

[AS PASSED BY THE NATIONAL ASSEMBLY]

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BILL

further to amend the Securities and Exchange Commission of Pakistan Act, 1997

Whereas it is expedient further to amend the Securities and Exchange Commission of Pakistan Act, 1997(XLII of 1997), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act shall be called the Securities and Exchange Commission of Pakistan (Amendment) Act, 2021.

(2) It shall come into force at once.

2. Amendments of section 2, Act XLII of 1997.- In the Securities and Exchange Commission of Pakistan Act, 1997(XLII of 1997), hereinafter referred to as the said Act, in section 2, in sub-section (1),-

- (a) in clause (s), for the word "schedule", occurring for the second time, the word "schedules" shall be substituted;
- (b) in clause (v), the word "and" at the end shall be omitted; and
- (c) in clause (w), for full stop at the end a semicolon and the word "and" shall be substituted and thereafter the following new clause shall be added, namely:-

“(x) “Tribunal” means the Financial Services Market Tribunal established under this Act.”.

3. Amendments of section 5, Act XLII of 1997.- In the said Act, in section 5,-

- (a) for sub-section (1) the following shall be substituted, namely:-

“(1) Subject to sub-section (2), the Commission shall consist of a Chairman and four Commissioners to be appointed in the prescribed manner by the Federal Government on the recommendation of the selection committee in accordance with section 7A.”;

- (b) after sub-section (3), the following new sub-section (3A) shall be inserted, namely:-

“(3A) Decision of the Commission shall be taken by majority of the Commissioners who are present in the meeting. The quorum of the meeting shall be minimum three Commissioners. In the event of a tie, the Chairman shall have a casting vote.”; and

- (c) after sub-section (5), the following new sub-section (6) shall be added, namely:-

“(6) Appointment to a vacancy in the Commission shall be made within a period of one hundred and twenty days from the date of such vacancy.”.

4. Substitution of section 6, Act XLII of 1997.- In the said Act, for section 6, the following shall be substituted, namely: -

“**6. The Chairman.** -(1) No person shall be appointed as Chairman unless he is a person known for his integrity, expertise and exemplary reputation having at least twenty years experience including five years at a senior level in any relevant field, including but not limited to, the securities market, law, accountancy, economics, finance, insurance and industry.

(2) The Chairman shall hold office for a term of three years and shall retire on attaining the age of sixty-five years or on the expiration of his term whichever is earlier and such term may, based on performance, be extended once for a period of two years by the Federal Government and shall not be eligible for further extension or re-appointment as a Chairman or Commissioner under this Act.

(3) The Chairman shall be the chief executive officer of the Commission and shall be responsible for managing day to day administration including the overall operations and resources in relation to the affairs of the Commission in a manner as may be specified.”.

5. Substitution of section 7, Act XLII of 1997.- In the said Act, for section 7, the following shall be substituted, namely: -

“**7. The Commissioners.** - (1) No person shall be appointed as Commissioner unless he is a person who is known for his integrity, expertise and exemplary reputation and having at least fifteen years experience including five years at a senior level in any relevant field, including but not limited to the securities market, law, accountancy, economics, finance, insurance and industry.

(2) The Commissioners shall hold office for a term of three years and shall retire on attaining the age of sixty-five years or on the expiration of this term whichever is earlier and such term may, based on performance, be extended once for a period of two years by the Federal Government and shall not be eligible for further extension or re-appointment as Chairman or Commissioner under this Act.

(3) A person previously appointed as the Chairman of the Commission shall not be appointed as a Commissioner.”.

6. Insertion of section 7A, Act XLII of 1997.- In the said Act, after section 7, as substituted as aforesaid, the following new section 7A shall be inserted, namely: -

“**7A. Selection committee.** - (1) The Federal government shall constitute a selection committee comprising of such members as may be specified by the rules.

(2) The selection committee shall be responsible for identifying and recommending candidates to the Federal Government for appointment on the post of Chairman, Commissioner and independent Members.

(3) The procedure adopted by the selection committee for recommending candidates to a vacant position shall comply with the principles of merit, confidentiality, transparency, diversity and fairness, including, but not limited to-

- (a) advertisement in the newspapers of wide circulation;
- (b) requesting applications by invitation; or
- (c) appointing a head-hunting agency.

(4) The selection committee shall notify the procedure for the short listings of applications, the interviews and selection of candidates for recommending at least three names against each vacancy to the Federal Government for appointment and no amendment or alteration in the notified procedure shall take effect unless a period of four months has passed from the date of notification of such amendment or alteration.”.

7. **Amendment of section 8, Act XLII of 1997.-** In the said Act, in section 8, for sub-section (2), the following shall be substituted, namely:-

“(2) The Commission shall not impose a service penalty on an employee of the Commission appointed under sub-section (1), without a just cause or against the manner and procedure as may be determined by the Commission with the approval of the Board.

(3) Any employee aggrieved of an order of imposition of penalty may prefer an appeal before an appellate authority as may be determined by the Commission with the approval of the Board.”.

8. **Insertion of section 8A, Act XLII of 1997.-** In the said Act, after section 8, amended as aforesaid, the following new section 8A shall be inserted, namely:-

“8A. Code of conduct.- (1) The Chairman, Commissioners, Members, consultants and advisers shall abide by a code of conduct to be specified.

