

ISLAMABAD: The Pakistan Business Council (PBC) has expressed serious concerns over restoration of section 452 of the Companies Act through the Companies (Second Amendment) Ordinance 2020, requiring declaration of all shareholdings of Pakistanis in foreign companies, which it asserts "is an intrusion into the privacy of the corporate sector, and a breach of confidentiality assured by the tax laws".

In this regard, the PBC has written a letter to Dr Hafeez Shaikh, Advisor to the Prime Minister on Finance, on the changes made in companies law.

The PBC is surprised at the rapid frequency of, and the knee-jerk and piecemeal manner in which the companies law is being changed.

When contacted, an expert on companies law stated that the disclosure requirements under Section 452 of the Companies Act should have been enacted through the income tax law.

From the corporate point of view, there is no need for requirement of the Section 452 in the Companies Act 2017. Moreover, there is no relevance of this section in the companies law.

"For instance, the requirement of disclosure/declaration of developing portfolio investors is only needed for tax purposes," the expert added.

Responding to a query of Business Recorder, sources stated that the government had promulgated the Companies (Second Amendment) Ordinance 2020 without consulting the relevant corporate regulator. The federal government had withdrawn six contentious amendments in Companies Act 2017, introduced through the Companies (amendment) Ordinance 2020.

The change in the Section 452, Companies' Global Register of Beneficial Ownership was also reverted back under the Companies (Second Amendment) Ordinance 2020.

The SECP, through an earlier amendment, had made Section 452 less stringent as the requirement for a 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 percent or more in a foreign company or body corporate, sources added.

When contacted, Member SECP Policy Board Khalid Mirza told Business Recorder that the section 452 is not appropriate, as it does not have any place in the Companies Act 2017. Such provisions are non-existent in the corporate laws of other jurisdictions. "I feel that if information of this kind is required for tax purposes, then necessary provisions should be introduced in the relevant tax laws, rules and regulations and not the corporate law," he said.

Khalid Mirza added that in any case, section 452 has become completely superfluous in view of the Foreign Assets Declaration and Repatriation Act 2018 (FADRA) for the discovery of investment in shares abroad, which is applicable to all categories and also ensures confidentiality. Unfortunately, the Companies Act 2017 is an outdated law with so many provisions that should not be in any corporate legislation.

He referred to Companies Ordinance 1984 which was a simple and rational law and not an unnecessary complicated and confused legislation like Companies Act 2017, Khalid Mirza added.

According to the PBC, the Companies (Second Amendment) Ordinance 2020 issued on July 7, 2020, followed closely on the heels of the Companies (Amendment) Ordinance 2020, signed barely two months earlier and reversed most of the changes made therein.

The PBC, Pakistan's leading business advocacy body, composed of the most significant local and MNC investors was not consulted in the reversal.

The PBC support reforms in the company law and has engaged closely with the SECP Policy Board and the SECP through proposals and discussions.

A considered and comprehensive change will restore confidence of the corporate sector and help provide a level playing field with unincorporated entities. It should also remove sections that have no place in the companies law, which are also unnecessarily intrusive and make it difficult to do business.

The PBC stated that it was surprising to note that the cabinet ministers leading the Pakistan Modernization of Regulations Initiative (PMRI) failed to avail this opportunity to make it easier for the corporate sector to do business.

Notwithstanding the aforementioned, PBC welcome the restoration of Section 181 (protection of non-executive and independent directors) and the return of powers to courts on company amalgamation through Section 282.