system regulated by the SECP, making any separate certificate (whether physical or electronic) redundant.</p>

		<p>any physical or electronic share certificates.</p> <p>Suggested wording:</p> <p><i>“Provided further that all shares of a listed company shall be issued, held, and transferred only in book-entry form in the records of a central depository system.”</i></p>	<p>Requiring electronic certificates will therefore create duplication, create uncertainty regarding proof of title in case of discrepancies, and can undermine the objective of full dematerialization.</p>
4.	<p>Section 62</p> <p><i>(Shares certificate to be evidence)</i></p>	<p><u>Proposed Change:</u></p> <p>The insertion of the word “electronic” to allow issuance of electronic share certificates should be reconsidered.</p>	<p>While the proposed amendment seeks to facilitate digitalization by permitting “electronic” share certificates, it introduces ambiguity by placing electronic certificates on the same evidentiary footing as book-entry records maintained in the central depository system. Recognizing electronic certificates as prima facie evidence alongside book-entry records could therefore undermine the dematerialized framework.</p> <p>We suggest that depository records serve as the sole evidence of ownership for dematerialized shares.</p>
5.	<p>Section 76</p> <p><i>(Restriction on transfer of shares by members of private company)</i></p>	<p><u>Proposed Change:</u></p> <p>In addition to the proposed amendments to section 76, we suggest the following further changes for consideration.</p> <p>It is suggested that section 76 be amended such that it allows companies (whether private or public limited) to determine through their articles transfer restrictions applicable to the company.</p>	<p>Section 76 mandates a proportional right of first refusal in favour of existing shareholders where a shareholder of a private company proposes to transfer shares to a third party. While intended to protect shareholders, this requirement is often unduly restrictive in practice.</p> <p>Shareholders frequently agree on transfer arrangements, such as rights of first refusal or offer, tag-along and drag-along rights, and deadlock mechanisms that are not aligned with the rigid statutory framework of section 76. As a result, companies are often compelled to convert into public unlisted companies solely to achieve contractual flexibility, notwithstanding that such arrangements are widely accepted in international corporate practice.</p>

		<p>If the company opts not to include specific transfer restrictions, then those provided in the current version of section 76 may apply.</p> <p>Further, it should also be clarified that such pre-emptive rights will not apply to: (i) those effected for the purposes of gifts; (ii) transfers of qualifying shares, (iii) transfers undertaken as part of the acquisition of 100% shares of a private limited company, and (iv) transfer undertaken pursuant to a share pledge agreement with a financial institution</p>	<p>Practically, where the shareholders want share transfer restrictions, converting to public unlisted company partially solves the issue. As transfer restrictions in a public unlisted company cannot be included in the articles of association of such companies, such restrictions are now only included in the shareholders' agreement between the shareholders. What this effectively means is that the share transfer restrictions are now enforceable as between the shareholders, but not against the company.</p> <p><u>Exemptions:</u></p> <p>(i) The operation of section 76 applies to all types of transactions regardless of the transactional context. Section 76(1) expressly uses the phrase "a member of a private company desirous of <i>selling</i> shares", indicating that the legislative intent was to provide existing shareholders with a right of first refusal in the <i>context of a sale</i>, rather than to restrict gratuitous transfers. However, in practice, it continues to apply to transfer by way of gifts as well as transfer of qualifying shares held by directors. It may be appreciated that such transfers do not qualify as <i>sales</i> and would not fall within the ambit of the transactions governed under section 76; clarity/exemption should be included in the Companies Act to this effect.</p> <p>(ii) In transactions involving the acquisition of 100% of the shares of a private company, compliance with section 76 becomes both redundant and unduly time-consuming, as all shareholders have already agreed to sell their shares to the same acquirer. In such circumstances, requiring each shareholder to separately comply with the pre-emption procedure under section 76, including submission of offer and declining letters, serves no substantive purpose and becomes a burdensome exercise. In such case, approval of the transaction by way of a board resolution, or such</p>
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			<p>other simplified mechanism as may be prescribed, should be sufficient in lieu of full compliance with section 76.</p> <p>(iii) The enforcement of a share pledge agreement by a financial institution in case of default by a borrower should not be subject to the requirements of section 76 of the Companies Act. Given that such transfer restrictions compromise the lenders' ability to enforce the pledge, such a pledge is often created after converting the company into a public unlisted company.</p>
6.	<p>Section 81</p> <p><i>(Application of premium received on issue of shares)</i></p>	<p><u>Proposed Change:</u></p> <p>It is suggested that the following points be considered and section 81 be amended accordingly.</p> <p>(i) Limited utilization: Share premium can currently only be used for preliminary expenses, share issue costs, redemption of preference shares, and bonus shares</p> <p>(ii) Terminology and classification: Outdated terms like "preliminary expenses"; IFRS treats share premium as equity, not a separate reserve.</p> <p>(iii) Non-cash share consideration: No clear requirement for independent valuation or board certification for shares issued for assets or other non-cash consideration.</p>	<p>(i) Limited utilization: By restricting the use of share premium to preliminary expenses, share issue costs, redemption of preference shares, and bonus shares, the current law prevents companies from using this reserve for legitimate corporate purposes such as capital restructuring, strategic acquisitions, or loss absorption. Expanding permitted uses ensures companies can efficiently manage equity while maintaining shareholder protections.</p> <p>(ii) Terminology and classification: The current reference to "preliminary expenses" is outdated, and the separate treatment of the share premium account conflicts with IFRS, where it is classified as equity. Modernizing the terminology and recognizing share premium as equity eliminates confusion in financial reporting and ensures consistency between statutory law and accounting standards.</p> <p>(iii) Non-cash share consideration: Issuance of shares for assets or other non-cash consideration without clear rules for independent valuation or board certification can create disputes over fairness, dilute shareholder value, or invite regulatory scrutiny. Introducing mandatory valuation and certification safeguards transparency and protects both the company and minority shareholders.</p> <p>(iv) Capital restructuring: Section 81 currently prevents the controlled use of share premium to offset accumulated losses or support</p>