(2) The code of conduct under sub-section (1) shall *inter-alia* provide for-

- (a) the manner and procedure of managing the conflict of interest under this Act;
- (b) the manner of managing confidentiality obligations under this Act; and
- (c) the principles governing how the Commission should engage with regulated persons including certain restrictions on financial engagements with regulated persons.

(3) A violation of the code of conduct shall be deemed to be an act of misconduct if such violation is established through an enquiry undertaken in accordance with section 19.”.

9. Amendments of section 10, Act XLII of 1997.- In the said Act, in section 10, in sub-section (1)–

- (a) the words ‘one or more Commissioners’, shall be omitted; and
- (b) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely: -

“Provided that the Commission shall not delegate any functions or powers specified in Schedule II.”.

10. Amendments of section 12, Act XLII of 1997.- In the said Act, in section 12,–

- (a) in sub-section (2), for clause (b), the following shall be substituted, namely:-

“(b) six independent Members appointed by the Federal Government from private sector on the recommendation of the selection committee in accordance with section 7A, including at least one from each Province, who are known for their integrity, expertise and exemplary reputation and who have at least twenty years experience including ten years at a senior level in any relevant field including but not limited to the securities market, law, accountancy, economics, finance, insurance and industry:

Provided that if a person has previously held the position of a Chairman or Commissioner under section 6 or section 7, he shall not be appointed as an independent Member of the Policy Board unless a period of two years has elapsed from the date of completion of his tenure as Chairman or Commissioner, as the case may be.”;

- (b) for sub-section (3), the following shall be substituted, namely:-

“(3) The independent Members of the Board shall hold office for a maximum term of four years or on attaining the age of sixty-five years whichever is earlier.”;

- (c) in sub-section (5), for the words “Additional Secretary” the expression “BPS-20” shall be substituted”; and

- (d) after sub-section (7), the following new sub-section (8) shall be added, namely:-

“(8) A vacancy in membership of the Board shall be filled within one hundred and twenty days from the date of occurrence of such vacancy.”.

11. Amendment of section 13, Act XLII of 1997.- In the said Act, in section 13, in sub-section (2), for the word ‘including the Chairman’, the expression ‘the majority of whom must be independent Members and shall also include the Chairman of the Board and the Chairman of the Commission’ shall be inserted.

12. Amendments of section 14, Act XLII of 1997.- In the said Act, in section 14,-

- (a) the existing provision shall be numbered as sub-section (1) thereof and in sub-section (1), numbered as aforesaid,-
 - (i) for the words “any person”, occurring for the first time, the words “an expert” shall be substituted;
 - (ii) the words “any of”, occurring for the first time shall be omitted;
 - (iii) the expression “or deliberations (including any of its committees)” shall be omitted; and
 - (iv) after the words “advising it on”, the words “a policy issue” shall be inserted.
- (b) after sub-section (1), numbered and amended as aforesaid, the following new sub-section (2) shall be added, namely:-

“(2) An expert invited under sub-section (1) to attend any meeting of the Board shall be entitled to such compensation and reimbursement of expenses as may be determined by the Board.”.

13. Amendments of section 15, Act XLII of 1997.- In the said Act, in section 15,-

- (a) in sub-section (1), after the word “committees” the expression “, comprising its members,” shall be inserted;
- (b) in sub-section (4),-
 - (i) the expression “, other than ex-officio Members” shall be omitted;
 - (ii) for the expression “or employees, and any other person”, the words “and employees”, shall be substituted; and
- (c) after sub-section (4), amended as aforesaid, the following new sub-section (5) shall be inserted, namely: -

“(5) No ex officio member, employee or an expert shall be entitled to claim any compensation or reimbursement, which is otherwise claimable from their respective ministries, institutions or entities, as the case may be.”.

14. Amendments of section 16, Act XLII of 1997.- In the said Act, in section 16,-

- (a) in the marginal heading, after the word, “by”, the expression, “the Chairman,” shall be inserted;
- (b) in sub-section (2),-
 - (i) for the letter “A”, the expression “the Chairman, a” shall be substituted; and

- (ii) after the word "in writing", the words "as soon as is reasonably possible after becoming aware of any potential or actual conflict of interest" shall be inserted;
- (c) in sub-section (3), after the expression "disclosure, the", the expression 'Chairman,' shall be inserted;
- (d) in sub-section (6), for the word "Each", the words "The Chairman and each" shall be substituted; and
- (e) in sub-section (7), the words "a Commissioner is not the Chairman and", shall be omitted.

15. Amendment of section 17, Act XLII of 1997.- In the said Act, in section 17, after sub-section (2), the following new sub-sections (3) and (4) shall be added, namely:-

"(3) A person referred to under this section, who has any interest in any matter shall not undertake any function or continue to take part in any function, as the case may require, in relation to such matter unless the Commission consents to the person so taking part.

(4) Any person who fails to disclose his interest as required under section 16 shall be liable to disciplinary action in accordance with the procedure prescribed by regulations."

