

A
BILL

*to make provision for the
establishment and operation of book-entry systems for
the transfer of securities by central depository companies ;*

WHEREAS it is expedient to make provision for the establishment and operation of book-entry systems for the transfer of securities by central depository companies ;

It is hereby enacted as follows : -

1. Short title, extent and commencement.- (1) This Act may be called the Central Depositories Act, 1997.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(1) "access", in relation to the central depository system maintained by a central depository, means the placing of information on that system or the retrieval of information therefrom ;

(2) "account" means an account maintained by a central depository in the name of an account holder so as to record the title of the account holder to any book-entry securities entered in such account ;

(3) "account-holder" means a person who opens and maintains an account with a central depository and operates such account ;

(4) "Authority" means the Corporate Law Authority constituted under section 11 of the Companies Ordinance, 1984 (XLVII of 1984) ;

(5) "book-entry security", in relation to a central depository, means a security which is transferable by book-entry in the central depository register pursuant to a declaration made by the central depository under sub-section (6) of section 4 and which is -

- (a) in the case of a security transferable by registration, registered in the name of the central depository or issued to the central depository pursuant to section 14 ; or
 - (b) in the case of a security transferable by delivery or endorsement, deposited with or transferred by endorsement to the central depository ;
- (6) "central depository" means a central depository as defined in clause (cc) of section 2 of the Securities and Exchange Ordinance, 1969 (XVII of 1969), and registered with the Authority under section 32A of that Ordinance ;
- (7) "central depository register" means a computerised electronic register maintained by a central depository in respect of book-entry securities ;
- (8) "central depository system" means central depository system established under section 4 ;
- (9) "debenture" means a debenture as defined in clause (12) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984), and includes a debenture issued by an issuer other than a company ;
- (10) "document evidencing title" includes, -
 - (a) in the case of any security which is not a Government security, the share certificate, debenture certificate, modaraba certificate or any other certificate representing the security ; and
 - (b) in the case of any security which is a Government security, such document or other evidence of title thereto as a central depository may require ;
- (11) "eligible pledgee" means any person who, in accordance with the regulations, is recognised by a central depository as eligible for the purpose of receiving any pledge of book-entry securities ;
- (12) "handling", with its grammatical variations and cognate expressions, in relation to a book-entry security, means the transfer of a book-entry security by electronic or similar means, the pledging of a book-entry security in accordance with section 12 or the withdrawal from the central depository system of the security represented by the book-entry security ;

- (13) "information" includes data recorded in a form which can be processed by equipment operating automatically in response to instructions given for a particular purpose ;
- (14) "issuer" means any person, the Federal Government or a Provincial Government who or which has issued or proposes to issue any security ;
- (15) "jumbo certificates" mean one or more consolidated certificates of the securities of one kind or class
issued by an issuer which are registered in the name of a central depository ;
- (16) "member" means a member as defined in clause (21) of sub-section (1) of section 2 of the Companies Ordinance, 1984(XLVII of 1984), and includes the registered owner of any equity security of an issuer which is established under any other law ;
- (17) "participant" means -
- (a) an account-holder who is a member of a stock exchange ; and
 - (b) any other account-holder who meets the qualifications of a participant prescribed in the regulations :
- Provided that such account holders -
- (i) perform services for sub-account holders in accordance with the terms of an agreement entered into between the central depository and each of the participants ;
 - (ii) transfer any securities to the central depository to the credit of any sub-accounts under their respective accounts ; and
 - (iii) handle, on behalf of sub-account holders, the book-entry securities in the sub-accounts under their respective accounts ;
- (18) "prescribed" means prescribed by regulations made under this Act;
- (19) "record" includes, in addition to a record in writing,-
- (a) any photograph ;
 - (b) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other instrument or machine) of being reproduced therefrom in

audible or readable form ; and

- (c) any film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom in visual form ;
and

- (d) any reference to a copy of a record includes –
 - (i) in the case of a record falling within paragraph (b) but not paragraph (c) of this clause, a transcript of the sounds or other data embodied therein ;
 - (ii) in the case of a record falling within paragraph (c) but not paragraph (b) of this clause, a still reproduction of the images embodied therein, whether enlarged or not ; and
 - (iii) in the case of a record falling within both paragraph (b) and paragraph (c) of this clause, the transcript of the sounds or other data embodied therein together with the still reproduction of the images embodied therein ;
- (20) "register of members" means the register of members referred to in section 147 of the Companies Ordinance, 1984 (XLVII of 1984), and includes the register of owners of any equity securities of an issuer established under any other law ;
- (21) "register of debenture-holders" means the register of debenture holders referred to in section 149 of the Companies Ordinance, 1984 (XLVII of 1984), and includes the register of holders of any non-equity securities of an issuer other than a company ;
- (22) "Registrar" means the Registrar as defined in clause (31) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984) ;
- (23) "regulations" means the regulations made pursuant to section 35 ;
- (24) "security" means –
 - (a) a security as defined in sub-clause (i) of clause (1) of section 2 of the Securities and Exchange Ordinance, 1969 (XVII of 1969) ;
 - (b) any Government security ;
 - (c) any derivative relating to a security or a Government security ; or
 - (d) any other instrument specified by the Federal Government, by a notification in the official gazette, to be a security for the purposes of this Act ;
- (25) "State Bank" means the State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 (XXXIII of 1956) ;

