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Pakistan's Companies Act, 2015 – draft for public comment

Glass, Lewis & Co. ("Glass Lewis") appreciates the opportunity to comment on the draft Pakistan's Companies Act, 2015 (the "Act") issued by the Securities and Exchange Commission of Pakistan ("SECP").

Founded in 2003, Glass Lewis is a leading, independent governance services firm that provides proxy research and vote management services to more than 1,200 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Through Glass Lewis' Web-based vote management system, ViewPoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record-keep, audit, report and disclose their proxy votes.

From its offices in North America, Europe and Australia, Glass Lewis' 300+ person team provides research and voting services to institutional investors globally that collectively manage more than US \$30 trillion.

Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.

#### Glass Lewis Views on Pakistan's Act

Glass Lewis commends the SECP for draft of the Act which will work to overhaul aspect of Pakistan's corporate governance to reflect global trends, developments and investor expectations. Glass Lewis generally agrees with the main principles of the Act. The response provided below includes Glass Lewis' views about some specific provisions outlined in the Act.

### **Section 85. Power to Issue Shares at a Discount**

Under the proposed revision, companies would be permitted to issue shares at a discount amounting to 50% of the nominal value of their shares. Glass Lewis generally supports the ability for companies to issue additional shares in order to have the flexibility to finance operations and future business opportunities. Yet, Glass Lewis recommends that such authorities have certain limitations in order to prevent possible abusive usage by companies. Specifically, Glass Lewis generally believes that the issuance of shares without preemptive rights should be limited to no more than 20% of the issued share capital with a discount of no more than 15% off market price. Therefore, Glass Lewis recommends that the discount rate limit in the revised section be lowered to substantially less than the proposed discount of 50% of the nominal value of a company's shares.

### **Section 87. Acceptance of Deposits by Companies**

Glass Lewis believes that the accepting of deposits may play an advantageous role for companies to raise funds without issuing shares or debt. However, while this revised section proposes to allow non-banking companies to accept deposits from their shareholders and other members of the public, there is no limit – whether monetary, as a percent of net assets or otherwise - on the amount of deposits a company may accept. Further, the revised section only requires that companies seeking to accept deposits obtain a credit rating. However, there is no indication in the revised section or elsewhere in the Act that companies would be required to procure any form of deposit insurance. Given the need to protect shareholders, depositors and companies alike from unforeseen events, Glass Lewis recommends this section be further revised to require that prior to accepting deposits, all companies take on deposit insurance, or provide guarantees against the deposited amounts.

### **Section 91. Power of a Company to Purchase its Own Shares**

Glass Lewis generally believes that companies should have the discretion, subject to certain limits, to engage in share buyback programs so long as the Company is left with a sufficiently strong balance sheet in light of its capital requirements. However, Glass Lewis is concerned that under the proposed revision, there are no limits for companies to repurchase shares. Therefore, Glass Lewis recommends that companies be subject to a reasonable limit on repurchases, such as 10% of a company's share capital, in the proposed revision.

**Section 137. Provisions as to Meetings and Votes, Subsections (b)(4) and (9)**

Glass Lewis commends the Act for including provisions allowing for the participation of a company's shareholders at shareholder meetings by way of video-link, proxy, postal ballot or e-ballot. Glass Lewis believes this revised section will lead to increased shareholder participation in general meetings.

**Section 143. Notice of Resolution**

Under the revised section, shareholders may submit a proposal for consideration at a general meeting, provided they hold a minimum of 15% of a company's issued share capital. However, Glass Lewis notes that the proposed threshold represents an increase from the present 10% threshold under the Companies Ordinance, 1984 (the "Ordinance"). Given Pakistan's relatively concentrated share ownership structures, Glass Lewis asserts that the increase in the shareholding requirement may lead to minority shareholders failing to meet a 15% requirement. Additionally, given that the existing threshold is already very high by international standards, Glass Lewis does not recommend that the threshold be made higher in order to preserve reasonable access to minority shareholders to put forth resolutions for consideration.