		<p>(iv) Capital restructuring: No provision to use share premium to offset accumulated losses or support corporate restructuring, even with shareholder or court approval.</p> <p>(v) Court-sanctioned schemes: No guidance on treatment of reserves created through court-approved mergers, recapitalizations, or restructuring schemes.</p>	<p>restructuring, even when sanctioned by courts or approved by shareholders. Allowing such use under defined safeguards would give companies flexibility to strengthen their balance sheet and maintain operational viability without compromising creditor protection.</p> <p>(v) Court-sanctioned schemes: The absence of guidance on reserves created through court-approved schemes, such as mergers, capital reductions, or recapitalizations, creates legal uncertainty. Explicitly permitting the use and treatment of these reserves under section 81 would clarify compliance obligations, reduce litigation risk, and facilitate smoother execution of approved restructuring or recapitalization plans.</p> <p>Overall, these improvements would transform section 81 into a provision that balances regulatory oversight, shareholder protection, and practical corporate finance needs. By clearly defining permissible uses, aligning terminology with IFRS, and providing safeguards for valuations and court-sanctioned schemes, section 81 would provide companies with a flexible framework for managing share premium, supporting both growth and financial stability</p>
7.	<p>Section 83</p> <p><i>(Further issue of capital)</i></p>	<p><u>Proposed Change:</u></p> <p>(i) Deletion of the offer period for unlisted companies.</p> <p>(ii) Deletion of the proposed provision 83(3A).</p>	<p>(i) It is noted that the previously prescribed time period for an offer letter, being a minimum of fifteen (15) days and a maximum of thirty (30) days, has been omitted and replaced with “as may be specified”, which under the Companies Act would be as specified by the SECP.</p> <p>In this context, it is suggested that, in the case of private and public unlisted companies, where all shareholders may unanimously decide the aforesaid minimum period should not apply. This is particularly relevant in private equity and similar investment</p>