- (26) "stock exchange" means a stock exchange registered under the Securities and Exchange Ordinance, 1969 (XVII of 1969) ;
- (27) "sub-account" means a sub-account maintained, as part of the account of a participant, in accordance with the regulations by a central depository in the name of a sub-account holder so as to record the title of the sub-account holder to any book-entry securities entered in such sub-account ; and
- (28) "sub-account holder" means a person in whose name a sub-account is opened and maintained by a participant with a central depository and is operated by that participant.

3.Overriding effect.— The provisions of this Act shall have effect notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), or in any other law or in any charter, statute or memorandum or articles of association or in any applicable document or resolution.

4.Central depository system.— (1) A central depository shall establish a central depository system whereby, in accordance with the regulations,—

- (a) (i) accounts may be opened and maintained with the central depository by the account-holders so as to record the title of the account-holders to book-entry securities entered in such accounts ; or
- (ii) where the account holders are participants, sub-accounts may be opened and maintained, as part of the accounts of the participants, with the central depository by the participants on behalf of the sub-account holders so as to record the title of the sub-account holders to book-entry securities entered in such sub-accounts ;
- (b) transfers of such book-entry securities shall be effected electronically or by any similar means ; and
- (c) pledging of such book-entry securities may be effected in accordance with section 12.

(2) Where any securities are issued to or registered in the name of a central depository or transferred by endorsement to or deposited with a central depository, such securities shall, in accordance with the regulations, be entered in the relevant accounts or sub-accounts, as the case may be, as book-entry securities.

(3) Notwithstanding anything contained in sub-section (1), a participant may, with the written authorisation of

his clients, enter book-entry securities beneficially owned by the clients in his own account without establishing sub-accounts in the names of such clients in the central depository system :

Provided that the central depository may at its discretion, enquire whether such authorisation has been obtained by the participant.

(4) Subject to the provisions of this Act, a central depository system shall be operated by a central depository for holding book-entry securities as a nominee for account holders and for facilitating the transfer of such book-entry securities.

Provided that nothing contained herein shall be construed as preventing a central depository from holding book-entry securities, as a beneficial owner of such securities, in its own account opened and maintained on its own central depository system.

(5) The title to any book-entry securities entered in an account shall vest in the account holder and the title to any book-entry securities entered in a sub-account shall vest in the sub-account holder.

(6) The central depository system of a central depository shall handle such securities as book-entry securities as are declared as such by the central depository.

(7) Different types of accounts and sub-accounts for different classes of persons may be opened with a central depository in accordance with the regulations.

5. Central depository not to be a member of an issuer etc.- (1) Where a central depository is named in the register of members of an issuer,-

- (a) the central depository shall be deemed not to be a member of the issuer ; and
- (b) the persons named as the account-holders or, as the case may be, the sub-account holders shall, for such period as the book-entry securities representing securities carrying voting rights in the issuer are entered against their names in the central depository register, be deemed to be members of the issuer in respect of such securities and shall, except as is otherwise provided in this Act, be entitled to all the rights, powers and privileges and be subject to all the liabilities, duties and obligations of a member as are or may be conferred by the Companies Ordinance, 1984 (XLVII of 1984), or by any other law for the time being in force or by the charter,

statute or memorandum or the articles of association of the issuer.

(2) Where a central depository is a debenture-holder of an issuer or is the owner of securities of an issuer (whether equity securities or debt securities) which do not carry voting rights in the issuer,—

(a) the central depository shall be deemed not to be the owner of such securities ; and

(b) the persons named as the account holders or, as the case may be, the sub-account holders shall, for such period as the book-entry securities representing such securities are entered against their names in the central depository register, be deemed to be the owners of such securities and shall, except as is otherwise provided in this Act, be entitled to all the rights, powers and privileges and be subject to all the liabilities, duties and obligations of the owners of such securities as are or may be conferred by the Companies Ordinance, 1984 (XLVII of 1984), or by any other law for the time being in force or in terms of any documents creating such securities.

