

**SECP  
Guide  
Series**

# Shareholders' Rights



**SECURITIES AND EXCHANGE COMMISSION  
OF PAKISTAN**

## ABOUT THIS GUIDE

This booklet is developed to create awareness amongst the shareholders of the corporate sector in the company, of their rights, with the aim to ensure members' participation in the company's affairs and its compliance with the provisions of law.

The shareholders are entitled to various rights, as provided under the various provisions of the Companies Ordinance, 1984 (the "Ordinance"). The real exercise of these rights not only protects their interests but also results in the effective implementation of good governance principles in the corporate enterprises.

The booklet highlights the basic of the shareholders' rights and their respective importance. The shareholders' participation in the affairs of a company is encouraged with special emphasis on the shareholders' responsibilities to monitor the activities of the management and to ensure the corporate compliance.

## SHAREHOLDERS' RIGHTS

When you buy a share in a company, you become a part owner of that company. Under company law, this ownership entitles you to certain rights. Some of these rights relate to financial aspects of owning shares, and some relate to the communications between the company and the shareholder, including the actions you can take to make your views known on the company's performance and actions.

The rights, inter-alia, include the, -

- a) right to the offer of shares by the company at the time of further issue of shares;
- b) right to receive dividends;
- c) right to participate and vote in general meetings;
- d) right to elect and remove directors;

- e) right to contest election to the position of director;
- f) right to appoint auditors and fix their remuneration;
- g) right to receive residual assets at the time of winding up of the company;
- h) right to have different periodical reports; and
- i) right to have access to certain information of company.

## SHAREHOLDERS' RESPONSIBILITIES

As owners of the company, shareholders have a unique relationship to the board and the management. They must rely on the board of directors, whom they elect for managing the affairs of the company, using their right to vote at shareholders' meetings. To protect their long-term economic interests, shareholders have a responsibility to monitor the conduct of the board of directors and exercise their voting rights by casting thoughtful and informed votes that safe-guard their financial and other interests.

Although the effective exercise of the voting rights is the key mechanism by which the shareholders can play a role in the governance of the corporation. It is also important that the shareholders always keep a watchful eye on the affairs of the company and ensure that the management is acting and performing its duties in compliance with the provisions of law. Shareholders should promote more effective corporate governance in the company and ensure that the corporate governance practices meet high standards of accountability, transparency and fiduciary responsibility. Shareholders must ensure that the affairs of the company are being conducted by the management, in the best interests of the shareholders.

## IMPORTANT SHAREHOLDERS' RIGHTS

### 1. Holding Your Shares:

Being a shareholder of a company having a share capital means that you become holder of share, scrip or other security. A share represents a part of the capital of the company which gives you a voting right in the company and your name is entered in the register of members. The liability of a shareholder of a company limited by shares is limited to the amount of his nominal share,

which means that the only risk he runs is that of losing his initial outlay, at the event of the winding up of the company.

## **2. Right to receive share certificates on allotment:**

The share certificates constitute documentary evidence of title of the shares. The company is required to issue share certificates to the shareholders within ninety days of the allotment of shares. In case of maintaining of account in central depository, shares are required to be registered in name of the shareholder within five days. [Section 74 of the Ordinance]

## **3. Right to receive duplicate share certificates:**

The shareholder has a right to apply to the company for the issue of duplicate copy of the share certificate, if the share certificate is lost, mutilated or torn. The company after conducting an enquiry into the fact, would either issue the duplicate certificate within forty five days or communicate refusal within thirty days of the application. [Section 75 of the Ordinance]

## **4. Right to the transfer of shares:**

The share transfer is required to be registered and share certificates duly transferred in favour of the transferee are to be issued within forty-five days from the date of the application for transfer of shares. Transfer deeds are accepted by the directors and entered into the register of members of the company. In case of account in central depository, transfer is registered within five days. However, the directors may refuse the transfer of shares notifying the defects or invalidity to the transferee through sending a notice within a period of thirty days after the lodgement of the instrument of transfer with the company.