			<p>transactions, where, following execution of the shareholders' agreement, the parties typically intend to proceed with immediate equity injection.</p> <p>(ii) The proposed addition of section 83(3A) introduces a significant substantive shift by subjecting the issue price of shares offered under section 83(1) (relating to further issue of capital by right and other than rights) to such limitations, conditions, or manner as SECP may specify.</p> <p>This would subject the issue price of shares of unlisted companies to regulatory oversight, which in our view is counter to promoting ease of business.</p>
8.	<p>Section 89</p> <p><i>(Reduction of Share Capital)</i></p>	<p><u>Proposed Change:</u></p> <p>(i) The provision should be broadened to permit reduction of all forms of reserves recognized under IFRS.</p> <p>(ii) Prescribing specific grounds for reduction may not be necessary, provided the reduction is approved by shareholders through a special resolution.</p> <p>(iii) Alternatively, permissible grounds may be expanded to include the reorganization of capital and the extinguishment of shares.</p>	<p>(i) The scope of section 89 is limited to the reduction of paid-up share capital and does not extend to other forms of capital or reserves (e.g., non-distributable or capital reserves). This is necessary as the Companies Act presently contemplates reduction only of paid-up share capital and does not adequately address other capital components reflected in financial statements.</p> <p>(ii) The grounds available for reduction of capital (for companies other than private companies and subject to court confirmation) are narrowly prescribed, thereby limiting flexibility in legitimate capital restructuring exercises.</p>

		(iv) Reduction of capital may be effected with or without cancellation of liability.	
9.	Section 100 <i>(Requirement to register a mortgage or charge)</i>	<p><u>Proposed Change:</u></p> <p>While the proposed change to a notice-based registry and ultimately a unified registry (covering only security interest over movable property) is welcome, we would recommend that the unified STR (i.e. for companies and non-company entities) may incorporate the following additional features:</p> <ul style="list-style-type: none"> (i) permit foreign financial institutions to register security interests in STR; (ii) allow optional registration of security agreements; (iii) enable secured creditors to specify priority rankings in registration particulars; (iv) allow secured creditors to determine the registration term (with extension rights) instead of a fixed five-year period; and 	<p>We appreciate some of the additional suggested features may not be fully consistent with recommendations of UNCITRAL Guidelines. However, the addition of such features to the STR in the Pakistani context will enhance the market's confidence in the STR as an effective collateral registry.</p>

		<p>(v) provide secured creditors access to downloadable uncertified search reports at no cost via user accounts.</p> <p>Creation of a unified STR registry and incorporation of the above features will entail:</p> <p>(i) Amendments in Companies Act (including section 100) to limit registration provisions to only include security interests over immovable properties; and</p> <p>(ii) Amendments to the Secured Transactions Act, 2016 (“STA”), and in particular amendments to the definition of “entity” to include companies and other consequential changes to Part IV of the STA to expand the scope of the STR to cover security interests created by companies.</p>	
10.	<p>Section 133</p> <p><i>(Calling of extra-ordinary general meeting)</i></p>	<p><u>Clarification:</u></p> <p>Where a majority of directors are related parties, a special resolution under section 133 is required. The proposed amendment to section 133 exempts single-member and private companies from holding an EOGM where the board of directors holds more</p>	<p>The drafting is unclear. It appears the intention may be to exempt companies where the same shareholder group holds more than 75% of the shareholding and voting rights, however, the reference to the board of directors holding such shareholding is conceptually inconsistent, as ownership is ordinarily linked to shareholders rather than directors.</p> <p>To be clarified, as this is usually linked to shareholders in other jurisdictions.</p>

		than 75% of the shareholding and voting rights.	
11.	Section 153 <i>(Ineligibility of certain persons to become a director)</i>	<u>Proposed Change:</u> It is suggested to include a caveat/proviso under section 153(h) to exclude foreign directors who are not residents of Pakistan / non-tax residents of Pakistan.	Obtaining a national tax number for foreign directors who are not residents of Pakistan / non-tax residents is a very challenging and cumbersome process and, in many instances, may not be doable. In any case, this requirement appears to be more apt for Pakistani tax-resident directors as opposed to foreign directors. Accordingly, the Commission is requested to consider the amendment proposed.
12.	Section 159 <i>(Procedure for election of directors)</i>	<u>Proposed Change:</u> It is suggested that, in the context of fresh elections that are to be held subsequent to the acquisition of shares, the boards of private and public unlisted companies be exempt from the requirement of fixing the size of the board within a prescribed period prior to the general meeting. Further, it is suggested that the scope of section 162 is widened such that upon the conversion of a private/public limited company to a listed company, the listed company is permitted to hold fresh elections of directors.	Pursuant to section 162 of the Companies Act, for any fresh elections to be held subsequent to the acquisition of shares, the procedure set out in section 159 is required to be complied with. It is noted that the proposed amendment to section 159 of the Companies Act replaces the previously prescribed period of thirty-five (35) days for the board to resolve a change in the number of directors prior to a general meeting with such time as may be notified by the SECP. However, prescribing any such time period for fresh elections to be held in the context of the acquisition of shares in private companies adds unnecessary delays to effecting a change in the board post-acquisition. Further, upon conversion of a private/public company to a listed company, the board size often needs to be updated to comply with the requirements of the code of corporate governance, however there is no express provision allowing fresh elections upon such conversion.
13.	Section 166 <i>(Manner of selection of independent directors)</i>	<u>Proposed Change:</u>	The current wording suggests that an independent director cannot be appointed under section 164 or 165, which hinders the process for the Federal Government to appoint independent directors, especially

