

SECP
Guide
Series

Investigation into the affairs of a Company



**SECURITIES AND EXCHANGE COMMISSION
OF PAKISTAN**

1. AIMS AND OBJECTIVES

1.1 This booklet is designed to explain the procedure of filing an application with the Securities and Exchange Commission of Pakistan (the "Commission") for appointment of an inspector to investigate into the affairs of a company under section 263 of the Companies Ordinance, 1984 (the "Ordinance"). The booklet will also narrate the relevant provisions of the Ordinance and the Companies (General Provisions and Forms) Rules, 1985 (the "Rules") relating to investigation, therefore, it must be read in conjunction with the relevant provisions of the Ordinance and the Rules.

1.2 It gives a summary of steps to be taken by the applicant and provides information and procedure for the aforesaid investigation. In case of any conflict between the guide and its contents with the provisions of the law, the latter would prevail. However, it is advisable for the applicant to seek advice from a competent professional before proceeding further.

1.3 The application for investigation into the affairs of a company should be made under section 263 of the Ordinance read with Rules 18, 28, 30, 32 and 34 of the Rules, and should be in compliance with the relevant provisions of the Ordinance.

2. WHO IS COMPETENT TO FILE AN APPLICATION?

2.1 The Commission may appoint one or more persons as inspectors to investigate into the affairs of a company and to report their findings thereon in a manner directed by the Commission:-

- (a) in the case of a company having a share capital, on the application of members holding not less than one-tenth of the total voting powers therein; and



- (b) in the case of a company not having a share capital, on the application of not less than one-tenth in number of the persons entered on the company's register of members.


3. PROCEDURE FOR FILING OF AN APPLICATION

3.1 Every application for investigation into the affairs of a company under clause (a) or clause (b) of section 263 of the Ordinance shall specify :-

- (a) the name, address and the registered office of the company whose affairs are sought to be investigated;
- (b) the names and addresses of the applicants, and, in case of a company having a share capital, also the total number of shares of the company held by each of them together with the amount paid up thereon;
- (c) if the company has a share capital, the issued and paid-up capital of the company and the nominal or face value of the shares or, if the company has no share capital, the total number of its members;
- (d) the precise and specific reasons for requesting the investigation with particulars of alleged irregularities; and
- (e) whether the applicants agree to give security for payment of the costs of investigation and the ceiling of the amount up to which they so agree.

3.2 Every such application shall be accompanied by such documentary evidence in support of the reasons for requesting the investigation and the alleged irregularities as is reasonably open to the applicant.

3.3 Every such application shall be signed by the applicants and



shall be verified by their affidavit stating, *inter-alia*, the paragraphs of the application containing statements true to the best of their knowledge, information and belief.

4. DOCUMENTS TO BE ANNEXED WITH THE APPLICATION

4.1 An application made by members of a company:-

- (a) must be supported with the documentary or other evidence;
- (b) must be supported with documentary evidence in proof of eligibility and status of the applicant;
- (c) must contain a good reason for requiring the investigation;
- (d) should contain the security for payment of investigation fee preferably bank challan/draft/pay order;
- (e) must contain the power of attorney or copy of Board of Directors' resolution for appearance;
- (f) must be in duplicate;
- (g) must contain the challan for application fee of Rs.500/- ; and
- (h) must be supported with an affidavit affirming the contents of application to be true.

4.2 The Commission may, before appointing an inspector, require the applicants to give such security for payment of the costs of investigation as the Commission may specify.

5. POWER OF THE COMMISSION TO APPOINT INSPECTORS

5.1 The Commission may, before passing any order on the application, require the applicants or any one or more of them to produce such further documentary or other evidence as the



Commission may consider necessary;

- (a) for the purpose of satisfying itself as to the veracity of the allegations made in the application; or
- (b) for ascertaining any information which, in the opinion of the Commission is necessary for enabling it to pass orders on the application; or
- (c) for ascertaining the eligibility of the applicants or any one or more of them to make the application.


5.2 The Commission has also the authority to appoint competent persons as inspectors to investigate into the affairs of a company without prejudice to its power under section 263 of the Ordinance;

- (a) if the company, by passing a resolution in its general meeting declares that the affairs of the company need to be investigated by an inspector to be appointed by the Commission; or
- (b) on the order of the Court.

6. CIRCUMSTANCES WHEREBY THE AFFAIRS OF THE COMPANY OUGHT TO BE INVESTIGATED BY INSPECTORS APPOINTED BY THE COMMISSION

6.1 **Fraudulent business:** Business of the company is being or has been conducted with the intent to defraud its creditors, members or any other person, or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose; or

6.2 **Breach of trust or unauthorized activities of sponsors/management:** Persons concerned in the formation of the company or management of its affairs have been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or any of its members, or have been carrying on an unauthorized business; or



6.3 **Depriving the members of reasonable return:** The affairs of the company have been conducted or managed in a manner as to deprive its members of a reasonable return; or

6.4 **Non-providing the information to members:** Member or members of the company have not been given all the information with respect to the company's affairs which they might reasonably expect; or

6.5 **Allotment of shares for inadequate consideration:** Shares of the company have been allotted for inadequate consideration; or

6.6 **Mis-management:** The company is not being managed in accordance with sound business principles or prudent commercial practices; or


6.7 **Danger of insolvency:** The financial position of the company is such as to endanger its solvency.

7. POWERS OF INSPECTOR

7.1 An inspector appointed for investigation has the same powers as vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters;

- (a) enforcing the attendance of persons and examining them on oath or affirmation;
- (b) compelling the discovery and production of books and papers, or any material objects; and
- (c) issuing commissions for the examination of witnesses.





7.2 Every proceeding before the appointed inspector will be deemed to be “judicial proceeding” within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

7.3 An inspector has also the power to investigate the affairs of:-

- (a) company’s associated companies;
- (b) subsidiary or holding company or subsidiary of holding or holding of its subsidiary.
- (c) a body corporate managed by present or past chief executive of the company; and
- (D) other body corporate of the chief executive or the or the managing agent or an associate of the chief executive or managing agent.

7.4 **Approval of Commission:** The inspector has to obtain prior approval of the Commission, in case if he intends to investigate any associated company or other body corporate as mentioned above at para 7.3.

PUBLIC CONSULTATION

If you have any suggestions for the development in the legal framework or otherwise, please let us know about your opinion/comments on the following address:

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Telephone No: 9206306.

Comments can also be sent via electronic mail at the following address:

headquarters@secp.gov.pk

DISCLAIMER

The booklet has been published with the intention to create an awareness of the concept of the relevant matters. However, the booklet does not tell everything and the opinions or legal interpretations, contained in the booklet are circumstantial and may vary under different situations. If the reader is in doubt while dealing with any specific condition, it is recommended to refer to the Companies Ordinance, 1984 and allied laws and consult an adviser for seeking professional advice.



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