16. Amendment of section 18, Act XLII of 1997.- In the said Act, for section 18, the following shall be substituted, namely:-

"18. Disqualification of independent Members, Chairman and Commissioners.- No person shall be appointed to be or remain an independent Member, Chairman or Commissioner if he—

- (a) is or becomes an officer or a director in any public listed company;
- (b) is or becomes an officer or a director of an entity that is licensed, registered, recognized or approved under this Act or administered legislation;
- (c) is in the service of Pakistan or service of a statutory body member of any legislative assembly or Senate of Pakistan;
- (d) is convicted of an offence involving fraud, dishonesty, corruption or violence;
- (e) is or becomes a bankrupt or suspends payment or compounds with his creditors;
- (f) is or becomes involved in any activity which may interfere with his independence in discharging his functions;
- (g) violates any conduct as established under section 8A;
- (h) in the case of the Policy Board, absents from three consecutive meetings without leave of the Board; or
- (i) fails to comply with his obligations to disclose potential or actual conflicts of interest under section 16."

17. Amendment of section 20, Act XLII of 1997.- In the said Act, in section 20,-

- (a) in sub-section (2), for the expression "divisions, wings or such other sub-divisions as it may consider expedient", the words "different administrative units in accordance with regulations made under this Act", shall be substituted;
- (b) in sub-section (3), for the words "the Board to make policy decisions and may also make recommendations regarding policy to the Board for its consideration", the words "requiring guidance from the Board" shall be substituted;
- (c) in sub-section (4),-
 - (i) in clause (f), for the expression "and associations of mutual funds, leasing companies and other NBFIs", the expression "depositories, clearing companies, future exchanges or any entity acting on their behalf jointly or severally and associations of regulated persons" shall be substituted; and
 - (ii) for clause (fb), the following shall be substituted, namely:-

"(fb) establishing and regulating, in the manner prescribed by rules, entities for promoting, encouraging and enforcing the proper conduct, standards, competence and integrity of regulated persons through certification and accreditation;"

18. Amendment of section 21, Act XLII of 1997.- In the said Act, for section 21, the following shall be substituted, namely:-

"21. Functions and powers of the Board.- Subject to the provisions of this Act, the Board shall-

- (a) when so asked to do and after consultation with the Commission, make recommendations to the Federal Government on policy matters relating to the securities and insurance industry, corporate sector and protection of the interests of investors;
- (b) provide guidance to the Commission with respect to implementation of policy decisions, proposed to be made by the Commission under this Act;
- (c) consider and approve the budget for each financial year of the Commission prepared and submitted to it pursuant to sub-section (2) of section 24;
- (d) approve the Commission's three year rolling market development plan which shall include *inter-alia*, a road map for implementation of policy decisions and regulatory strategy to achieve the objectives of the Commission;
- (e) subject to sub-section (3) of section 20, oversee the performance of the Commission to the extent that the purposes of this Act are achieved; and
- (f) conduct annual appraisal of the Chairman and Commissioners as per policy made by the Federal Government; and

- (g) recommend fees, penalties and other charges chargeable by the Commission for carrying out the purposes of this Act.”.

19. Amendments of section 22, Act XLII of 1997.- In the said Act, in section 22,-

- (a) for sub-section (2), the following shall be substituted, namely:-
- “(2) All policy decisions and directions of the Commission shall be published in the official Gazette.”.
- (b) in sub-section (4),-
- (i) for clause (c), the following shall be substituted, namely:-
- “(c) the suitability of disclosure of the company or body corporate desirous of listing on a stock exchange;” and
- (ii) for clause (e), the following shall be substituted, namely:-
- “(e) any approval given by the Board pursuant to the provisions of this Act;”.

20. Amendments of section 25, Act XLII of 1997.- In the said Act, in section 25,-

- (a) in sub-section (1), for the word “ninety” the words “one hundred and twenty” shall be substituted;
- (b) the words “including investigations and enquiries made by the Commission” shall be omitted;
- (c) for the words “the Ordinance or the Law of Insurance” the words “any administered legislation” shall be substituted;
- (d) after sub-section (1), amended as aforesaid, the following new sub-section (1A) shall be inserted, namely:-

“(1A) The activities of the Commission to be made part of the report prepared under this section shall include, *inter alia*-

- (a) an overview of investigations and enquiries initiated and concluded:

Provided that in case an investigation or enquiry, with regard to any suspected fraudulent activity or scheme, is yet to be concluded by the Commission and if deemed necessary, the Commission may make a public disclosures in such manner and form subject to reasonable restrictions as may be specified;

- (b) declarations of interests by the Chairman, the Commissioners and the independent Members, as well as any declarations of conflict of interest; and
- (c) overview of investor complaints handled and disposed of.” and

- (c) after sub-section 5, the following new sub-section (5A) shall be inserted, namely:-

“(5A) There shall be an annual performance audit of the Commission and the Board in the manner as may be specified.”.

21. Amendment of section 32B, Act XLII of 1997.- In the said Act, for section 32B, the following shall be substituted, namely:-

“32B. Review.- (1) Any order passed by the Commission or an officer authorized by the Commission in this behalf shall be subject to review by the Commission or, as the case may be, such authorized officer on the following grounds on application made within thirty days from the date of such order, namely:-

- (a) that the order suffers from a mistake or error apparent on the face of the record; or
 - (b) no appeal against the order has been preferred.
- (2) The Commission or, as the case may be, such authorized officer may on the ground under clause (a) *suo moto* review the order against which no appeal has been preferred.”.

22. Substitution of section 33, Act XLII of 1997.- In the said Act, for section 33, the following shall be substituted, namely:-

“33. Financial Services Market Tribunal.— (1) There shall be established by the Prime Minister, by notification in the official Gazette, a Financial Services Market Tribunal hereinafter called as the Tribunal to exercise the powers conferred by this Act and the administered legislation without prejudice to the powers of the tribunal constituted under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980) and the tribunal constituted under the Insurance Ordinance, 2000 (XXXIX).