	<i>and maintenance of databank of independent directors)</i>	It is suggested to remove section 166(2)(h) from the proviso to section 166(2) of the Companies Act.	where independent directors are required under other legislation, such as the Public Sector Companies (Corporate Governance) Rules. In the absence of clarification, it appears that the Federal Government can only have independent directors elected to public sector boards. Similar issues affect other appointing bodies under Sections 164 or 165.
14.	Section 179 <i>(Passing of resolution by the directors through circulation)</i>	<u>Clarification:</u> The wording of section 179 uses the term 'approved by'. The Commission is to clarify if the requirement for signing a circular resolution by directors is still required or whether confirmation of assent (whether by electronic means or otherwise) is sufficient.	From a practical perspective, to ensure that directors have approved a circular resolution, it would be helpful to clarify whether a signature is still required (as in the case of section 149, which pertains to circular resolution by members). Clarity from the Commission is sought in this regard.
15.	Section 183 <i>(Powers of board)</i>	<u>Clarification:</u> While we note that section 183(2) requires the board to exercise its powers mentioned therein by means of a resolution passed at their meeting, it needs to be clarified that directors may be able to exercise their powers with respect to matters contained in section 183(2) by passing circular resolutions. Clarity from the Commission is sought in this regard.	Since section 179 does not restrict the types of resolutions which can be carried out through circular resolution, and all provisions of the Companies Act have equal weight and are to be read harmoniously with a view to allow rather than restrict, it is suggested to clarify that even section 183(2) matters may be passed by way of circular resolution in compliance with section 179.

<p>16.</p>	<p>Section 199</p> <p><i>(Investment in associated companies and undertaking)</i></p>	<p><u>Clarification:</u></p> <p>It is noted that the Commission vide S. R. O. 1239 (I)/2017 provided certain exemptions from section 199(1). Where the exemptions apply, special resolution is not required pursuant to section 199(1).</p> <p>Section 199(2) states in part, “<i>The company shall not invest in its associated company or associated undertaking by way of loans or advances except in accordance with an agreement in writing and such agreement shall inter-alia include the terms and conditions specifying the nature, purpose, period of the loan, rate of return, fees or commission, repayment schedule for principal and return, penalty clause in case of default or late repayments and security, if any, for the loan in accordance with the approval of the members in the general meeting</i>”.</p> <p>The language of section 199(2) refers to “approval of the members in the general meeting”, however, where the exemption to section 199(1) applies, it should be clarified that section 199(2) does not require a general meeting for any purpose.</p> <p><u>Proposed Change:</u></p>	<p>In order to avoid ambiguity in interpretation, it may be clarified that no general meeting is required under section 199(2) where an exemption to section 199(1) applies.</p>
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17.	<p>Section 208 <i>(Related transactions)</i> party</p>	<p><u>Proposed Change / Clarification:</u></p> <p>(i) Definition may be aligned with accounting standards, but should be defined within the Companies Act, itself.</p> <p>(ii) Some clarification on relatives, indirect control and nominee/family structures to be included.</p> <p>(iii) The proviso relating to exemption from section 208 (which currently requires that transactions be in the ordinary course of business and on an arm's length basis) may be reconsidered. It is suggested that language may be revised to apply to transactions entered into by the company, otherwise than on an arm's length basis.</p>	<p>(i) While it is not unusual to align the definition with accounting standards, the Companies Act would effectively become subject to future amendments by an external standard-setting body. This also raises the question of delegation of authority by the legislature to such a body.</p> <p>(ii) Further, the International Financial Reporting Standards (“IFRS”) definition appears somewhat opaque on familial relationships and may not align with Pakistani ownership realities (e.g. family-controlled businesses, cross holdings, nominee arrangements). Existing law is clearer on which family ties are covered, while IFRS only mentions close family.</p> <p>(iii) Parties typically have concerns around interpretation relating to whether one or both elements need to be present. It is unclear what ordinary course constitutes.</p>

