

KARACHI: Pakistan Business Council (PBC) on Sunday said it supports the Government and the SECP on the Companies (Amendment) Ordinance 2020.

Some recent media reports on some changes introduced by the SECP through the Companies (Amendment) Ordinance 2020 on declaration of interests in companies abroad are based on a less than complete understanding of the issue, said PBC.

The Pakistan Business Council supports the government and the SECP on the direction of the changes but feels that more needs to be done to promote corporatisation and the formal sector. It also appreciates the manner in which the SECP Policy Board and the SECP has conducted its consultations and their thrust to make it easier and simpler to do business.

Section 452 of the Companies Act 2017 required all interests in foreign companies, no matter how small, to be declared by officers and substantial shareholders of Pakistani companies to the SECP, which the SECP merely passed on to the FBR.

Any member of the public could see it. The changes brought about by the amendment ordinance is to limit the declaration to interests over 10 percent in the overseas company and to protect its confidentiality. Whilst these changes are in the right direction, the PBC continues to advocate the complete withdrawal of Section 452 for the following reasons:

1) NO GLOBAL PRECEDENCE: There is no global precedence of the use of Companies Law to unearth interests in entities, local or foreign, other than those that could lead to potential conflict of interest. Section 452 was never intended to cover conflicts as Section 208 regulates this.

2) THE COMPANIES ACT HAS BEEN SUPERSEDED BY FADRA WHICH ASSURES TOTAL CONFIDENTIALITY: The Foreign Assets Declaration and Repatriation Act 2018 (FADRA) has superseded the Companies Act 2017, as also all previous laws, with respect to confidentiality. Hence the purpose of discovering shareholding by Pakistanis in companies abroad is now served through FADRA. Section 452 of the Companies Act is therefore superfluous.

3) OECD CONVENTION: Pakistan is a signatory to the OECD Convention on exchange of information on overseas interests. This is the channel used by administrations across the world to unearth assets held abroad.

4) NO BENEFIT TO INVESTORS: The information contained in the declarations is not shared with shareholders in the annual or other reports. No corporate governance or investor interest is therefore served by Section 452.

5) SECP MERELY A POST OFFICE: Under Section 452 the SECP was (and is) merely a post office for the FBR. It neither has (nor claims), any expertise to verify or add value to the information obtained from the declarations. SECP's time and effort would be better spent on more value-adding functions.

As a matter of principle, the PBC believes that tax and exchange control laws and conventions should be used to discover overseas interests, instead of misusing the Companies Act to encumber investors, and officers associated with generally well-regulated and tax-compliant corporates in the formal sector with further reporting responsibilities. Incorporation promotes formalisation of the economy. Provisions such as Section 452 encourage businesses to remain in the informal and

unincorporated sector. They also make it more difficult to do business.

Discriminating against the corporate sector cannot (and should not) be the objective of law. Jobs, exports and tax revenues are generated predominantly by the corporate sector, which PBC strongly believes deserves more trust, support and empowerment. Aside from withdrawing Section 452, the PBC has requested the SECP to redefine related parties under Section 208 and restore the provisions of section 181 with respect to independent and non-executive directors.