(2) An appeal shall lie to the Tribunal in respect of an order of the Commission or an officer authorized by it in this behalf:

Provided that no appeal shall lie against—

- (a) an administrative direction given by the Commission or an officer of the Commission authorized by it in this behalf;
- (b) an order passed in exercise of the powers of revision or review;
- (c) a sanction provided or decision made by the Commission or an officer of the Commission authorized by it in this behalf to commence legal proceedings; and
- (d) an interim order which does not dispose of the entire matter.

(3) The provisions of this section shall be notwithstanding anything contained in any other provision of this Act and the administered legislation and where any power therein is exercisable by the Appellate Bench of the Commission such power shall be exercised by the Tribunal and the cases pending adjudication before the Appellate Bench of the Commission shall stand transferred to the Tribunal on commencement of the Securities and Exchange

Commission of Pakistan (Amendment) Act, 2020 and on such transfer it shall not be necessary to recall any witness or record any evidence a fresh that may have been recorded and the Tribunal to which the cases are transferred shall continue proceedings from the stage immediately before such transfer.

(4) A Tribunal shall, for the purposes of hearing and deciding appeals under this Act, have the same powers as are vested in a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents and material objects;
- (c) receiving evidence on affidavits; and
- (d) issuing commissions for examination of witnesses and documents.

(5) The Tribunal shall consist of a chairman and such other judicial and technical members as may be appointed by the Prime Minister in such manner and on such terms and conditions of service as he may prescribe by rules made under this sub-section, notwithstanding anything contained in any other law for the time being in force and any other provision including section 39 of this Act.

(6) There shall be a registrar of the Tribunal who shall have custody of record of the Tribunal and shall be appointed by such authority, in such manner and on such terms and conditions as may be prescribed in accordance with sub-section (11).

(7) For exercising its powers and discharge of its functions under this Act, the Tribunal shall be assisted by such officers and other employees appointed by such authority, in such manner and on such terms and conditions as may be prescribed by rules made under sub-section (11).

(8) No person shall be appointed as a judicial member, or remain as such member, of the Tribunal unless such person—

- (a) is, or has exercised the powers of, a district judge; or
- (b) is or has been an advocate having for a period of not less than ten years active practice of conducting cases before a High Court; and
- (c) fulfils the conditions provided for in clauses (a) to (k) of sub-section (9) with the modification therein if for the words "technical member", the words "judicial member" were substituted.

(9) No person shall be appointed as a technical member, or remain as such member, of the Tribunal unless such person—

- (a) is a citizen of Pakistan;
- (b) is not of the age exceeding sixty-five years on the date of his appointment;

- (c) has not been by a competent court of law declared as undischarged insolvent;
- (d) has not filed a petition before a competent court of law to declare him insolvent and such petition is pending before the court;
- (e) has not been by a competent court of law declared of unsound mind or insane;
- (f) has not been by a competent court of law convicted for an offence involving moral turpitude, fraud, dishonesty or corruption;
- (g) is not incapable of discharging his duties by reasons of physical or mental unfitness and has not been so declared by a duly constituted medical board;
- (h) is not, or while appointed as technical member does not become, an officer or a director in any public listed company;
- (i) while appointed as technical member, does not fail to disclose any conflict of interest at or within the time provided for such disclosure under this Act or does not contravene any of the provisions of this Act pertaining to unauthorized disclosure of information;
- (j) is not, or while appointed as technical member does not become, an officer or director of an entity that is licensed or registered under this Act or any administered legislation;
- (k) is not or has not been a Commissioner or employee of the Commission unless a period of two years has elapsed after he has ceased to be such Commissioner or employee;
- (l) have at least a master's or professional degree or equivalent qualification from a university, or institute, recognized by the Higher Education Commission in finance, law, accountancy, insurance, economic, investment management, industry, banking or finance; and
- (m) have at least fifteen years of professional work experience in any of the fields under clause (l).

(10) The chairman and judicial and technical members of the Tribunal shall be appointed for a period of three years from the date of assumption of charge of their office and may, based on good performance, be eligible for only one time extension in their term for a period not exceeding two years and shall cease to hold office on attaining the age of seventy years or expiry of their term, whichever is earlier:

Provided that the condition of seventy years in respect of a judicial member who is a serving district judge shall be subject to the age of his superannuation in accordance with the legal framework applicable to his service and shall after such superannuation continue to hold office as such judicial member for the remaining period of his contract.

(11) Subject to the provisions of this section, the terms and conditions of service in the Tribunal in respect of its registrar and other employees shall be

governed by the Civil Servants Act, 1973 (LXXI of 1973) and rules made thereunder, notwithstanding any other provision including section 39 of this Act.

(12) Every appeal to the Tribunal shall be heard and decided by consensus by a bench consisting of a judicial member and a technical member and where there is a difference of opinion in a case, it shall be placed before the chairman of the Tribunal whose decision shall be construed as decision of the Tribunal.

(13) The constitution of benches, functioning and other procedure of the Tribunal shall be regulated in such manner as may be prescribed through rules made by the Prime Minister notwithstanding anything contained in any other provision of this Act including section 39.