18.	<p>Section 285</p> <p><i>(Power to acquire shares of members dissenting from the scheme or contract)</i></p>	<p><u>Proposed Change:</u></p> <p>We suggest for the Court to retain jurisdiction over matters on scheme of arrangement.</p>	<p>At present, pursuant to Notification No. SRO 1351(I)/2023 dated September 22, 2023 (issued by the Finance Division), the Company Bench of the High Court having jurisdiction acts as the sanctioning authority for schemes of arrangement relating to public interest companies, large sized companies, and medium sized companies. It is recommended that the court retains this jurisdiction. Based on our experience, the proposed change would be contrary to ease of doing business. Several of our clients are of the same opinion and have requested us to communicate the same to the SECP.</p> <p>Based on desktop research, we understand that most common law countries require schemes to be sanctioned by a court, including the United Kingdom, Australia, Singapore and Canada.</p>
19.	<p>Section 426</p> <p><i>(Easy exit of a defunct company)</i></p>	<p><u>Proposed Change:</u></p> <p>Section 426 states that after examination of the application, the registrar shall publish a notice in the Official Gazette stating that after 90 days the name of the company may be struck off.</p>	<p>The Commission is requested to consider including a timeline within which the relevant notice is to be published in the Official Gazette. Some of our clients have had to wait for several months before the relevant notice is published in the Official Gazette, after which the name of a defunct company can be struck off.</p> <p>Such delays make the process very lengthy, which becomes counter-productive as the premise of such regulations is to simplify and expedite the winding-up process.</p>
ADDITIONAL COMMENTS			
20.	<p>Section 2(1)(2)</p> <p><i>(Definition of “alter” or “alteration”)</i></p>	<p><u>Proposed Change:</u></p> <p>Deletion of the phrase “without substituting or destroying the main scheme of the document”.</p>	<p>The definition is predominantly applied in the context of amendments to a company’s memorandum and articles of association, including variations of members’ rights. The Companies Act already prescribes a detailed and comprehensive framework governing alterations of constitutive documents, incorporating appropriate safeguards such as shareholder approvals and, where applicable, approval of the SECP.</p>

			<p>Where these prescribed procedures and approvals have been duly complied with, the resulting alteration should be accorded full legal effect, irrespective of whether it materially alters the original structure or substance of the document. Introducing an additional substantive limitation based on the concept of the “main scheme of the document” is therefore unnecessary and may undermine legal certainty.</p> <p>Moreover, the phrase is inherently ambiguous and may give rise to interpretational uncertainty, as the Companies Act provides no guidance on what constitutes the “main scheme of the document”. By way of example, it is unclear whether an alteration such as a change in the principal line of business would be regarded as affecting the main scheme.</p>
21.	<p>Section 2(1)(4)</p> <p><i>(Definition of “Associated Companies and Associated Undertakings”)</i></p>	<p><u>Proposed Change:</u></p> <p>It is suggested that the definition provided in section 2(4) with respect to ‘associated person’ should be revised from 10% to 20%. It is also advised to simplify the language of the said paragraph to clearly reflect the scope thereof.</p>	<p>The existing definition of “associated companies” and “associated undertakings” is unclear particularly with regard to the newly inserted paragraph relating to “associated person”. In particular, it is unclear whether the same is intended to trigger an associated person relationship merely by virtue of holding 10% shares in a company. We understand the accounting standards threshold for triggering an associated relationship based on significant influence is at 20% shareholding and hence it is suggested to align the definition provided with that of the accounting standard.</p>
22.	<p>Section 66</p> <p><i>(Issue of securities and redeemable capital not based on interest)</i></p>	<p><u>Proposed Change:</u></p> <p>Include provisions enabling debt-to-equity swaps for financial institutions.</p>	<p>In view of the prolonged delays often faced by financial institutions in recovering outstanding loans, conversion of debt-to-equity is a commercially viable and internationally recognized mechanism. However, issuance of shares to financial institutions in satisfaction of outstanding debt is currently constrained by statutory pre-emptive rights of existing shareholders and the issue of shares at a discount.</p>

