

Guide Series



SECP

**SECURITIES AND EXCHANGE
COMMISSION OF PAKISTAN**

DIRECTORS AND SECRETARIES GUIDE

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PRELUDE

The aim of this booklet is to:

- Provide rudimentary knowledge on the responsibilities of a company's officers; and
- Deal with some of the key requirements of the Companies Act, 2017 relating to filing of returns/applications with the Securities and Exchange Commission of Pakistan (the Commission) and the Company Registration Office (CROs). It will give a basic idea of responsibilities of directors and secretary as they relate to the Commission and CROs.

This guide does not in any way vary or amend obligation of stakeholders in complying with requirements of applicable laws. Nothing in this guide overrides or is intended as an interpretation of applicable law. In case of any conflict, the requirements of relevant laws and directives shall prevail over this Guide. The Companies shall ensure compliance with relevant regulatory requirements as per law and Corporate Governance Rules/Regulations, as applicable.

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PART-I

The law recognizes a “**Company**”, as a “legal person”, which in its own rights is capable of owning property, making contracts, conducting litigations and also accountable to wrongdoings and the affairs of the company are managed by company officers or “**Board of Directors**”.

Types of Directors

Under Section 2(25) a director is a person occupying the position of director in a company. There are different types of directors mentioned in the Companies Act, 2017, namely:

- (i) **First Directors:** In terms of **Section 157**, the first directors are determined by the subscribers of the memorandum and stand retired on the election of directors in the first annual general meeting of the company.
- (ii) **Independent Director:** Under **Section 166 (2)** an independent director means a director who is not connected or does not have any other relationship, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest.

The appointment of an independent director is to be made through selection from a databank maintained by any institute, body or association, as may be notified by the Commission.

- (iii) **Foreign Director:** Under the provisions of the law directors/shareholders and persons holding other statutory positions having foreign nationality can be appointed in the company. However, in terms of **Section 461** such persons are required to be security cleared from the relevant authority.
- (iv) **Female Director:** In order to encourage gender diversity, under **Section 154** certain categories of company i.e. public interest companies are mandatorily required to appoint a female representation on their board.
- (v) **Additional Director:** Under **Section 157**, the number of directors and the names of the first directors are determined by the subscribers of the Memorandum. And, the number of first directors can be increased by appointing additional directors by the members in a general meeting.
- (vi) **Alternate Director:** In terms of **Section 174** with the approval of the Board, an existing director can appoint an alternate director to act for him during his absence from Pakistan of not less than ninety days. The alternate director so appointed is required to vacate office if and when the director appointing him returns to Pakistan.

- (vii) **Nominee Directors:** In terms of **Section 164** a company may have directors nominated by the company's creditors or other special interests by virtue of contractual arrangements. Furthermore, a body corporate or corporation owned or controlled by the Federal Government or Provincial Government may also have directors nominated on the board to whom such corporation or company has extended credit facilities.
- (viii) **Chief Executive Officer:** **The Chief Executive Officer is appointed** for implementing plans and policies which relate to the company's financial strength, operational efficiency, business transformation and strategic management. In terms of **Section 188**, the chief executive officer is a deemed director of a company, and is entitled to all the rights and privileges, and subject to all the liabilities, of that office under the provisions of the law, the chief executive is appointed for a term of three years term and is eligible to serve for another term..

Requirement of Minimum Number of Directors in a Company

The minimum number of directors in a company is contingent upon the type of company, by law only a natural person can be a director of a company and the minimum number required, are as under;

S. No.	Type of Company	Minimum number of Director
i.	Single	One Director
ii.	Every other private company	Two Directors
iii.	Public company other than a listed company	Three Directors
iv.	Listed company	Seven Directors

Ineligibilities for Appointment of Directors

Generally, the onus lies on the members to appoint persons as directors who they believe can manage and run the affairs of a company on their behalf. However, the following exclusions may be taken into account while appointing a person as a director; if he:

- is a minor;
- is of unsound mind;
- has applied to be adjudicated as an insolvent and his application is pending;
- is an undischarged insolvent;
- has been convicted by a court of law for an offence involving moral turpitude;
- has been debarred from holding such office under any provision of this Act;

- is lacking fiduciary behaviour and a declaration to this effect has been made by the Court under section 212 at any time during the preceding five years;
- does not hold National Tax Number as per the provisions of Income Tax Ordinance, 2001 (XLIX of 2001)
- is not a member: Provided that clause shall not apply in the case of, –
 - o a person representing a member which is not a natural person;
 - o a whole-time director who is an employee of the company;
 - o a chief executive; or
 - o a person representing a creditor or other special interests by virtue of contractual arrangements;
- has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution*;
- is engaged in the business of brokerage, or is a spouse of such person or is a sponsor, director or officer of a corporate brokerage house*.