In case, transferee is a central depository, the refusal shall be made within five days. If shortcomings are pointed out, the transfer may again be re-lodged after removal of the shortcomings. [Sections 76 to 79 of the Ordinance]

The shareholders have been provided a right to make an appeal to the Commission against refusal of transfer of shares by the company within sixty days of refusal. The Commission has the power to order the company to register the share transfer after giving reasonable notice and opportunity of hearing, which is required to be implemented by the company within fifteen days. [Section 78-A of the Ordinance]

#### **5. Rights Issues - A right in capital increases:**

From time to time, a company may wish to issue further capital. As a shareholder you have a pre-emptive right to participate in a Rights Issue. This is where the company asks existing shareholders if they want to buy new shares in the company, in proportion of the existing shares held by each member, irrespective of the class of shares. Such offer is made by a notice sent to members specifying the number of shares to which the member is entitled and prescribing time limit within which if offer not accepted will be deemed to be declined. The company sends prescribed circular to the members alongwith the notice making the said offer. [Section 86(1),(3) of the Ordinance]

If they decline to subscribe for the further issue or make no response to the issue, the directors may allot the shares to that extent, as they deem fit. [Section 86(1) of the Ordinance]

However, in case of a public company, the members can approve issuance of further shares without right offer through passing a special resolution, and subject to the approval of the Commission. [Section 86(1) of the Ordinance]

#### **6. Right to be informed on, and approve variation of shareholder's rights:**

Variation of rights means abrogation, revocation or enhancement of the rights of the shareholders. Such variation is effected by an amendment in the Articles of Association, regarding the rights of the shareholders, in the manner provided under Section 28 of the Ordinance. 1/10<sup>th</sup> of the class of shareholders aggrieved by the variation of rights can file petition before the

High Court for an order cancelling the resolution, within thirty days of the date of the resolution varying their rights [Section 108 of the Ordinance].

#### **7. Right to a Share in the Profits- Dividends:**

As a shareholder, you have a right to a share in the company's earnings. This is called dividend and is the share in net profits that is distributed to shareholders. This share varies according to the results of the company. Dividends are paid out to all registered shareholders. If you hold "preference shares" you will usually get a fixed dividend, which will take priority over payments of dividend to ordinary shareholders.

The board of directors recommends the dividend, and submits the same to the shareholders for approval in its general meeting. Dividend is declared by the members in a general meeting, being a part of the meeting's agenda. However, no dividend shall exceed the amount recommended by the directors. As per law, where the dividends stands declared, the company cannot with-hold or defer its payment and is responsible to make the payment within forty-five days of declaration in case of a listed company and within thirty days in case of any other company. In case, the company fails to make the said payment within the specified time period, subject to certain provisions, the chief executive of the company is liable to penal action. [Sections 248 to 251 of the Ordinance]

#### **8. Attending the Company's Annual General Meeting:**

Every company must hold an Annual General Meeting once a year. Shareholders whose names are on the register have the right to attend such meetings and they must be sent a notice of the meeting at least 21 days before the date fixed for the meeting. [Section 158 of the Ordinance]

## 9. Participation in a company's general meetings:

Shareholders should be informed of the rules, including voting procedures, which govern general meetings. Shareholders should be given:

- Sufficient and timely information about the date, location and agenda, including the issues to be decided at the meeting. Notice of the general meeting, specifying the day, time and place of the meeting and a statement of the business to be transacted with all material facts, is required to be sent to every member of the company, at least 21 days before the meeting. Where any business other than ordinary business that is any special business is to be transacted at a general meeting, a statement setting out all material facts concerning such business, including in particular the nature and extent of the interest of any director, is also enclosed with the notice. In case of listed companies, notices are also published in English and Urdu newspapers having circulation in the Province where the relevant stock exchange exists. [Section 158(3), 159(7), 160(1) (a) (b) of the Ordinance]
- Opportunity to place items on the agenda of meetings, subject to reasonable limitations. [Section 164 of the Ordinance]

## 10. Call an Extraordinary General Meeting (E.O.G.M):

Extraordinary general meetings are simply company's meetings, other than annual general meeting and the statutory meeting. Directors often have to call them to transact special business and to consider any matter that requires the approval in a general meeting. Shareholders, representing not less than one-tenth of the voting power, have the right to force the Board to call an Extraordinary General Meeting by making a requisition.

