

**GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**

Islamabad, the 21st April, 2017

NOTIFICATION

S. R. O. **275** (I)/2017.- In exercise of the powers conferred by section 506 of the Companies Ordinance, 1984 (XLVII of 1984) read with clause (b) of section 43 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), the Securities and Exchange Commission of Pakistan, with the approval of the Federal Government, is pleased to direct that the following amendments shall be made in the Public Sector Companies (Corporate Governance) Rules, 2013, the same having been previously published in the official Gazette vide Notification S.R.O. 790(I)/2016, dated 23rd August 2016, namely:-

In the aforesaid Rules, -

- (1) in rule 2, in sub-rule (1), in clause (g), after the word "fifty", the word "one" shall be inserted;
- (2) after rule 2, the following new rule shall be inserted, namely: -

"2A. Criteria for sound and prudent management. - (1) For the purposes of these rules, the following shall be the criteria for sound and prudent management of a Public Sector Company, which shall be bound to comply with it at all times namely: -

- (a) the business of the Public Sector Company is carried on with integrity, objectivity, due care and the professional skills appropriate to the nature and scale of its activities;
- (b) each director and chief executive officer, by whatever name called, of the Public Sector Company complies with the fit and proper criteria specified under these rules;
- (c) the Public Sector Company is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold; and
- (d) the Public Sector Company maintains adequate accounting and other records of its business.

(2) Accounting and other records shall not be regarded as adequate for the purposes of these rules unless they are such as -

- (a) to enable the business of the Public Sector Company to be prudently managed;
- (b) to enable the Public Sector Company to comply with the obligations imposed on it by or under the Ordinance and these rules; and
- (c) comply with all professional standards and pronouncements of relevant professional bodies as applicable in Pakistan.

(3) The Public Sector Company shall not be regarded as conducting its business in a sound and prudent manner if it fails to conduct its business with due regard to the legitimate policy objectives and development targets of the Government.”;

(3) in rule 3, -

- (a) for sub-rule (2), the following shall be substituted, namely: -

“(2) The Board shall have at least one-third of its total members as independent directors. The Public Sector Company shall disclose in the annual report non-executive, executive and independent directors.”;

- (b) sub-rule (4) shall be omitted; and

- (c) in sub-rule (7), for full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely: -

“Provided that the requirement to comply with the fit and proper criteria is without prejudice to compliance with any other requirement for the fitness and propriety of directors issued under any special law, rules or regulations by a sector regulator or authority governing a specified sector.”;

(4) after rule 3, amended as aforesaid, the following new rule shall be inserted, namely: -

“3A. Term of office and removal of directors. - (1) A director, once appointed or elected under section 180 or section 178 of the Ordinance, shall hold office for a period of three years, unless he resigns or is removed in accordance with the provisions of the Ordinance.

(2) Any casual vacancy arising in the Board in the manner specified in sub-section (1) of section 180 of the Ordinance shall be filled in by the directors in accordance with sub-section (2) of section 180 of the Ordinance.

(3) A director nominated by the Government shall hold office in accordance with section 183 of the Ordinance.

(4) The removal of an elected director shall take place in accordance with section 181 of the Ordinance and the removal of a nominated director shall only take place -

- (a) if the director has not performed up to a standard, determined through a performance evaluation;
- (b) if the director is found to be in non-compliance with the provisions of the Ordinance or these rules;
- (c) if the director fails to fulfil his duties and responsibilities under these rules;
- (d) if the director fails to comply with or deliberately ignores policy directives of the Government;
- (e) for any administrative reasons such as posting, transfer, retirement, etc., the Government decides to withdraw the nomination; or
- (f) in the event of his misconduct.