(3) Nothing in this Act shall be construed as affecting,-

(a) the obligation of an issuer to keep a register of its members or debenture holders or allow inspections of such register under the provisions of the Companies Ordinance, 1984 (XLVII of 1984), or under any other law for the time being in force :

Provided that the issuer shall not be obliged to enter in any registers maintained by it the names and particulars of persons who are members of the issuer under clause (b) of sub-section (1) or owners of the securities of the issuer under clause (b) of sub-section (2) ;

(b) (i) the right of an account holder to request withdrawal of his securities from the central depository system at any time and, where applicable, to have them registered in his name, or where the account-holder is a participant, in any other name ; or

(ii) the right of a participant to request a withdrawal of his sub-account holders' securities from the central depository system at any time and, where applicable, to have them registered in the name of his sub-account holder ; or

(c) the right of a central depository to hold book-entry securities beneficially in its own behalf.

(4) Notwithstanding any-thing contained in this Act, an account-holder or a sub-account holder, who is named in the central depository register, at the close of business hours of the central depository on the day before the first day of the period of closure of register of members of an issuer, as the holder of book-entry securities representing securities carrying voting rights in the issuer, shall be

regarded as a member of the issuer for the purpose of attending and exercising all rights at a general meeting of the members of the issuer in respect of which the register of members has been closed.

(5) Notwithstanding any-thing contained in this Act, an account-holder or a sub-account holder, who is named in the central depository register, as at the close of business hours of the central depository on the day before the first day of the period of closure of register of non-equity securities of an issuer, as the owner of book-entry securities representing such securities of the issuer, shall be regarded as an owner of such securities for the purpose of attending and exercising all rights at a general meeting of the owners of such securities of the issuer in respect of which the register of such securities has been closed.

6. Transfers under book-entry system.— (1) Subject to the provisions of this Act, a transfer of book-entry securities from accounts or sub-accounts to other accounts or sub-accounts shall be made in such manner as may be prescribed and shall be effected by making of an appropriate entry in the central depository register in accordance with such regulations.

(2) A transfer of book-entry securities in the manner set out in sub-section (1) shall be a valid and effective transfer of title to the securities represented by the book-entry securities.

7. Effect of book-entry transfer on transferee.— If a transfer of book-entry securities takes place at a particular time in accordance with the provisions of section 6 —

- (a) the transferee shall be deemed to have agreed to have accepted the transfer of such book-entry securities subject to the terms and conditions on which the transferor held them immediately before the time of such transfer, and
- (b) the transferee shall be deemed to have, where applicable, agreed to become a member of the issuer and to be bound by the issuer's charter, statute or memorandum and articles of association, as the case may be.

8. Central depository discharged from liability if acting on instructions.— (1) A central depository, if acting in good faith and without negligence, shall not be liable to for any loss, damages, compensation, costs and expenses in tort or under any law or contract for any breach of trust or duty where the central depository has, in the accounts or

sub-accounts maintained by it, made or allowed to be made entries or handled or allowed handling of any book-entry securities, according to the instructions of an account-holder or a participant, notwithstanding that the account holder or the participant, as the case may be, had no right to dispose of or take any other action in respect of such book-entry securities.

(2) A central depository, if acting in good faith and without negligence, shall be fully discharged of its obligations to an account-holder and participant, upon the transfer or delivery of book-entry securities under the instructions of the account holder or participant, as the case may be.

(3) A central depository shall not be required to enquire whether or not -

- (a) an account-holder or a participant, has a right to handle any book-entry securities entered in his account or in any sub-account under his account, as the case may be, or to take any action in that regard ; or
- (b) the document evidencing title in respect of a security deposited with an issuer for the purpose of registration of the transfer of the security in the name of the central depository is genuine.

(4) Except as provided in this Act, a central depository shall not owe any fiduciary or any other obligations whatsoever, including, without limitation to the generality of the foregoing, any obligations in law, contract, tort, warranty or strict liability, to the sub-account holders in whose names sub-accounts are maintained in the central depository system.

(5) Without prejudice to the provisions of any other law for the time being in force, if any loss is caused to an account holder or a sub-account holder due to any negligent or wrongful act or

omission of a central depository or any of its employees, the central depository shall compensate such account holder or sub-account holder for such loss.

9. Central depository to supply information.- (1) Every issuer which is a company or other body corporate and whose securities are entered in the central depository system of a central depository shall request the central depository, at such times as may be prescribed in the regulations, for a list of the names and other relevant details of the account-holders and sub-account holders, holding the book-entry securities of such issuer together with details of the book-entry securities of such issuer entered in the accounts of such account holders or sub-account holders, as the case may be -

- (a) for sending notices to any account-holders and sub-account holders of general meetings of the holders of any securities of the issuer ;

- (b) for sending any other notices or documents to any account holders and sub-account holders which are required to be sent by the issuer to holders of any securities of the issuer ;
- (c) for the purpose of allowing any account-holders and sub-account holders to attend general meetings of any holders of securities of the issuer or to appoint proxies for this purpose ;
- (d) for despatching dividend or other warrants to any account-holders and sub-account holders ;
- (e) for despatching to any account-holders and sub-account holders any other payments or benefits paid by the issuer ; or
- (f) for despatching to any account holders and sub-account holders formal offers for subscription of securities of the issuer.