If the directors do not proceed within 21 days from the date on which the requisition is deposited, to cause a meeting, the shareholders may themselves call the meeting which is required to be held within three months of the date of requisition and claim back their expenses.

Notice of an EOGM must be sent to the members at least 21 days before the date of the meeting. However, the registrar may authorize such meeting to be held at a shorter notice than 21 days, on an application by the company. [Section 159 of the Ordinance]

#### **11. Placing items on the agenda of a Meeting:**

A copy of draft resolutions to be placed in a company's general meeting other than routine and procedural resolutions is required to be sent to each member along with the notice of the meeting. The members having not less than 10% shares of the voting rights can also propose a resolution and submit it to the company. In case of a meeting requisitioned by the members, the draft resolution is forwarded in order to reach the company, along with the requisition and in case of any other meeting at least 15 days prior to the meeting. [Section 164 of the Ordinance]

#### **12. Special Resolutions at a Company's General Meeting:**

Under the Companies Ordinance, 1984, a special resolution is a resolution which is passed by majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy at a general meeting and a 21 days prior notice of which has been sent to all shareholders, specifying the intention to propose a special resolution. A copy of every special resolution is required to be forwarded to any shareholder on his request on payment of the amount as prescribed by the company. [Section 172(3) of the Ordinance]



### **13. Right to seek Court declaration to invalidate the proceedings of a general meeting:**

The members having at least 10 % of the voting powers in the company, for any material defect or omission in the notice or irregularity observed in the proceedings of a general meeting, which prevented members from using effectively their rights, may file a petition in the Court within thirty days of such meeting. The Court may declare the proceedings of such a meeting as invalid and direct holding of a fresh general meeting. [Section 160 A of the Ordinance]

### **14. Shareholders' voting rights:**

Shareholders are asked by the company to vote on important matters, which affect the company. Shareholders should carefully consider the decision to benefit from exercising their voting rights.

Every shareholder has votes proportionate to the paid up value of shares carrying voting rights held by him according to the entitlement of the class of such shares. However, at the voting through show of hands, every member, present for the time being, has one vote.

No member holding shares carrying voting rights shall be debarred from casting his vote, nor shall anything contained in the articles have the effect of so debarring him. [Section 160(5) of the Ordinance]

### **15. Right to appoint the proxy:**

The shareholders can cast their votes personally at a company's meeting. However, any shareholder entitled to attend and vote at a meeting can appoint another person as his proxy to attend and vote in place of him. [Section 160(d) of the Ordinance]

Such a proxy shall have the rights of attending and voting at a meeting, as available to the shareholder. A shareholder is not entitled to appoint more than one proxy for any one meeting. A proxy must be a shareholder unless the articles of the company provides otherwise.

The notice of a meeting must specify the shareholder's right to appoint a proxy and the rights of such a proxy as to attending and voting at a meeting. A proxy form must accompany such notice of the meeting.