Explanation. - For the purpose of this clause, misconduct includes -

- (i) indulging in a competing professional or personal conflict of interests' situation;
- (ii) using the funds, assets and resources of the Public Sector Company without due diligence and care;
- (iii) failing to treat the colleagues and the staff of the Public Sector Company with respect, or using harassment in any form of physical or verbal abuse;
- (iv) making public statements without authorization by the Board;
- (v) receiving gifts or other benefits from any sources external to the Public Sector Company offered to him in connection with his duties on the Board; or
- (vi) abusing or misusing his official position to gain undue advantage or assuming financial or other obligations in private institutions or for persons which may cause embarrassment in the performance of official duties or functions:

Provided that the notice of removal to a nominated director shall give reasons for removal of the director.”;

(5) in rule 4, -

- (a) in sub-rule (3), after the word “Ordinance” the words “and these rules” shall be inserted; and
- (b) for sub-rule (4), the following shall be substituted, namely: -

“(4) The chairman of the Board shall be elected by the Board of Directors of the Public Sector Company. However, this provision shall not apply where chairman of the Board is appointed by the Government.”;

(6) in rule 5, -

(a) for sub-rules (1) and (2), the following shall be substituted, namely: -

“(1) The directors of a Board shall be persons who, in opinion of the Government, shall assist the Public Sector Company to achieve its principal objective and the Board shall accordingly exercise its powers and carry out its fiduciary duties with a sense of objective judgment and in the best interest of the company. This provision shall apply to all directors, including *ex officio* directors.

(2) The Board shall evaluate the candidates based on the fit and proper criteria and the guidelines specified by the Commission for appointment to the position of the chief executive and recommend at least three candidates to the Government for its concurrence for appointment of one of them as chief executive of the Public Sector Company, except where the chief executive is nominated by the Government. On receiving concurrence or nomination of the Government, as the case may be, the Board shall appoint the chief executive in accordance with the provisions of the Ordinance. The Board shall also be responsible for development and succession planning of the chief executive.”; and

(b) after sub-rule (10), the following new sub-rules shall be inserted, namely:-

“(11) The Board shall ensure compliance with policy directions received from Government from time to time.

(12) The Board shall ensure compliance with the reporting requirements received from the Government within the specified time-frame, related to, including but not limited to, audit, finance, parliamentary business, performance and ancillary matters:

Provided that the Board shall nominate the company secretary or any other official at appropriate level as focal person for maintaining liaison with the Government regarding the aforesaid matters.”;

(7) in rule 8, for sub-rule (1), the following shall be substituted, namely: -

“(1) The performance evaluation of members of the Board including the chairman and the chief executive shall be undertaken annually by the Government for which the Government shall enter into performance contract with each member of the Board at the time of his appointment.”;

(8) in rule 10, -

(a) in sub-rule (1), for full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely: -

“Provided that Public Sector Companies which are listed on the exchange shall prepare half-yearly accounts within such time period and undertake limited scope review by the auditors as specified by the Commission from time to time.”; and

(b) sub-rule (2) shall be omitted;

(9) in rule 12, -

(a) in sub-rule (1), for clause (e), the following shall be substituted, namely: -

“(e) nomination committee, to identify, evaluate and recommend candidates for vacant positions, including casual vacancies, on the Board, including the candidates recommended by the Government for consideration of shareholders or in case of casual vacancy to the board of directors after examining their skills and characteristics that are needed in such candidates:

Provided that the nomination committee shall submit its proposal within thirty days of a vacancy arising or on a recommendation made by the Government as the case may be.”; and

(b) in sub-rule (2), -

(i) the words “and the majority of their members shall be independent” shall be omitted; and

(ii) the words “during the first four years of this notification” shall be omitted;

(10) in rule 13, in sub-rule (1), after the word “auditor”, occurring at the end, the expression “, by whatever name called” shall be inserted; and

(11) in the Annexure at the end, -

(a) in clause (1), -

(i) for the word “Commission”, occurring for the first time, the words “appointing authorities” shall be substituted;

(ii) in sub-clause (I), after the word “office holders”, the words “whether or not” shall be inserted; and


(b) in clause (2), -

(i) in sub-clause (c), for full stop at the end, a semi colon shall be substituted and thereafter the following new sub-clauses shall be added, namely: -

“(d) he does not conduct his duties with due diligence and skill; or

- (e) his association with the Public Sector Company is likely, for whatever reason, to be detrimental to the interest of the Public Sector Company, or be otherwise undesirable.”

[No. Sy/SECP/8/13]



(Bilal Rasul)

Secretary to the Commission