(2) A participant may, in respect of such book-entry securities as are beneficially owned by his clients and entered in his account, supply to the central depository the names and other details of such clients together with instructions that such names and other details be forwarded to the issuer upon a request for information made by the issuer under sub-section (1) :

Provided that the persons whose names are supplied by a participant under this sub-section shall be deemed to be sub-account holders holding the book-entry securities to which they are stated by the participant to be entitled and shall be entitled to the rights of sub-account holders set out in section 5.

(3) Subject to sub-section (2), the central depository shall supply to an issuer the information requested by the issuer under sub-section (1) in such manner and within such time as may be prescribed in the regulations :

Provided that in cases where the information requested by the issuer under sub-section (1) is for the determination of entitlement of any account-holders and sub-account-holders, in relation to the book-entry securities of the issuer held by them, to attend any meetings of the issuer or to receive payments of any dividends or other amounts payable by the issuer or to receive any offers for subscription of any shares in the issuer or for any other purpose as required by any law or the issuer's charter, statute or memorandum or articles of association, the central depository shall supply such information to the issuer as is correct as at the close of business hours of the central depository on the day before the first day of the period of closure of register of members, debenture holders or any other securities of the issuer.

(4) Subject to sub-sections (5) and (6), an issuer to whom sub-section (1) applies shall rely upon the information supplied by the central depository under sub-section (3).

(5) An issuer who is liable to pay any dividend or other amount or issue any offer for subscription of any securities to any account-holders or sub-account holders shall pay such dividend or other amount or issue such offer for subscription of securities in accordance with such information as a central depository may give in accordance with the regulations and such payment or issue shall discharge the issuer from any liability in respect of that payment or issue to the relevant account holders or sub-account holders.

(6) All notices and other documents which an issuer is obliged or required to send to its members or holders of any of its securities, shall in cases where an account-holder or a sub-account holder is deemed to be a member or holder of any securities of the issuer, be sent directly to the account-holder or the sub-account holder, as the case may be, on the basis of information provided by the central depository under sub-section (3) and in such manner as notices and documents are required to be sent by the Companies Ordinance, 1984 (XLVII of 1984), or any other applicable law or articles of association.

10. Bonus issue by an issuer.— (1) Where an issuer whose securities are entered in the central depository system makes a bonus issue, the securities to be issued on the number of securities of that issuer registered in the name of the central depository shall be allotted to the central depository.

(2) The central depository shall, upon allotment of securities under sub-section (1), determine the entitlements of the relevant account-holders and sub-account holders to such securities in proportion to the other securities of the same issuer standing in their accounts and sub-accounts, as of the close of business hours of the central depository on the day before the first day of the period of closure of register of members, debenture holders or any other securities of the said issuer and enter the book-entry securities in the relevant accounts and sub-accounts in accordance with the determined entitlements :

Provided that fractional entitlements to book-entry securities relating to the bonus securities shall not be credited by the central depository to the relevant accounts and sub-accounts but the book-entry securities representing such fractional entitlements shall be consolidated and dealt with in accordance with the regulations.

11. Bar on rectification of central depository register.— Notwithstanding anything contained in section 152 of the Companies Ordinance, 1984 (XLVII of 1984), if —

- (a) an account-holder or a sub-account holder did not consent to a transfer of any book-entry securities from, or to, his account or sub-account, as the case may be, or
- (b) the name of any account-holder or sub-account holder is fraudulently or without sufficient cause entered in, or omitted from, the central depository register,

the aggrieved party may apply to the court for relief and the court may award damages to the aggrieved party but shall not order rectification of the central depository register.

EXPLANATION : The expression "court" for the purposes of this section shall mean the High Court having jurisdiction over the defendant.

12. Pledge of book-entry securities.— (1) Book-entry securities shall be pledged only in favour of an eligible pledgee to secure the payment of a debt or liability or performance of any obligation by any account holder directly or by any sub-account holder through instructions given to a participant when the book-entry securities are blocked in the manner set out in sub-section (2).

(2) The book-entry securities to be pledged shall be blocked when an account holder or a participant gives instructions to the central depository system in a manner that the pledgor or the relevant participant when the pledgor is a sub-account holder ceases to handle the pledged book-entry securities and notice of the blocking is available through the central depository system to the eligible pledgee.

(3) A pledgee of the pledged book-entry securities shall, in addition to the powers available to him under the Contract Act, 1872 (Act IX of 1872), have the following powers : —

- (a) a power, upon the default of the pledgor, to transfer the pledged book-entry securities or any part thereof ; and
- (b) any other power which may be granted to him in writing by the pledgor in relation to the pledged book-entry securities provided that the central depository shall not be concerned with or affected by the exercise of any such power.

(4) The central depository system shall only allow the pledgee to remove the block from the pledged book-entry securities in such manner that they are available to the pledgor for the purpose of handling them.