			<p>While we note section 66(2)(d), this provision does not, in its present form, provide a comprehensive or workable framework to address the foregoing issues.</p> <p>With respect to pre-emptive rights, please refer to our comments on section 76 (S. No. 5). In the event these suggestions are not accepted, we recommend that provisions enabling debt-to-equity swaps be expressly incorporated in this section.</p>
23.	<p>Section 84</p> <p><i>(Prohibition on acceptance of deposits from public)</i></p>	<p><u>Clarification:</u></p> <p>It is noted that, as per section 84 of the Companies Act, no company shall invite, accept or renew deposits from the public after the commencement of the Companies Act. However, the Companies (Invitation and Acceptance of Deposit) Rules, 1987 (as amended in 2003) permits companies to raise certain types of deposits.</p> <p>The Commission to clarify if the Companies (Invitation and Acceptance of Deposits) Rules, 1987 are still in force.</p>	<p>The Companies (Invitation and Acceptance of Deposit) Rules, 1987 (as amended in 2003) in Rule 3(4)(j) permit the following type of deposit:</p> <p><i>“... amount received by way of security or an advance from any purchasing agent, selling agent or other agent in the ordinary course of business of the company or an advance received against orders for the supply of goods and properties for rendering services not being the amount collected through a scheme advertised in media or by any other means by real estate companies, automobile or other companies as an advance against the promise to supply the property or commodity, as the case may be, at some future date...”</i></p> <p>As per the explanation provided under Rule 3(4)(j), a scheme is if:</p> <ol style="list-style-type: none"> i. The property or commodity is not in possession of the company at the time when the notice, circular, advertisement or communication is issued; or ii. It offers for sale a product which the company does not have adequate production facility; or

			<p>iii. A campaign / advertisement contains a promise for a gift or reward or some unusual incentive so as to prompt an early booking.</p> <p>In light of the aforesaid, if the Companies (Invitation and Acceptance of Deposit) Rules, 1987 are still valid and not repealed then it appears that companies can raise deposits from the public for the purposes set out in the Companies (Invitation and Acceptance of Deposit) Rules, 1987 (as amended in 2003).</p>
24.	<p>Section 181</p> <p>(Protection to independent and non-executive directors)</p>	<p><u>Proposed Change:</u></p> <p>It is suggested that the protection under section 181 of the Companies Act for independent and non-executive directors also be extended to all directors of all types of companies.</p> <p>If our change is not acceptable, then please consider extending the protection to independent directors who are required pursuant to a regulatory regime (such as the NBFC regime), regardless of whether the company is listed or a public sector company.</p>	<p>Extending the protection under section 181 of the Companies Act to all directors of all companies would create a more equitable and globally aligned corporate environment. It balances accountability with the need to empower directors to make bold, good-faith decisions, ultimately fostering stronger corporate governance and economic growth in private and public companies as well.</p>
25.	<p>Section 204</p> <p>(Duties of directors)</p>	<p><u>Clarification:</u></p> <p>Clarification on the conflict of interest of nominee directors.</p> <p><u>Proposed Amendment:</u></p>	<p>It is proposed that section 204(4) be clarified to expressly provide that the interests of a shareholder nominating a director shall not, by itself, be deemed to constitute an interest of such director.</p> <p>Based on the current language of section 204, there can be an argument that directors owe a direct duty to the community and other stakeholders at large, which we understand cannot be the intent.</p>