(14) The Tribunal shall submit to the Division, to which the business of the Tribunal stands allocated, within thirty days from the end of every financial year an annual report in respect of cases filed and disposed of by it in the financial year.

33A. Civil court not to have jurisdiction. Without prejudice to anything contained in the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980) and the Insurance Ordinance, 2000 (XXXIX of 2000), no court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal constituted under this Act is empowered by or under this Act to exercise and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”.

23. Amendment of section 34, Act XLII of 1997.- In the said Act, in section 34, for sub-section (1), the following shall be substituted, namely:-

“(1) An appeal shall lie to the Court in respect of an order of the Tribunal constituted under section 33.”.

24. Amendment of section 35, Act XLII of 1997.- In the said Act, in section 35, in sub-section (6), in clause (a), after the semicolon, the word “or” shall be added, in clause (b), for the semicolon and the word “or” a comma shall be substituted and thereafter clause (c) shall be omitted.

25. Amendment of section 36D, Act XLII of 1997.- In the said Act, in section 36D, in sub-section (1), for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that the Commission, in the interests of financial services markets, investors and general public, may direct an association of regulated persons to register under this section and comply with the requirements of this Part.”.

26. Amendments of section 36H, Act XLII of 1997.- In the said Act, in section 36H,-

(a) in clause (a), for the expression “253 of the Ordinance”, the expression “247 of the Companies Act, 2017 (XIX of 2017)”;

(b) for clause (b) the following shall be substituted, namely:-

“(b) “audit firm” means a firm of chartered accountants in practice organized as partnership firm under the Partnership Act, 1932 (IX of

1932) or a sole proprietary firm being an auditor registered with or required to registered with the AOB;”;

- (c) after clause (c), the following new clauses, (ca) and (cb) shall be inserted, namely:-

“(ca) “audit partner” means the individual in an audit firm who is responsible for the audit engagement, its performance and for the audit report that is issued on behalf of the firm;

(cb) “connected person” means any sole proprietor, partner, principal or professional employee of an audit firm or any independent contractor or entity that, in connection with the preparation or issuance of any audit report, either-

(i) shares in the profits of or receives compensation in any other form from that audit firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm but excludes any person engaged only in clerical tasks;

- (d) in clause (g), for the word “the”, the word “a” shall be substituted;

- (e) for clause (i), the following shall be substituted, namely:-

“(i) “public interest company” or “public interest entity” means a company which falls under the criteria as laid down in Third Schedule or deem to be such company under section 216 of the Companies Act, 2017 (XIX of 2017);”;

- (f) for clause (j), the following shall be substituted, namely:-

“(j) “quality assurance board” or “QAB” means the quality assurance board as established by the Institute of Chartered Accountants of Pakistan (ICAP)”.

27. Amendment of section 36J, Act XLII of 1997.- In the said Act, in section 36J, -

- (a) in sub-section (3), for the full stop at the end, a colon shall be substituted and thereafter the following new proviso shall be added, namely:-

“Provided that a person shall not be eligible to be appointed a member of the AOB if, in the preceding three years, he has been a connected person of any audit firm in Pakistan. Further, the number of members of AOB, who are or have been member of the Institute shall not be more than three.”.

- (b) in sub-section (4), for the expression “including interviews of the potential candidates, before recommending them to the Federal Government for appointment” the words “as it deems appropriate” shall be substituted; and

- (c) for sub-section (7), the following shall be substituted, namely:-

“(7) A member of AOB shall be appointed for an initial term of three years and may be considered for re-appointment for another non-renewable term of three years:

Provided that any vacancy arising at any time shall be filled in accordance with the provisions of this Part for a term of three years reckoning from the date of the appointment.”.

28. Amendment of section 36K, Act XLII of 1997.- In the said Act, in section 36K,-

- (a) for clauses (a) and (b), the following shall be substituted, namely:-
 - “(a) to register audit firms and audit partners that carry out or intend to carry out audit of financial statements of public interest entities in the manner laid down in sub-section (1) of section 36T and regulations made under this Part;
 - (b) to deregister audit firms or audit partners in the manner laid down in this Part and regulations made hereunder.”;
- (b) in clause (d), for the word “companies”, the word “entities” shall be substituted;
- (c) for clause (f), the following shall be substituted, namely:-
 - “(f) to ensure that the auditing, quality control, ethical and continuing professional development standards adopted by the Institute conform to the international standards as issued by the International Auditing and Assurance Standards Board, the International Ethics Standards Board for Accountants, the International Federation of Accountants and applicable legal and regulatory framework and take such actions as deemed necessary.”;
- (d) in clause (g), the word “and”, occurring at the end, shall be omitted;
- (e) in clause (h),-
 - (i) for the word “companies”, the word “entities” shall be substituted; and
 - (ii) for the full stop at the end a semi colon shall be substituted;
- (f) after clause (h), amended as aforesaid, the following new clauses (i), (j) and (k) shall be added, namely:-
 - “(i) to set up such committees and panels of external technical experts as it deems appropriate;
 - (j) to engage with the audit committees and other relevant persons to enhance audit quality for public interest entities; and
 - (k) to cooperate and collaborate with international audit regulators, and other relevant organizations or bodies under intimation to the Division concerned.”.