(5) The central depository system shall not allow the pledgor to handle the pledged book-entry securities save upon the removal by the pledgee of the block from such pledged book-entry securities.

(6) A participant shall not create a pledge over any book-entry securities entered in any sub-accounts maintained under his account with the central depository without the authorisation of the sub-account holder concerned.

(7) No pledge of any book-entry securities may be made except as provided in this section.

(8) Except as otherwise provided in this section, the provisions of the Contract Act, 1872 (Act IX of 1872) , shall be applicable to pledging of book-entry securities.

EXPLANATION : For the purpose this section, the account-holder or sub-account holder, as the case may be, pledging any book-entry securities shall be called the "pledgor", the eligible pledgee in whose favour a pledge of book-entry securities is made be called the "pledgee" and the book-entry securities when blocked are be called the "pledged book-entry securities".

13. Consolidation or sub-division of securities by an issuer.— When an issuer announces a consolidation or sub-division of his securities, the book-entry securities of such issuer as are entered in the accounts and sub-accounts maintained in the central depository register shall in like manner and in accordance with the regulations shall be consolidated or sub-divided, as the case may be, in the central depository register.

14. Regulations for issue or offer for sale of securities.— (1) A central depository may make regulations which permit any issuer to enter into an arrangement with the central depository whereunder the issuer may register in the name of the central depository all the securities of one class after making allocation of such securities to the subscribers of the securities.

(2) Where any issuer enters into an arrangement referred to in sub-section (1) with a central depository and registers the securities in the name of the central depository, the central depository shall ensure that every subscriber of the securities or any account holder designated by such subscriber is credited with book-entry securities representing his entitlement to such securities.

(3) A central depository may make regulations which permit any person intending to make an offer for sale of securities to the public to enter into an

arrangement with the central depository whereunder the securities which are to be offered for sale by that person may be transferred in the name of the central depository after the acceptance of offer from persons who apply to purchase such securities.

(4) Where any person intending to make an offer for sale of securities to the public enters into any arrangement referred to in sub-section (3) with a central depository and transfers the securities in its name, the central depository shall ensure that every purchaser of the securities or any account holder designated by such purchaser is credited with book-entry securities representing his entitlement to such securities.

15. Conversion of non-equity securities into equity securities.— Where any debentures, bonds or any other non-equity securities, whether partly or wholly convertible into equity securities or with warrants to subscribe to equity securities of an issuer, are converted into equity securities, a central depository shall take appropriate action, in accordance with the regulations, in respect of the book-entry securities representing such debentures, bonds or other non-equity securities to give effect to such conversion.

16. Issuance of Jumbo Certificates.— Every issuer of the securities registered in the name of a central depository shall, if so requested by the central depository in writing, issue to it jumbo certificates, of such denominations as may be requested by the central depository, upon the occurrence of any increase or decrease in the number of the securities of such issuer held by the central depository.

17. Inspection of the central depository register.— (1) The central depository register shall, to the extent that it records the holdings of book-entry securities representing securities of an issuer, be open to inspection at the registered or head office of the issuer in the same manner and to the extent provided in any law for the time being in force pursuant to or by which such issuer was established or is governed.

EXPLANATION : For the purposes of this sub-section, the expression "law" shall include any rules or regulations governing such issuer.

(2) The information made available upon any request for inspection under sub-section (1) shall be correct as of the close of business hours of the central depository on its first working day in the month preceding the month in which

the request for inspection is made :

Provided that where any closure of the register of members or debenture holders or of the holders of any other equity or non-equity securities, of the issuer has occurred subsequent to the first working day of the central depository in the month preceding the month in which the request for inspection is made, the information made available upon any request for inspection shall be correct as of the close of business hours of the central depository on the day before the first day of the latest period of closure of register of members or debenture holders or of the holders of any other equity or non-equity securities, as the case may be, of the issuer :

Provided further that where notice of a general meeting of the members or debenture holders or of the holders of any other equity or non-equity securities of the issuer has been issued, the information made available upon any request for inspection under sub-section (1) shall be correct as of the close of business hours of the central depository on the third day before the date of receiving the request for inspection.

18. Record of an entry prima facie evidence.— A record of an entry in an account or a sub-account shall be prima facie evidence of the truth of the matters so recorded.

19. Borrowing or lending of securities.— Book-entry securities may, in accordance with the regulations, be borrowed or lent in the interest of the smooth and orderly functioning of stock exchanges.

20. Duty to maintain secrecy.— (1) Except as provided in this Act or in any other law for the time being in force, no director or officer of a central depository or a participant, whether during his tenure of office or during his employment or thereafter, and no other person who has by any means knowledge of any information or document whatsoever relating to the affairs of any of the account holders, and in particular, relating to their accounts or sub-accounts, shall give, divulge, reveal or otherwise disclose such information or document to any other person.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of sub-section (1) shall not in any manner howsoever disclose it to any other person.

