

A. K. BROHI & CO.
LEGAL CONSULTANTS & ADVOCATES
HIGH COURTS OF PAKISTAN
SUPREME COURT OF PAKISTAN

153-K, SUFI STREET,
BLOCK 2, PECHS, KARACHI
UAN: (92 21) 111-21-22-23
TEL: (92 21) 34550094-5
Fax: (92 21) 34557080

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The Honourable Senate Committee on Finance

1. The Honourable Chairman, Senator Saleem Mandviwala
2. Respected Member, Senator Ilyas Ahmed Bilour
3. Respected Member, Senator Muhammad Mohsin Khan Leghari
4. Respected Member, Senator Ayesha Raza Farooq
5. Respected Member, Senator Muhammad Talha Mehmood
6. Respected Member, Senator Nasreen Jalil
7. Respected Member, Senator Kamil Ali Agha
8. Respected Member, Senator Mushahid Ullah Khan
9. Respected Member, Senator Saud Majeed
10. Respected Member, Senator Sardar Fateh Muhammad Muhammad Hassani
11. Respected Member, Senator Osman Saifullah Khan
12. Respected Member, Senator Mohsin Aziz
13. Respected Member and Honourable Minister for Finance, Revenue, Economic Affairs, Statistics and Privatisation Mr. Mohammad Ishaq Dar

SUBJECT: ABAD OBJECTIONS TO PROPOSED STATUTORY REQUIREMENTS FOR REAL ESTATE BUILDERS AND DEVELOPERS UNDER SECTION 456 OF THE COMPANIES BILL, 2017

Dear Sir

We write to you on behalf of our Client, the Association of Builders & Developers of Pakistan (hereinafter referred to as "ABAD"), which has serious reservations regarding Section 456 of the Companies Bill, 2017 (hereinafter referred to as "Section 456" or the "Proposed Amendment") and has been passed by the National Assembly and is now pending approval of

the Senate. By virtue of the said amendment, any real estate company announcing or advertising any real estate project or accepting/inviting advances from the public for real estate project(s) must seek the approval of the Securities & Exchange Commission of Pakistan (hereinafter referred to as the “SECP” or the “Commission”) as well as, inter alia, deposit any sum obtained from the allottees, from time to time, in a separate escrow account in the name of the project(s).

Our Client has the following objections to the Proposed Amendment:

2. It is submitted that ABAD is the sole representative organization of Builders & Developers of Pakistan. The Construction industry supports more than 100 allied industries. It is the second largest provider of employment for unskilled, semi-skilled and skilled workforce in Pakistan. ABAD’s members strictly abide by the law and are all registered taxpayers. ABAD made a proposal that builders be subject to a Fixed Tax Regime which was implemented by the Government and has resulted in generating ten times more revenue for the national exchequer and also helped in minimizing leakages.

3. At this juncture, it is pertinent to note that, as a matter of fact, out of the 1000 total members i.e. the builders of ABAD, 92.5% of them are operating as Association of Persons (“AOP”) and/or Sole Proprietorships and 7.5% are those who are registered as companies; and out of the 7.5%, only 2.5% are active operating members. It is submitted that, since the Proposed Amendment only targets ‘companies’ that are engaged in construction and development work, therefore, in view of the instant Proposed Amendment, even these 2.5% active members operating as a private companies have also resolved to switch to AOPs in order to avoid the draconian effect of Section 456 which, it is submitted, would, in effect, defeat the whole purpose i.e. the regulation of the construction industry (as envisaged by the Federal

Government). On the contrary, the Proposed Amendment is retrogressive and it will rather discourage disclosure and documentation in the construction industry. Furthermore, ABAD is of the firm opinion that the Proposed Amendment is rather discriminatory against the entire construction/housing industry as this industry is clearly being cornered and isolated by imposition of requirement of maintaining escrow account, whereas all other industries are freely accepting advance deposit for booking and none of them are required to maintain escrow account. Hence, there appears to be no intelligible differentia in singling out real estate builders/developers out of several other businesses that accept public deposits in advance of providing goods/services. Companies involved in the sale and assembly of automotive vehicles (such as e.g Indus Motor Company or Honda Atlas Cars Pakistan Limited), companies involved in the production of fertilizers, sugar manufacturers, cement manufacturers etc. all accept public deposits, however such deposits are not placed in any escrow account and may be appropriated by the relevant companies for the purpose of procuring raw materials as well as providing liquidity to the company; furthermore such companies deliver the goods several months after accepting such advances from the public. The Honourable Supreme Court of Pakistan held in the case of *I.A Sharwani vs Government of Pakistan* reported as **1992 SCMR 1041** wherein it was held as follows:

“a. That reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis

b. That no standard of universal application to test of reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances

c. ... a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from mischief of Article 25

Definition of Reasonableness

d. That in order to make a classification reasonable, it should be based

i. On an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out

ii. That the differentia must have rational nexus to the object sought to be achieved by such classification.”

The Proposed Amendment does not have any rational nexus to the objective of regulating public deposits made to companies/association of persons. The application of the Proposed Amendment to the real estate development industry alone and only incorporated companies engaged in such business does not appear to be a “reasonable classification.” There is no intelligible differentia by way of which the real estate development industry can be distinguished from other industries that have not been included within the proposed regulatory regime. **Hence, the Proposed Amendment violates Article 25 of the Constitution.**

4. ABAD’s stance on the said Proposed Amendment is that it will completely destroy the Real Estate Sector and will result in a major setback to the construction industry of Pakistan as a whole. There shall be increased costs associated with maintaining escrow accounts.

5. That one of ABAD's main objections regarding the proposed amendment is that, since, in Pakistan, there are officially three (3) different recognized values of built-up units and/or plots *i.e.* (a) Provincial value (DC Value) (b) Federal value (determined by F.B.R.) and (c) Actual Market value, whereby there are varying official rates/values of properties, therefore, it is uncertain as to which rate must be deposited in the escrow account.

6. Moreover, the ground realities are that in a country like Pakistan, where corruption is rampant, it would be a cumbersome exercise to withdraw money from the escrow account and get the work done within the stipulated time period. For example, in Islamabad since CDA takes 3-4 years to approve building plans hence approximately 70% of buildings in the capital have been built without an approved building plan. Presently, there is a shortage of 12 million houses in Pakistan as per the report of the State Bank of Pakistan. Hence, if the housing sector is subjected to additional regulation by SECP then it will cause further delay in the process of approval and those unscrupulous elements constructing buildings without approved building plans shall benefit at the expense of law abiding developers that are members of ABAD. The average time of construction will be doubled if the Proposed Amenmdents are made law e.g from 3 years to 6 years. The delays will be the result of the reduction in the number of players in the real estate sector since less built up units will be constructed in given year. The annual demand of built up units for Pakistan is 400,000 units out of which 250,000 units are built (150,000 are built by members of ABAD) and the shortfall is 150,000 however if the onerous Proposed Amendments are made into law then the shortfall is likely to increase by a further 150,000 hence the people of Pakistan will be forced to live in slums.

7. That, for the sake of argument, even if Section 456 becomes a law (which is strongly opposed for the reasons set out herein), it is submitted that, for all practical purposes, by increasing the level of compliance manifolds, the cost of housing/property would significantly increase for the common-man. Thereby, bringing it out of reach of the common man and forcing them to live in slums. It may be noted that 16% of the population lived in slums in 1992 and the percentage has increased to a staggering 56% of the population in 2014.
8. In effect, after going through the Proposed Amendments, it seems as if the said amendments are being made to wipe-out 'Small and Medium sized enterprises' (SME) sector engaged in construction business at the behest of few large players of the corporate sector.
9. It is also worth mentioning that the housing industry requires technical understanding, special knowledge and experience to deal with the housing industry. In this regard, it is submitted that the SECP does not have much required expertise and it will, therefore, result in further complicating the existing regulatory framework. Furthermore, the delays caused if the Proposed Amendments are made law shall result in large scale unemployment.
10. Builders and developers are unable to raise finances from the Government or financial institutions. Hence, if the Proposed Amendment is made law then advance deposits will be placed in an escrow account rendering it impossible for the builder/developers to withdraw money to purchase land which is in essence the raw material of the Industry. It goes without