Every shareholder having voting rights has a right to inspect all proxies lodged with the company during the business hours of the company. [Section 161 of the Ordinance]

#### **16. Right to demand a poll on any resolution:**

Voting to be by show of hands in first instance. However, the Chairman of the meeting shall order for poll, before or on the declaration of the result of the voting on any resolution on a show of hands, either on his own motion or on a demand made in this behalf by the following person(s):

- a) In case of public company, by at least five members;
- b) in case of private company, by one member, present in person or by proxy, if not more than seven such members are personally present, and by two members present in person or by proxy, if more than seven such members are personally present; and
- c) by any member or members present in persons or by proxy and having shareholding (10% voting power) of their own or aggregate. [Section 167 of the Ordinance]

#### **17. Right to request for a certified copy of the minutes of any general meeting:**

Shareholders have a right to request for a certified copy of the minutes of any general meeting on payment of such amount, not exceeding the prescribed amount, as may be fixed by the company. [Section 173(7) of the Ordinance]

**18. Right to apply to the Commission to call overdue general meetings:**

If the company fails to hold its annual general meeting, statutory meeting or extra-ordinary general meeting, within the prescribed period under the Ordinance, the member of the company can apply to the Commission for direction to the company for holding the overdue general meeting. [Section 170 of the Ordinance]

**19. Right to Appoint and Remove Auditors:**

Auditors are external accountants appointed by the company to check its financial statements. The directors appoint first auditor or auditors within sixty days of incorporation, subject to certain provisions, who stands retired at the conclusion of the first AGM. However, if the directors fail to appoint first auditor or auditors, the members in general meeting may appoint first auditor or auditors. Thereafter, members at each AGM appoint the auditor or auditors.

The remuneration of the auditor or auditors appointed by the members is also fixed by the members in the general meeting. Members can remove the auditors or auditors through passing of special resolution in a general meeting in accordance with the procedure laid down. [Section 252 of the Ordinance]

**20. Right to contest for election to the Board of Directors:**

A member has the right to contest for election as a director of a company, subject to basic conditions for the office of directorship of the company. [Section 187 of the Ordinance]

**21. Right to elect and remove directors:**

Shareholders have a right to elect the directors. The shareholders, as owners of the company, elect the directors to run the business on their behalf, and hold them accountable for their acts. First directors are usually appointed by virtue of Articles of Association or otherwise, all the subscribers are deemed to be directors of the company. They shall hold office until the holding of first AGM. Subsequent directors are elected in the AGM of the company for a period of three years. [Section 178 of the Ordinance]

The shareholders can also remove a director by passing a resolution in a general meeting. [Section 181 of the Ordinance]

**22. Right to apply to the Court for declaration of election of directors as invalid:**

The members, having not less than twenty percent of the voting power in the company can make an application to the Court within thirty days of the date of the election, for declaring the election of all directors or any one or more of them, as invalid. [Section 179 of the Ordinance]

**23. Right to receive, or obtain copies of annual accounts:**

Every company is required to send copies of annual accounts to the members at least 21 days before the AGM at which the accounts are required to be laid before the members. [Section 233(4) of the Ordinance]

Shareholders of a company are also entitled to obtain copies of audited financial statements along-with auditor's report and director's report, on payment of such amount as fixed by the company. [Section 243 of the Ordinance]

#### **24. Right to obtain the copies of Memorandum and Articles of Association:**

Shareholders also have a right to obtain the copies of the Memorandum and Articles of Association of the company, on payment of such sum, not exceeding the prescribed amount as may be fixed by the company, within fourteen days of the application. [Section 35 of the Ordinance]

#### **25. Right to inspect company documents and returns:**

As such, no member has a right of inspecting books of accounts of a company. However, the books or papers can be inspected by the shareholders under various provisions of the Ordinance or authorization by the directors of the company in general meeting. Various such rights, as provided under the Ordinance are as under:-

- a) right to inspect the register of directors or officers of a company [Section 205 of the Ordinance];
- b) right to inspect the contracts, arrangements and appointments having directors' interest [Section 219 of the Ordinance];
- c) right to inspect the copies of instruments creating mortgages and charges and company's register of mortgages [Section 136 of the Ordinance];
- d) right to inspect various registers regarding members, debenture holder, etc [Section 150 of the Ordinance];
- e) right to inspect auditor's report [Section 256 of the Ordinance];