21. Permitted disclosures.— Subject to the provisions

of this Act, the provisions of section 20 shall not entitle any person to refuse to disclose any information or documents—

- (a) which an account-holder or a sub-account holder has authorised in writing to disclose ;
- (b) in a case where an account-holder or a sub-account holder is declared a bankrupt, or, if the account-holder or sub-account holder, as the case may be, is a company or body corporate and is being or, has been, wound up within or outside Pakistan ;
- (c) in the case of any litigation or other legal proceedings ;
- (d) to any person duly authorised by a competent court, the Authority or the State Bank of Pakistan to investigate into any offence under any law for the time being in force ;
- (e) for the purpose of enabling or assisting the Authority to exercise any power conferred on it by this Act or by any other law for the time being in force ;
- (f) for the purpose of enabling or assisting the State Bank of Pakistan to exercise any power conferred on it by any other law for the time being in force ;
- (g) for the purpose of enabling or assisting a stock exchange or clearing house of a stock exchange to discharge its functions;
- (h) for the purpose of enabling or assisting auditors of a central depository or participant to discharge their functions ; or
- (i) to the Authority if the disclosure is required in the interest of investors or in the public interest.

22. Regulation of access to the computer system.— (1) A central depository may, in accordance with the regulations, authorise any account holders, the stock exchanges on which the securities in relation to book-entry securities entered in the central depository register of the central depository are listed, clearing houses of such stock exchanges or issuers to have access to its computer system within such limits and for such purposes as may be specified in such regulations.

(2) No person —

- (a) who, being a person authorised to have access

under sub-section (1), shall gain access, or attempt to gain access, to a computer system of a central depository, whether by means of any device or apparatus forming part of the computer system or by any other means, beyond the limits or for purposes other than for which he is authorised thereunder ;

- (b) who, not being a person authorised to have access under sub-section (1), shall gain access, or attempt to gain access, to a computer system of a central depository, whether by means of any device or apparatus forming part of the computer system or by any other means; or
- (c) shall unlawfully interfere with, or impede, or attempt to interfere with or impede, the operation of a computer system of a central depository.

23. Central depository to provide assistance to the Registrar, the Authority, the State Bank of Pakistan and the stock exchanges.— A central depository shall provide such assistance to the Authority, the State Bank of Pakistan, the Registrar, stock exchanges and to any person acting on their behalf, as they reasonably require for the performance of their functions and duties under this Act or under any other law for the time being in force.

24. Handling book-entry securities without authority.—
(1) A participant shall not handle or authorise or permit any handling of book-entry securities entered in the sub-accounts maintained under his account without authority of the sub-account holder.

2) A participant shall not, except with the authority of his clients, handle or authorise or permit any handling of book-entry securities beneficially owned by such clients and entered in his account.

25. Nomination and transmission.— The provisions of sections 79, 80 and 81 of the Companies Ordinance, 1984 (XLVII of 1984), shall, *mutatis mutandis*, apply to book-entry securities and all references to member or holder of debentures in those sections shall be construed as references to account-holders or sub-account holders, and all references to a company shall be construed as references to a central depository in case the book-entry securities belong to an account-holder and to a participant in case the book-entry securities belong to a sub-account holder.

26. Settlement of securities transactions using the central depository system.— (1) Subject to the provisions of this Act, no transfer of book-entry securities shall be effected on the central depository system unless at least one party to the transaction in respect of which the transfer of book-entry securities is sought to be effected is a member of a stock exchange.

(2) Notwithstanding the provisions of sub-section (1), a central depository shall make regulations prescribing transactions, other than the transactions referred to in that sub-section, in respect of which transfers of book-entry securities may be effected on the central depository system :

Provided that a central depository may, before making or allowing the entry to be made, require the production of such documentary evidence as may be prescribed in the regulations.

27. Power of Registrar and Authority to call for information or appoint inspectors.— (1) Nothing contained in this Act shall be construed to impose any limits on the powers of the Registrar or the Authority under the Companies Ordinance, 1984 (XLVII of 1984), as regards calling for any information from and appointing any persons as inspectors to investigate the affairs of a central depository or of any participant which is a company or is a corporation to which the provisions of the Companies Ordinance, 1984 (XLVII of 1984), apply.

(2) Nothing contained in this Act shall be construed to impose any limits on the powers of any competent authority under any other law for the time being in force as regards calling for any information from or carrying out any investigation into the affairs of a participant which is established under or is otherwise governed by such law.

(3) The Authority, on being satisfied that the affairs of a participant, not being a participant referred to in sub-sections (1) or (2), in relation to his account on a central depository system are being or have been conducted with intent to defraud his creditors or any other persons or for a fraudulent or unlawful purpose, may by order in writing,—

- (a) call upon such participant to furnish in writing such information relating to book-entry securities held by him on the central depository register, whether on his own behalf or on behalf of a client ; or
- (b) authorise any one or more competent persons as inspectors to investigate the affairs of such participant :

Provided that before making an order for enquiry or inspection, the Authority shall give the participant an opportunity to show cause against the action proposed to be taken.