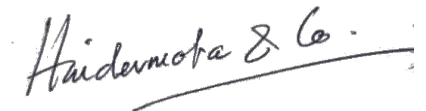
		<p>It is noted that section 204 states that a director shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment.</p> <p>It is suggested that this be amended to clarify that the primary duty of a director is to work in the interest of the company and the fiduciary duty is owed to the company.</p>	<p>Accordingly, section 204(2) of the Companies Act should be clarified that directors will owe a duty to the company and are required to act in the best interests of the company while considering the interests of members as a whole, employees, community and protection of environment; however, the primary duty should be to the company.</p> <p>The current provisions of section 204 expose companies and their directors (including independent directors) to claims by indirect stakeholders, which is a very heavy burden put on the company and its directors. As it is, it is not easy to find competent people to become independent directors of companies.</p>
26.	<p>Section 241</p> <p><i>(Dividend to be paid only out of profits)</i></p>	<p><u>Proposed Change:</u></p> <p>Restriction relating to payment in kind be removed.</p>	<p>The restriction limiting the payment of dividends in kind to shares of a listed company held by the distributing company should be removed, as dividends in kind may take other forms, subject to appropriate shareholder approval and disclosure.</p>
27.	<p>Section 247</p> <p><i>(Qualification and disqualification of auditors)</i></p>	<p><u>Clarification:</u></p> <p>Section 247(3) of the Companies Act states that no person can be appointed as an auditor if <i>inter alia</i> they are a spouse of a director of a company. It should be clarified whether these extend to partnership firms where one of the partners of such a firm is the spouse of a director.</p>	<p>One of our clients had this query and may have sought this clarification already as to whether this provision would apply in case the spouse of a director is a partner in the audit firm that advises the company, even though the mandate for such company is not being handled by the related director.</p>
28.	No Par Stock	<p><u>Proposed Change:</u></p>	<p>Several jurisdictions, including Australia, Germany, Japan, New Zealand, South Africa, and the Cayman Islands, have abolished the concept of par value of shares, recognizing that par value often bears</p>

		<p>It is recommended that the par value regime be omitted, and that the following be considered:</p> <ul style="list-style-type: none"> (i) The concepts of issuance of shares at a discount or premium be abolished. (ii) The articles of association (in light of the proposed omission of the memorandum) reflect the share capital without fixing a nominal share price, for example; “the share capital of the company is PKR [X], divided into [Y] shares”. (iii) The price at which shares are issued be determined by the board of directors, subject to shareholder approval where required under the Companies Act or the articles of association. (iv) The no-par value regime be implemented mandatorily across all classes of shares. <p>Corresponding amendments will be required to be made to related provisions, including, without limitation, sections 81 and 82, the formats under the articles of association, and the relevant regulations governing procedures on pricing/further issue of shares.</p>	<p>no meaningful relationship to the economic reality of a company’s shares.</p> <p>While par value may reflect the nominal capital contributed at the time of incorporation, it does not account for changes in a company’s assets, business, or valuation over time, and therefore does not reflect the intrinsic value of shares.</p> <p>The par value regime also complicates share issuances by creating artificial distinctions between issues at “discount” and “premium”, based solely on comparison with par value rather than market or negotiated value. This leads to conceptual inconsistencies where shares issued at fair market value may technically be treated as issued at a discount, and vice versa. No-par value regimes eliminate this confusion by removing an outdated and misleading benchmark, and non-par value shares are also recognized by the International Financial Reporting Standards (IFRS).</p> <p>Further, the commonly cited justification that par value protects creditors is not borne out in practice, as creditors typically rely on factors such as net worth, cash flows, assets, and commercial relationships, rather than nominal share capital, when assessing credit risk.</p> <p>Accordingly, it is recommended that issuance of no-par value shares be permitted, in line with international practice, to simplify capital structures, enhance commercial flexibility, and better reflect economic reality.</p> <p>We would welcome the opportunity to discuss the rationale and the proposed legal/regulatory framework in an in-person meeting.</p>
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29.	Common Chief Executive Officers	<p><u>Proposed Change:</u></p> <p>Provisions should be added in the Companies Act to allow holding companies and wholly owned non-operating subsidiaries to have common chief executive officers, even in the case of competing businesses.</p>	<p>It would be helpful from the perspective of ease of operations.</p> <p>Accordingly, it is suggested that the restriction under section 191 of the Companies Act, not be applicable to holding companies and their subsidiaries, and that section 191 be expressly exempted in this regard.</p>
30.	Conversion of Guarantee Company	<p><u>Proposed Change:</u></p> <p>A provision should be added to allow for a company limited by guarantee without share capital to be converted into a guarantee limited company with share capital.</p>	<p>In the spirit of ease of doing business, it would be helpful to provide a mechanism for companies limited by guarantee without share capital to transition to a guarantee limited company with share capital as such companies (with mostly begin as not-for profits) will not have to undergo a costly and disruptive ‘dissolve and re-incorporate’ process.</p>

Thank you for providing us this opportunity to share our comments. We would be happy to assist if there are any queries on the above.

Sincerely,



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HAIDERMOTA & CO.