- f) right to inspect the register of transfer of shares or debentures, and [Section 76 of the Ordinance]
- g) right to inspect the books containing the minutes of proceedings of the general meeting. [Section 173(6) of the Ordinance]

**26. Right to apply to Court for rectification of register of members:**

The member or debenture holder of the company may apply to the Court for rectification of the register of members or debenture holders, where

- a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register, or
- b) default is made or un-necessary delay takes place in entering or omitting the name of a member or debenture holder. [Section 152 of the Ordinance]

**27. Right to apply for an investigation into the affairs of the company:**

The members holding at least one-tenth of the total voting powers, in the case of a company having share capital, and at least one-tenth of the company's members, in case of other companies, may make an application to the Commission, for ordering an investigation into the affairs of the company. [Section 263 of the Ordinance]

**28. Right to lodge a complaint with the Registrar for prevention of oppression and mismanagement:**

Any member or members having not less than twenty percent of the paid up capital of the company may lodge a complaint with the Registrar that the affairs of the company are being conducted or likely to be conducted in an

unlawful or fraudulent manner or in a manner not provided in memorandum or in a manner oppressive to members or prejudicial to public interest. The registrar may make an application to the Court by petition for an order. [Section 290 of the Ordinance]

### **29. Right to residual assets at the time of winding up:**

Winding up of a company refer to the process whereby all the affairs of the company are wound up, all its assets are realized, its liabilities paid off and the balance, if any, is distributed to its shareholders in proportion to their holding in the company. A liquidator is appointed who takes control of the company, collects its debts and distributes any surplus amongst the members proportionate to their shareholding. It is a basic right of the shareholders of a company to receive their share of the residual assets at the time of winding up in proportion to their holding in the company.

### **30. Right of joint shareholders:**

The joint holders have the following rights:

- a) **Participation in meetings:**  
Although the notices of general meetings are served to only senior or first named joint shareholder but the joint shareholders are individually entitled to take part in the company's general meeting
- c) **Voting and Quorum:**  
Any shareholder present at a meeting is entitled to exercise voting power and will be counted for quorum. But only one of the several joint holders will be entitled to exercise voting power. For quorum, joint shareholders will be collectively regarded as one shareholder.

Apart from these rights, the company may make its own provisions in its Articles, provided that such provisions are not repugnant to the provisions of the Ordinance.

### 31. Rights of minority shareholders:

Minority shareholders means shareholders together holding less than 20% of the equity share capital of the company. Minority shareholders are protected by the same rights, as provided under various provisions of the Ordinance and receive equitable treatment as other shareholders. In this manner, all the shareholders are able to obtain effective redress for violation of their rights.

The minority shareholders also have a right to get the company wound up by the Court if they feel that the company is conducting its business in a manner oppressive to them. [Section 305 of the Ordinance]

Under the Code of Corporate Governance, applicable to listed companies, the listed companies are voluntarily encouraged to ensure effective representation of independent non-executive directors, including those representing minority interests, on their Boards of Directors. For the purpose, the minority shareholders are also facilitated as a class to contest election of directors by proxy solicitation [Clause (i) (a) of the Code of Corporate Governance.]



## **PUBLIC CONSULTATION**

If you have any suggestions for any improvement in the legal framework or otherwise, please let us know about your opinion/comments on the following address:

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Comments can also be sent via electronic mail at the following address:

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### **DISCLAIMER**

The Guide has been published with the intention to create an awareness of the concept of the relevant matters. However, the Guide does not tell everything and the opinions or legal interpretations, contained in the booklet are circumstantial and may vary under different situations. If the reader is in doubt while dealing with any specific condition, it is recommended to refer to the Companies Ordinance, 1984 and allied laws and consult an adviser for seeking professional advice.

The background is a deep red color with a circular, pebbled texture. A large, semi-circular arc with a brushed metal finish is positioned on the left side, curving towards the center.

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