(4) A person appointed as inspector under sub-section (3) shall, for the purposes of his investigation, have the same powers as are 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, namely:—

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

and every proceeding before such person shall be deemed to be "judicial proceeding" within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(5) Any contravention of or non-compliance with any orders, directions or requirement of the inspector exercising powers of a court under sub-section (4) shall, in all respects, entail the same liabilities, consequences and penalties as are provided for such contravention, non-compliance or default under the Code of Civil Procedure, 1908 (Act V of 1908), and the Pakistan Penal Code 1860 (Act XLV of 1860).

(6) Every past and present partner, proprietor or employee of a participant shall on demand produce before inspector all information or such records and other documents in his custody having a bearing on the subject-matter of the investigation.

(7) The inspector may, and if so directed by the Authority shall, make interim reports to the Authority, and on the conclusion of the investigation, shall make a final report to the Authority on the basis of which it may take such action as it deems expedient.

8) If, from any report made under sub-section (7), it appears to the Authority that any participant or any other person has been guilty of any offence for which he is criminally liable, the Authority may prosecute such participant or other person for the offence.

(9) When an investigation is ordered to be made under this section, the expenses of the investigation shall, in the first instance be defrayed by the Authority ; but any person who is convicted on a prosecution instituted in pursuance of sub-section (8) may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified by the Authority or as the court may so direct.

(10) The amount of expenses which any person is liable under this section to reimburse to the Authority shall be recoverable from that person as arrear of land revenue.

(11) In so far as the expenses to be defrayed by the Authority under this section are not recovered thereunder, those shall be borne by the Federal Government.

(12) A copy of any report of any inspector or inspectors appointed under this section authenticated in such manner as may be prescribed, shall be admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

28. Offences.— (1) Whoever knowingly and willfully contravenes or attempts to contravene or abets the contravention of any of the provisions of this Act or the regulations made thereunder shall be punishable with a fine which may extend to five hundred thousand rupees and to a further fine not exceeding ten thousand rupees for every day if such contravention continues after the imposition of the fine.

(2) Notwithstanding anything contained in sub-section (1), whoever knowingly and willfully contravenes or attempts

to contravene or abets the contravention of the provisions of section 24 shall be punishable with a fine which may extend to one million rupees and to a further fine not exceeding twenty thousand rupees for every day after the first contravention during which the contravention continues or with imprisonment for a term which may extend to five years, or with both.

(3) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Notwithstanding anything contained in sub-section (3), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other employee of the company, such director, manager, secretary or other employee shall also be deemed to be guilty of the offence.

EXPLANATION : For the purposes of this section,—

- (a) "company" means any body corporate and includes a partnership firm or other association of individuals ; and
- (b) "director", in relation to a firm, means a partner in the firm.

29. Cognizance of offences by courts.— No court or authority or officer shall take cognizance of any offence punishable under this Act or any regulations or under any bye-laws made thereunder, save on a complaint made in writing by the Authority.

30. Offences to be non-cognizable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), every offence under this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

31. Punishment and adjudication of fine or penalty.—
(1) A fine for any offence under or contravention of any provisions of this Act may be adjudged and imposed by any

Member of the Authority.

(2) The fine as aforesaid shall be imposed after giving the person concerned an opportunity to show cause why he should not be punished for the alleged offence or contravention and, if he so requests, after giving him a reasonable opportunity of being heard personally or through such person as may be prescribed in this behalf.

(3) Where imprisonment is provided for any offence under or contravention of any provisions of this Act, it shall be adjudged by a court not inferior to that of a court of session.

32. Review and appeal.— Any person —

(a) aggrieved by any order or sentence passed under sub-section (1) of section 31 may, within thirty days of such order or sentence, apply to the Member of the Authority passing the order or sentence for a review of such order or sentence ;

or

(b) aggrieved by any order or sentence passed under sub-section (1) of section 31, may within sixty days of such order or sentence, prefer an appeal to the Authority and the Authority may pass such order in relation to the appeal as it thinks fit
:

Provided that no order enhancing the fine shall be passed unless the applicant has been given an opportunity of showing cause against it and, if he so requests, of being heard personally or through such person as may be prescribed in this behalf.

33. Powers of the Authority in relation to proceedings.— (1) The Authority shall, for the purposes of a proceeding in exercise of its powers and discharge of functions under this Act, have the same powers as are 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, namely :—

(a) summoning and enforcing the attendance of any witnesses and examining him on oath or affirmation ;

- (b) compelling the discovery or production of any document or other material object ;
- (c) receiving evidence on affidavit ; and
- (d) issuing commissions for the examination of witnesses and documents.

(2) Any proceeding before the Federal Government or the Authority or a member of the Authority under this Act shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and such Government or Authority or a member of the Authority shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 Act V of 1898).