29. Amendment of section 36P, Act XLII of 1997.- In the said Act, in section 36P,-

- (a) in sub-section (2),-
 - (i) in clause (a), before the word “sum”, the words “an annual allocation and” shall be inserted;
 - (ii) for clause (d), the following shall be substituted, namely:-

- “(d) fee including registration fee and charge, as may be specified, from the audit firm and audit partner;” and
- (iii) in clause (e), for the words “from the public interest company”, the words “as may be specified from the public interest entity” shall be inserted.

30. Amendment of section 36T, Act XLII of 1997.- In the said Act, for section 36T, the following shall be substituted, namely:-

“36T. Registration and deregistration of audit firm. (1) To register with AOB, an audit firm shall require a recommendation of QAB in accordance with QCRF:

Provided that-

- (a) all the firms having satisfactory rating at the time of commencement of this Act shall be deemed to be registered;
- (b) only those firms that have been rated satisfactorily by the QAB under the QCRF shall be eligible for recommendation by QAB for registration with AOB.
- (c) an audit firm shall comply with the requirements of this Part, regulations made hereunder, quality control review framework, International Standards on Auditing and Quality Control, relevant requirements of applicable Code of Ethics and International Standards on continuing professional development, as may be adopted in Pakistan;
- (d) AOB may impose such conditions upon registration of an audit firm as it deems fit; and
- (e) no change shall be made or take effect in the QCRF without the prior written approval of AOB.
- (2) AOB may, after giving an opportunity of hearing, suspend or deregister an audit firm from the register maintained under section 36W on any one or more of the following reasons, namely:-
 - (a) recommendation by QAB;
 - (b) audit firms seeking to voluntarily deregister;
 - (c) audit firm is in violation of the-
 - (i) relevant legal and regulatory requirements as applicable in Pakistan;
 - (ii) International Standards on Auditing or International Standards on Quality Control issued by the International Auditing and Assurance Standards Board as adopted in Pakistan; or
 - (iii) relevant requirements of Code of Ethics issued by the International Ethics Standards Board for Accountants, as adopted in Pakistan;
 - (d) audit firm does not meet the minimum quality standard required under the QCR framework or AOB’s regulations;
 - (e) audit firm provides false or misleading information to AOB;

- (f) audit firm does not pay applicable fees payable to AOB by the due date;
- (g) audit firm does not submit information required by AOB by the due date or extensions granted by AOB in this respect;
- (h) audit firm is found guilty of misconduct pertaining to audit of financial statements by a court of law;
- (i) audit firm fails to meet a condition imposed by AOB at the time of registration; or
- (j) any other reason, as may be deemed appropriate, to protect the public interest in audit of financial statement of public interest entity.”.

31. Amendment of section 36U, Act XLII of 1997.- In the said Act, in section 36U, for sub-section (1), the following shall be substituted, namely:-

“(1) The AOB shall conduct recurring direct inspections of registered audit firms and the work performed by the Institute’s quality assurance department and QAB with respect to audits of public interest entities. In addition, AOB may conduct an inspection on a complaint, *suo moto* or on reference made by the Commission or State Bank of Pakistan, or any other grounds to ensure compliance with this Part or regulations made hereunder.”.

32. Substitution of section 36V, Act XLII of 1997.- In the said Act, for section 36V, the following shall be substituted, namely:-

“36V. Appeal against orders of AOB.- (1) Any person aggrieved by an order passed by AOB or a committee or an employee of AOB under delegated authority may prefer an appeal within thirty days of such order before the Tribunal under section 33.

(2) No appeal shall be admissible against-

- (a) an administrative direction given by an employee of the AOB;
- (b) a sanction provided or decision made by AOB or an employee of the AOB to commence legal proceedings; and
- (c) an interim order which does not dispose of the entire matter.”.

33. Substitution of section 36W, Act XLII of 1997.- In the said Act, for section 36W, the following shall be substituted, namely:-

“36W. Register of audit firms and audit partners. (1) AOB shall keep and maintain register of audit firms and audit partners authorized to carry out audit of public interest entities in such form and manner as may be specified.

(2) An audit firm or an audit partner that is not registered with AOB shall not undertake audit of financial statements of a public interest entity or seek to be appointed as an auditor of a public interest entity. Where an audit firm is deregistered by AOB subsequent to its appointment by a public interest entity, the audit firm shall immediately resign from that

appointment and failure to timely comply with this requirement shall be subject to the provisions of 36CC.

(3) A public interest entity shall not appoint, seek to appoint or retain an audit firm to audit its financial statements that is not registered with AOB. A public interest entity that fails to comply with this requirement may be referred by AOB to the Commission and the relevant regulators for their information and necessary action against partner, firm and public interest entity.”.

34. Substitution of section 36X, Act XLII of 1997.- In the said Act, for section 36X, the following shall be substituted, namely:-

“**36X. AOB may seek assistance.-** AOB may seek such assistance from the relevant regulatory authority including Commission, State Bank of Pakistan, Institute or relevant department of the Federal and Provincial Governments as it reasonably requires for the performance of its functions under this Part.”.

35. Amendment of section 36Y, Act XLII of 1997.- In the said Act, in section 36Y, for the word “companies”, wherever occurring, the word “entities” shall be substituted.

36. Amendment of section 36AA, Act XLII of 1997.- In the said Act, in section 36AA, for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that where AOB issues a directive to the institute regarding the QCRF and if the Institute fails to comply with the said directive within the specified period, AOB may make or amend or rescind the QCRF and that QCRF shall be deemed to have been made, amended or rescinded by the Institute and shall take effect accordingly.”.