**Section 146. Demand for Poll**

Glass Lewis believes that shareholders should be unfettered in their ability to participate in general meetings and cast their votes in an equitable manner. However, the revised section eliminates the existing quorum provision of "at least five members having the rights to vote on the resolution and present in person or by proxy" being a sufficient quorum to demand a poll. While the Act would instead use the 10% threshold to require a vote by poll, Glass Lewis believes that such limitations may preclude the ability for shareholders to request a poll. Further, the proposed revision is silent on whether members seeking to demand a vote by poll will have to be physically present at the meeting location, or if shareholders participating by video-link or otherwise may request to vote by poll. In order support the rights of all shareholders, Glass Lewis recommends that provision relating to members being present to request a poll be retained and that all voting be done by poll as it is more equitable than a vote by show of hands.

**Section 158. Compliance with the Code of Corporate Governance.**

Glass Lewis notes that this revised section and the Act are largely silent on matters pertaining corporate governance structures and practices, in particular, board structure, independence as well as board committee requirements and composition. Instead, the Act defers to the code of corporate governance (the "Code") as specified PSEC. Although formulation of the Code falls under the prerogative of the PSEC, Glass Lewis draws attention to the two distinct sets of corporate governance rules in

Pakistan for publicly-listed companies. One set, being the Code, applies only to non-government controlled companies. The other, being the Public Sector Companies (Corporate Governance) Rules, 2013 (the “Rules”), applies strictly to government controlled companies.

The Code and the Rules diverge from each other on several important matters relating: to board independence thresholds, board chairman independence, committee requirements for publicly-traded companies and the number of boards a director may serve on. Therefore, given this unique opportunity as the Act is being formulated, Glass Lewis strongly recommends that the Act be revised to address and harmonize corporate governance structures and practices for all public companies, regardless of the existence of a controlling shareholder.

#### **Section 171. Vacation of Office by the Directors**

Glass Lewis believes that directors have an obligation to attend their board meetings and to report any potential conflicts of interests that may arise during the course of their service. As such, Glass Lewis supports part (b) of the revised section to remove a director from a board if they are absent without leave from the board for a period of 12 months. Similarly Glass Lewis supports part (d) of the revised section that requires increased disclosure in director interests in contacts or arrangements to avoid conflicts of interest.

#### **Section 182. Proceedings of Directors**

Glass Lewis believes that directors have an obligation to attend the meetings of the board and that in person meetings can be more effective. Under the revised section, directors would be permitted to attend meetings by video conferencing or by other audio-visual means for the purposes of meeting board meeting quorum requirements. While Glass Lewis supports the use of electronic means to allow for board attendance, Glass Lewis recommends that director attendance by way of audio-visual means should be limited to a relatively small portion of directors’ meetings in a year in order to ensure a properly functioning board.

#### **Section 201. Appointment of Legal Adviser**

Under the revised section, companies with a paid up capital of PKR 3 million or more will be required to appoint or retain a qualified legal adviser. Although Glass Lewis recognizes the importance of companies having readily available access to sound legal advice, Glass Lewis recommends that legal advisers be independent from the board and that a prohibition of directors acting as or serving on behalf of a legal firm be applied to this revised section. Such a prohibition would work to avoid potential conflicts of interest between directors and the boards on which they serve.



### **Section 213. Related Party Transactions**

Glass Lewis views favorably the revised section for its breadth of the requirements for related party disclosure. However, Glass Lewis recommends that this section be further amended to incorporate disclosure requirements relating to: (i) the anticipated length of time for transactions; (ii) the expected value of transactions; (iii) an explanation as to how the transaction will benefit the Company; and (iv) the payment schedule between the related parties. Through the enhanced disclosure requirements, Glass Lewis expects that shareholders will be able to make informed decisions on whether such transactions are in the best interest of the company.