34. Amendment of Ordinance XLVII of 1984.— As from the date of commencement of this Act, sections 2, 3, 74, 77 and 209 of the Companies Ordinance, 1984 (XLVII of 1984), shall have effect subject to the amendments specified in the Schedule to this Act.

35. Central depository to have power to make own regulations.— (1) Subject to prior approval of the regulations by the Authority, a central depository shall have the power to make regulations from time to time to carry out its functions in accordance with the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :—

- (a) manner of opening and maintaining accounts and sub-accounts with the central depository ;
- (b) criteria for recognition of persons as eligible pledgees ;
- (c) qualifications of account holders for the purposes of becoming participants ;
- (d) manner and procedure of effecting transfers of book-entry securities ;
- (e) manner and timing of entering book-entry

- securities in accounts and sub-accounts ;
- (f) types of accounts and sub-accounts which may be established with the central depository for different classes of persons ;
 - (g) manner of withdrawing securities from the central depository system of the central depository ;
 - (h) criteria for determining close of business hours of the central depository on each day ;
 - (i) manner of making entries in accounts and sub-accounts maintained with the central depository ;
 - (j) manner of provision of information to a central depository by a participant under sub-section (2) of section 9 ;
 - (k) manner and timing of provision of information by the central depository to issuers under sub-section (3) of section 9 ;
 - (l) details of information to be given by the central depository to issuers under sub-section (5) of section 9 ;
 - (m) procedure for consolidation and sub-division of book-entry securities representing securities which have been consolidated or sub-divided by an issuer ;
 - (n) new issues or offer for sale of securities ;
 - (o) manner of conversion of debt-based book-entry securities into equity-based book-entry securities ;
 - (p) borrowing and lending of book-entry securities ;
 - (q) regulating access to the computer system of the central depository and the limits of such access ;
 - (r) direct statements sent by a central depository to sub-account holders ;
 - (s) any other matter for which a regulation is required to be or may be made to carry out the purposes of this Act.

(3) All regulations made under this section shall be published in the official gazette and shall take effect upon such publication.

(4) Where the Authority considers it expedient so to do, it may, by order in writing, direct a central depository to make any regulation, or to amend or rescind any regulation already made, within such period as it may specify in this behalf.

(5) If a central depository fails or neglects to comply with any direction under sub-section (4) within the specified period, the Authority may make or amend, with or without modifications, or rescind, any regulation directed to be made, amended or rescinded, and a regulation so made, amended or rescinded by the Authority shall be deemed to have been made, amended or rescinded by the central depository in accordance with the provisions of this section and shall have effect accordingly.

36. Removal of difficulties.— If any difficulty arises in giving effect to any provisions of this Act, the Authority may, by notification in the official gazette, make such provisions as may appear to it to be necessary for the purpose of removing such difficulty.

SCHEDULE

(See section 34)

AMENDMENT OF ORDINANCE XLVII OF 1984

As from the commencement of this Act, the following amendments shall be made in the Companies Ordinance, 1984 (XLVII of 1984), namely :-

(a) in section 2, in sub-section (1).-

(i) in clause (2), in the second proviso, in item (ii), after the words "Provincial Government" occurring at the end, the words and comma "or shares registered in the name of a central depository" shall be inserted ; and

(ii) after clause (5), the following new clause shall be inserted namely :-

"(5A) 'central depository' means a central depository as defined in clause (cc) of section 2 of the Securities and Exchange Ordinance, 1969 (XVII of 1969), and registered with the Authority under section 32A of that Ordinance : " ;

(b) in section 3, in sub-section (1), in clause (b), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely :-

"Provided that, where a central depository holds more than fifty percent of the voting securities of a company, such company shall not be deemed to be a subsidiary of the central depository save where such voting securities are held beneficially by the central depository in its own behalf." ;

(c) in section 74, 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 company shall, within five days after an application is made for the registration of the transfer of any shares, debentures or debenture stock to a central

depository, register such transfer in the name of the central depository." ;

- (d) in section 77, in the first proviso, after the words "thirty days", the words and comma "or, where the transferee is a central depository, within five days" shall be inserted ; and
- (e) in section 209, in sub-section (5),-
 - (i) in clause (b), in the proviso, the word "or" occurring at the end shall be omitted ; and
 - (ii) in clause (c), for the full stop at the end the semi-colon and word" ; or" shall be substituted and thereafter the following new clause shall be added, namely :-
 - "(d) from depositing with, or transferring to, or holding, or registering in the name of a central depository any shares or securities."

Statement of Objects and Reasons

The purpose of this bill is to replace the present manual system of physical handling and settlement of shares and transform the securities industry in Pakistan from manual and laborious setup to a modern and efficient scripless computer-aided system.

(SARTAJ AZIZ)
Federal Minister for
Finance & Economic
Affairs