37. Amendment of section 36BB, Act XLII of 1997.- In the said Act, in section 36BB, for the word “companies”, the word “entities” shall be substituted.

38. Amendment of section 36CC, Act XLII of 1997.- In the said Act, in section 36CC,-

(a) in sub-section (1),-

(i) after the word, “firm”, occurring for the first time, the words “or a connected person of an audit firm” shall be inserted; and

(ii) for the word “companies”, the word “entities” shall be substituted;

(iii) in clause (b), in sub-clause (ii), after the word “interest”, the words “entities for a period not exceeding five years” shall be inserted;

(iv) for clause (c), the following shall be substituted, namely:-

“(c) reprimand or issue warnings which may be public or private as deemed necessary or appropriate under the circumstances;”;

(v) for clause (d), the following shall be substituted, namely:-

“(d) require the audit firm or partner or connected person to implement an action plan including completing required professional education and training;” and

(vi) after clause (d), substituted as aforesaid, the following new clauses (e), (f) and (g) shall be added, namely:-

“(e) place temporary or permanent limitation on activities, functions or operations of such firm or connected person;

(f) impose limitations on the activities, functions or operations of a firm which may include-

(i) prohibiting an audit firm or partner from accepting new audit engagements or clients for a specified period of time;

(ii) appointing a reviewer or supervisor on the work performed by the audit firm or connected person;

(iii) requiring an audit firm or audit partner to resign from one or more audit engagements; or

(iv) requiring a firm to make functional changes in supervisory personnel organization or in engagement team organization; or

(g) appoint a monitor to observe and report on the registered audit firm's compliance with the applicable laws, regulations, standards, quality control review framework and code relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants.”;

(b) in sub-section (2),-

(i) for the word “compliant”, the word “complaint” shall be substituted; and

(ii) for the word “Ordinance”, the expression “Companies Act, 2017 (XIX of 2017) shall be substituted; and

(c) in sub-section (3), for the expression “prior to imposing any penalty, sanctions or revocation of registration”, the words “or a connected person prior to taking any penal actions.”.

39. Insertion of new sections 36DD, 36EE, 36FF, 36GG, 36HH, 36II, Act XLII of 1997.- In the said Act, after section 36CC, amended as aforesaid, the following new sections 36EE, 36FF, 36GG, 36HH, 36II shall be inserted, namely:-

“36DD. Compliance with principles for independent audit regulators and cooperation with international audit regulators.- (1) AOB shall strive to comply with the relevant principles and standards for independent audit regulators and seek to become a member of the relevant forum.

(2) AOB shall on reciprocal basis cooperate with international audit regulators with whom the AOB has entered into any arrangement or agreement or understanding and, where relevant, other authorities to protect and enhance audit quality and AOB shall have the right to exchange such information under intimation to the Division concerned as required to meet the purposes of this Part.

(3) No audit regulator or another authority from any other jurisdiction shall conduct an inspection of a registered audit firm based in Pakistan without first informing AOB.

36EE. Recovery of fee and penalty by AOB.- Where a public interest entity or an auditor fails to pay the fee charged by or a penalty imposed by AOB by the due date, AOB may publicly disclose the name of the public interest entity or auditor and refer the same to the Commission, State Bank of Pakistan, Institute and other relevant regulators for their information and necessary action and the AOB may recover the unpaid amount and any surcharge thereof as arrears of land revenue.

36FF.- All fines and penalties recovered under this part or regulations made hereunder shall be credited to the Federal Consolidated Fund.

36GG.- Delegation of functions or powers of AOB.- (1) The AOB may, subject to such conditions and limitations as it may deem fit to impose, delegate any of its functions or powers under this Part or the regulations made hereunder, to its Chairman, one or more of its members and one or more employees of the AOB.

(2) A delegation under this section shall not prevent the concurrent performance or exercise by the AOB of the functions or powers so delegated.

36HH. Penalty for false statement and failure to disclose correct information.- (1) Any person, who furnishes any information or submit any document or made any statement which he is bound to produce or made under this Part or the regulations made hereunder-

- (a) he knows to be false or does not believe to be true or which he furnishes recklessly; or
- (b) intentionally suppresses any material fact,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two million rupees.

(2) Notwithstanding anything contained in the Code of Criminal Procedure 1898 (V of 1898), no court other than a court of session shall have jurisdiction to try a person charged with an offence under sub-section (1) except upon complaint in writing made by the AOB or any officer authorized by it in this behalf.

36II. Indemnity of the AOB, Chairman, Members, CEO and employees.— (1) No suit, prosecutions or any other legal proceedings or action in damages shall lie against the AOB and its Chairman, Members, CEO or its employees for anything done or omission in exercise or performance of any functions, power or duty conferred or imposed by or under this Part or the regulations made hereunder unless the act or omission is shown, beyond reasonable doubt to have been in bad faith.

(2) Chairman, Member, CEO or employees of AOB shall not be sued in their personal capacity for the action bona fide taken in their official capacity and in case of any such suit the AOB shall bear expenses of the proceeding till its final decision.”.

40. Amendment of section 37, Act XLII of 1997.- In the said Act, in section 37,-

- (a) in sub-section (1), in the proviso, for the words "any other court established under any other law presided by", the expression "the Tribunal established under this Act, or any other court established under any other law, presided by a serving or retired"; and
- (b) for the words "the court", the words "the Tribunal or court" shall be substituted.