*(*The restrictions applicable only in case of listed companies)*

The Role of the Board of Directors

The role and responsibilities of Board of Directors (BoD) are very distinct. The BoD hires a Chief Executive Officer for overseeing the day to day affairs of the business. It also selects officers for the Board; namely, the Chairman and Secretary. Some of the major responsibilities of the board are:

- to appoint a Chief Executive Officer to manage the business/operations;
- to provide direction to the organization by setting goals;
- to develop a governance system and policies for achieving the goals;
- to protect the organizations assets, employees and member's investment;
- to have in place a monitoring and control function. It is responsible for the auditing process and engage an auditor ensuring that the audit of the financial statements are done in a timely manner.
- to ensure that statutory returns/particulars are filed with the registrar in a timely manner.

Powers of the Board

With the consent of the general meeting or by way of authorisation, the board can exercise its powers which are enumerated in detail under Section 183, which generally encompass the following:

- to issue shares;
- to borrow moneys otherwise than on debentures;
- to invest the funds of the company;
- to make loans;
- to approve financial statements;

- to approve bonus to employees;
- to incur capital expenditure on any single item or dispose of a fixed asset in accordance with limits
- to declare interim dividend;
- to write off bad debts, advances and receivables; and
- to take over a company or acquire a controlling or substantial stake in another company.

Statutory Compliances required under the Act by the Board

The directors of the company are required to maintain statutory records and proper books of account at the registered office. Furthermore, the law also require returns to be filed with the registrar within the prescribed timelines. Documents/information maintained by the registrar is public record and available for inspection to the public for the purpose of making investment in the company, enter into contract and for other useful purposes. It is important to note that filing of returns/documents does not take place until it reaches the Registrar.

Some of the major compliances required under the law are listed below:

- Issuance of shares certificates to the shareholders (Section 71);
- Transfer of shares (Part V);
- Registration/Modification & Satisfaction of Charges (Section 100 - 109);
- Maintenance of Registered Office Address (Section 21);
- Holding of statutory meetings/general meetings/extra ordinary meetings by a company (Section 131-133);
- Maintenance of Minute's Book (Section 178);
- Election of Directors (Section 159 to 161);
- Appointment of Chief Executive (Section 186 to 191);
- Appointment of Company Secretary (where applicable) (Section 194);
- Maintenance of books of accounts and other statutory registers (Sections 119, 122, 197 and 220);
- Preparation, audit and presentation of accounts in the AGM (Section 233);
- Preparation of quarterly accounts by a listed company (Section 237);
- Payment of Dividends within the prescribed period (Section 241);
- Appointment of Auditor (Section 246); and
- Relevant laws relating to Appointment of Legal Adviser.

Disqualification of Directors

A director risks disqualification if he fails to render his directorial responsibilities; not complying with the provisions as laid down in the Companies Act, 2017. The law lays down circumstances in which the Commission may pass a disqualification order against a person to hold the office of a director of a company for a period up to five years beginning from the date of order. Section 172 amply covers the areas for debarring a person; which generally extends to the following:

- convicted of an offence in connection with the promotion, formation, management or liquidation of a company;
- persistent default made in relation to provisions of the Act;
- a person has been a director of a company which became insolvent;
- the business of the company in which he is or has been a director, has conducted to defraud its creditors, members, shareholders or any other persons or formed for a fraudulent or unlawful purpose;
- the person has been convicted of allotment of shares of a company for inadequate consideration;
- the person has entered into a plea bargain arrangement with the National Accountability Bureau or any other regulatory body;
- the person is involved in illegal deposit taking;
- the person has been convicted of financial irregularities or malpractices in a company; or
- the company of which he is a director has acted against the interests of the sovereignty and integrity of Pakistan, the security of the State, friendly relations with foreign States.

Cessation of Boards' Powers

When a company is under liquidation or winding up and a liquidator is appointed all the powers of the board cease, except for the purpose of giving notice of resolution to wind up and appointment of the liquidator and filing of consent of the liquidator as required under this Act; refer Section 365.

PART II

Company Secretary

A Company secretary plays an important role in ensuring compliance to statutory and regulatory requirements. By law, a company secretary is empowered to sign the statutory returns and applications to be furnished to the Registrar and the Commission.

Appointment, Retirement, Resignation or Removal of a Company Secretary

The law requires only public and public listed companies to have a secretary. A private company does not need to have a company secretary, unless it is specified in the articles of association. Furthermore, a company secretary of a private company does not need to have any particular qualifications.

A public company must have a company secretary, who must have the relevant knowledge and experience to be the company secretary and have certain qualifications specified by law. In terms of Section 194, the Commission has prescribed the qualifications and experience of a company secretary to be appointed in a public company in the Companies Regulations, 2024. The rights of a company secretary depend on the terms of his or her contract with the company. The secretary has no special rights under the Act.

Functions of Secretary

A. Secretarial functions:

- To ensure compliance of the provisions of Act and rules made there-under and other statutes and bye-laws of the company.
- To ensure that business of the company is conducted in accordance with its objects as contained in its memorandum of association.
- To ensure that affairs of the company are managed in accordance with the articles of association and the provisions of the Act.
- To prepare the agenda in consultation with the Chairman and the other documents for all the meetings of the board of directors.
- To arrange with and to call and hold meetings of the board and to prepare a correct record of proceedings.
- To attend the broad meetings in order to ensure that the legal requirements are fulfilled, and provide such information as are necessary.
- To prepare, in consultation with the chairman, the agenda and other documents for the general meetings.

