

Companies Act 2017, Ordinance promulgated to withdraw six amendments

ISLAMABAD: The federal government has promulgated an Ordinance to withdraw six controversial amendments, out of total 121 changes made in the Companies Act 2017, through Companies (Amendment) Ordinance 2020.

In this regard, Companies (Second Amendment) Ordinance 2020 has been issued here on Wednesday. The amendments that have been reversed through Companies (Second Amendment) Ordinance 2020 include section 172(m), section 181, section 186 and 187, sections 279 to 282, section 452 and amendment made in section 461 of the Companies Act. The government has recently promulgated Companies (Amendments) Ordinance 2020 that altered over 121 provisions of Companies Act 2017 apparently to provide ease of doing business, promote startups and facilitate access to finance to small and medium enterprises, with an aim to meet World Bank's Ease of Doing Business indicators.

These amendments that were reverted back were recommended by the then SECP's Policy Board Chairman Khalid Mirza. It is pertinent to mention here that the federal government has removed Khalid Mirza from the Chairmanship of SECP policy Board in August 2019 but Mirza secured a stay order from Islamabad High Court against the decision of federal government. Mirza later resigned from the chairmanship in May 2020.

The section 172(m) that related to disqualification of a person to hold the office of a director of a company is restored in Companies Act. This section was deleted from the act through Companies Amendment Ordinance 2020. Section 172(m) was included in the Companies Act in 2017 to enable the Commission to pass disqualification order for maximum period of up to 5 years against the person from holding office of director in a company who has entered into plea bargain arrangement with NAB.

The Section 181 that related to protection to independent and non-executive directors was also restored through the Second amendment Ordinance. This Section was introduced in 2017 to protect independent and non-executive directors from acts, omissions and commission which occurred without their knowledge or consent. SECP had recommended to remove this section on the grounds that all the directors making decision should be treated equally.

The change in the Section 452, Companies' Global Register of Beneficial Ownership was also reverted back. The SECP through earlier amendment, had made the section 452 less stringent as the requirement for company's directors, shareholders, or officers to report their shareholdings or any other interest in a foreign company was reduced to only those who may have shareholding of 10% or more in a foreign company or body corporate. The amendment in Section 186 of the act had reduced the powers of the federal government to appoint first chief executive officer of a public sector company was also reverted back.

In the first amendment ordinance the SECP powers in sections 279 to 282 to approve compromises, reconstruction and amalgamation of companies has been given to court of law.

Now these powers given back to SECP. The SECP Board has recommended to give this powers to Court on the assumption that the Commission has no capacity to exercise said powers in view of complex valuations, legal entitlement of properties, equitable decision making keeping in view rights and obligations of multiple parties and requirements of other regulatory compliances in such cases

Prime minister has taken notice of the issue and asked his Advisor Dr Ishrat Hussain to look into the issue and present him a report. Dr Ishrat examined the whole process of introducing amendments and presented a report in meeting of federal cabinet. According to Dr Ishrat report, the SECP led the amendment's process with an objective to provide ease of doing business and meet World Bank's indicators for Doing Business Index. While appreciated a number of amendments, Dr Ishrat suggested government to withdraw above mentioned amendments. These three amendments were inserted in companies Ordinance on the recommendations of SEC Policy Board, which was then headed by Dr. Khalid Mirza.

According to sources, the prime minister has shown his displeasure that how these specious amendments escape the through security process legislation.