41. Amendment of section 38, Act XLII of 1997.- In the said Act, in section 38,-

- (a) in sub-section (1), after the expression "(Act V of 1898)", the words "or any other law for the time being in force" shall be inserted;
- (b) after the words "appointed by the Commission", occurring for the first time, the words "and for this purpose the law officers of the Commission shall be deemed to be public prosecutors" shall be inserted; and
- (c) in the proviso after the word "before", the words "the Tribunal or" shall be inserted.

42. Amendment of section 40, Act XLII of 1997.- In the said Act, for section 40, the following shall be substituted, namely:-

"40. Power to make regulations.- (1) The Commission in consultation with the Board, by notification in the official Gazette, may make such regulations as may be required to carry out the purposes of this Act in respect of internal functions of the Commission.

(2) The power to make regulations conferred by this section shall be subject to the condition of previous publication and before making any regulations the draft thereof shall be published in the official Gazette and uploaded on website of the Commission followed by such advertisement in the newspapers as the Commission may deem fit for eliciting public opinion thereon within a period of not less than thirty days from the date of publication."

43. Amendment of section 42, Act XLII of 1997.- In the said Act, in section 42, sub-section (2) shall be omitted.

44. Amendment of section 42A, Act XLII of 1997.- In the said Act, in section 42A, in sub-section (2), for the word "bonafidely", the word "bona fide" shall be substituted.

45. Amendment of section 42B, Act XLII of 1997.- In the said Act, in section 42B,-

- (a) for sub-section (1), the following shall be substituted, namely:-

"(1) Any penalty imposed by the Commission in exercise of its powers under this Act or any administered legislation shall be payable to the Commission and may be recovered by the Commission as decree for the payment of money. In case any person aggrieved by an order of the Commission or an officer of the Commission authorized by it in this behalf has-

- (a) preferred an appeal under section 33 and the Tribunal has upheld such order, it shall automatically be converted into execution proceedings and no fresh notices shall be issued to the appellant; or
- (b) not preferred an appeal to the Tribunal under section 33, the Commission may make an application to the Tribunal to confirm the order and convert the application into execution proceedings after notices to the parties as deemed appropriate by the Tribunal.”; and

- (b) in sub-sections (2), (3) and (4), for the word “court”, wherever occurring, the word “Tribunal” shall be substituted.

46. Amendment of 42E, Act XLII of 1997.- In the said Act, in section 42E, for the word “Schedule”, the words “Schedule except Schedule II” shall be substituted.

47. Addition of Schedule II.- In the said Act, after Schedule I, the following new Schedule II shall be added, namely:-

“SCHEDULE II

[see section 10(1)]

Non-Delegable Powers and Functions of the Commission

S. No.	Statute	Sections
(1)	(2)	(3)
1.	Modaraba Companies Modaraba Floatation Control Ordinance, 1980	41A, 41B
2.	Companies Ordinance, 1984	282B(2), 282B(3), 282C, 282CA(2), 282D, 282E, 282F, 282L, 282N
3.	Central Depositories Companies Act, 1997	35, 36
4.	Securities and Exchange Commission of Pakistan Act, 1997	5(3), 6(2), 8, 9, 10, 11A, 20(2), 20(3), 25(3), 26, 27, 28, 31, 32A, 36C, 36E, 36F, 36G, 36U, 37, 38, 40, 40B, 42D All exemptions, relaxations and clarifications.
5.	Insurance Ordinance, 2000	6, 7, 60, 63, 64, 65, 66, 83, 135, 139, 167
6.	Stock Exchanges (Corporatization, Demutualization and Integration) Act, 2012	All powers
7.	Securities Act, 2015	3, 4, 5, 6(12), 7, 8, 12, 13, 14, 19, 20, 22, 23, 24, 25(10), 26, 27, 31, 32, 33, 47, 48, 49, 50(7), 51, 52, 55, 56, 57, 64(3), 70, 71, 75, 78(2), 80, 87(2), 88, 89, 95, 100, 124, 125, 151, 169, 170,

		171, 172
8.	Futures Market Act, 2016	3, 4, 5, 6(12), 7, 8, 12, 13, 14, 15, 16, 22, 23, 24, 26, 27, 31, 32, 33, 54, 95, 114, 115, 117, 118
9.	Corporate Restructuring Companies Act, 2016	4, 16, 17
10.	Companies Act, 2017;	42, 147, 258, 264, 279, 280, 282, 439, 507(2), 510, 512
11.	Limited Liability Partnership Act, 2017	52, 53, 54
12.	Corporate Rehabilitation Act 2018;	41, 42
13.	All Acts, Ordinances, Rules, Regulations, Guidelines, Circulars and Notifications administered or issued by the Commission	All exemptions, relaxations and clarifications.”.

STATEMENT OF OBJECT AND REASONS

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN (AMENDMENT) ACT, 2021

The draft SECP (Amendment) Bill, 2021 aims at enhancing SECP operational autonomy, establishing independent Financial Services Market Tribunal and strengthening of Audit Oversight Board (AOB). The draft amendments put emphasis on enhancing SECP's governance by providing a transparent appointment process and code of conduct for statutory posts and strengthening of provisions pertaining to eligibility criteria, dismissal, tenure and conflict of interest, ensuring operations of SECP as a collegiate body and clarifying role of the policy board.

Sd/-

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