- To arrange with the consultation of chairman the annual and extraordinary general meetings of the company and to attend such meetings in order to ensure compliance with the legal requirements and to make correct record thereof.
- To carry out all matters concerned with the allotment of shares, and issuance of share certificates including maintenance of statutory Share Register and conducting the appropriate activities connected with share transfers.
- To prepare, approve, sign and seal agreements leases, legal forms, and other official documents on the company's behalf, when authorised by the broad of the directors or the executive responsible.
- To advise, in conjunctions with the company's solicitors, the chief executive or other executive, in respect of the legal matters, as required.
- To engage legal advisors and defend the rights of the company in Courts of Law.

B. Legal obligations of secretary:

- Filling of various documents/returns with the Registrar/Commission as required under the provisions of the Act.
- Proper maintenance of books and registers of the company as required under the provisions of the Act.
- To see whether legal requirements of the allotment, issuance and transfer of share certificates, mortgages and charges, have been complied with.
- To convene/arrange the meetings of directors, on their advice.
- To issue notice and agenda of board meetings to every director of the company.
- To carry on correspondence with the directors of the company on various matters.
- To record the minutes of the proceedings of the meetings of the directors.
- To implement the policies formulated by the directors.
- To deal with all correspondence between the company and the shareholders.
- To issues notice and agenda of the general meetings to the shareholders.
- To keep the record of the proceedings of all general meetings.
- To make arrangement for the payment of the dividend within prescribed period as provided under the provisions of the Act.

C. To maintain the following statutory books

- The register of transfer of shares (Section 119);
- The register of buy-backed shares by a company (Section 88);
- The register of mortgages, charges etc. (Section 107);
- The register of members and index thereof (Section 119, 120);
- The register of debenture-holders (Section 122);

- The register of directors and other officers (Section 197);
- Register of contracts, arrangements and appointments in which directors etc are interested (section 209);
- Minute books; and
- Register of beneficial ownership (Section 452).

D. Other duties

The company secretary usually undertakes the following duties:

Ensuring that statutory forms are filed promptly. Companies cannot simply send a letter to notify the Registrar that it wishes to change the situation of the company's registered office or that change has occurred among directors or secretaries or auditors or particulars. Generally, statutory forms viz. forms 21 and 9 as appropriate are filed. Form A/B/C/D is filed as annual return if the return is due at the current time. Changes in directors and secretaries or in time particulars must be notified to the Registrar within 14 days. There are many other forms that need to be filed with the Registrar.

Providing members and auditors with notice of meeting. Members and auditors are given written notice for holding of annual and other general meetings.

Sending the Registrar copy of special resolutions. Companies are required to file with the Registrar special resolution on Form-26 within 15 days of its being passed.

Supplying a copy of the accounts to every member of the company, every debenture holder and every person who is entitled to receive notice of general meetings. Companies are required to send annual audited accounts at General Meeting at which they are to be laid – see section 233 of the Act.

Keeping or arranging for the minutes of directors' meetings and general meetings. Apart from monitoring the Directors and Members minutes books, copies of the minutes of board meetings should also be provided to every director within 15 days of the meeting.

Ensuring that people entitled to do so, can inspect company records. For example, members of the company are entitled to a copy of the company's register of

Submission of Documents

What documents are to be provided to the Commission and the Company Registration Office?

Company directors and secretaries are responsible for filing various returns containing information to the Commission and the Registrar. Failure to do so may result in default in compliance of the provisions of the law.

The following information deals only with the most common forms and documents that companies will use.

Financial Statements/Accounts -

All limited companies, whether trading or not, must keep accounting records. Private companies with a threshold of over Rs.10 million and public companies are required to file annual audited accounts with the Registrar. Listed companies are also required to send quarterly accounts to the Commission and the Registrar.

The accounts will include:

- a) a statement of financial position as at the end of the period;
- b) a statement of profit or loss and other comprehensive income or in the case of a company carrying on any activity not for profit, an income and expenditure statement for the period;
- c) a statement of changes in equity for the period;
- d) a statement of cash flows for the period;
- e) notes, comprising a summary of significant accounting policies and other explanatory information;
- f) comparative information in respect of the preceding period; and
- g) any other statement as may be prescribed.

Some of the commonly filed statutory returns and applications under the provisions of the Companies Act, 2017, are as follows

- Special Resolution
- Returns containing particulars of substantial shareholding
- Returns of allotment of shares
- Particulars of Directors & Officers
- Annual Returns / Form A
- Declaration of compliance with the provisions of Section 123A
- Intimation of Principal Line of Business or any Change therein
- Notice of Change in Registered Office
- Particulars of Registration, Modification & Satisfaction of Charge,
- Application for conversion of status
- Application for Change of Company Name
- Petition for alteration of Memorandum