Section 7

Management
Directors

A company is an artificial person, and cannot manage itself. Companies therefore have individuals to give it leadership and direction.

This is provided by the board of directors.

Most of the powers of a company are given to its directors by the Act and company’s articles of association. Directors are collectively named as ‘board’ or ‘board of directors’ (we may use abbreviations as ‘BOD’ for board of directors)
Number and appointment of directors

- SMC shall have at least 1 director.
- Other PVT Companies shall have at least 2 directors.
- Public company other than a listed company shall have at least 3 directors.
- Listed Company shall have at least 7 directors.
- Any casual vacancy on the board of a listed company shall be filled up by the directors within 90 days.
- The names and number of first directors shall be decided by the subscribers of MoA.
- The first directors shall retire at the date of first AGM.
Election of directors – Procedure

In the first AGM, all the first directors shall retire and election shall be held to elect new directors who shall hold office of the directors for next 3 years. Company limited by guarantee may reduce the period.

Election procedure
Existing directors decide the number of directors for the next term at least 35 days before the date of meeting. Such number once fixed cannot be changed without the approval of members.

A GM of the members is called for the elections and the notice of GM includes the number of directors to be elected and the names of the retiring directors.

Every members interested in contesting the election sends the notice of his interest to the company at least 14 days before the date of meeting which can be withdraw any time before the election.

Company sends such notices to all the members and in case of a listed company it is published in one issue of a daily newspaper in English & Urdu.
Election of directors – Procedure

If the number of persons offering themselves to be elected as director is not more than the number of directors fixed for by the directors, the directors shall stand elected unopposed.

During a poll every member is entitled to cast the number of votes equal to the product of number of shares held and the number of directors to be elected, a member can give all his votes to any one contestant or he may distribute it to more than one contestant.

The person getting the highest number of votes shall be considered as a director then the second and then third until the number of directors fixed for election is reached.
Election of directors – Procedure

In case of a company not having share capital, the procedure for election of directors shall be mentioned in its AoA.

After election as a director, every director shall have equal authority and they shall not be superior or inferior on the basis of number of votes they got in election or on any other grounds.

Fresh election of directors can be held on request of substantial acquirer.

The court has got the authority to declare the directors’ election invalid on certain grounds.
Selection of independent directors

Independent director is a director who is not connected or does not have any other relationship, with company, associates, subsidiaries, holding or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any conflict of interest.

No director shall be considered independent if one or more of following exist:

- Has been employee of company, its subsidiaries or holding within last *3 years;
- Is or has been Chief Executive of the same in last *3 years
- Has, or has had within last *3 years, a material business relationship with company
- Has received remuneration in 3 years preceding his/her appointment
- Is a close relative of the company’s promoters,
- Holds cross-directorships
- Has served on board for more than *3 consecutive terms,
- Person nominated as a director or representing special interest

- In case of public sector company period is 2 year than 3 years
Eligibility to act as director

No person shall be appointed as a director of a company if he:

- is a **minor**;
- is of **unsound mind**;
- is an **insolvent**;
- has been **convicted by a court of law**
- has been **debarred from holding such office** under this Act;
- has **betrayed lack of fiduciary behavior** and a declaration to this effect has been made by the Court at any time during the preceding **5 years**;
- does not hold the **NTN** as per the Income Tax Ordinance, 2001;
- is not a member however this ineligibility shall not apply in the case of
  - a person **representing** a member who is not a natural person;
  - a whole-time director who is an **employee** of the company;
- a chief **executive**; or
- a person representing a **creditor**;
- declared as **defaulter in repayment of loan** – **(only listed company)**,
- is engaged in the **business of brokerage**, **(only listed company)**
Vacations of office by directors

Resignation
Directors are appointed for a term of three years, however they may earlier resign from the office and casual vacancy shall be filled by the remaining directors.

Removal
Director may be removed from the office by the members of the company by passing a resolution in their meeting. No director has power to remove any other director from office.

Vacation by contravention
A director shall be treated to have vacated the office if he becomes subject to any of the ineligibilities as discussed above or he absents himself from 3 consecutive meetings of the board without seeking leave of absence.
Powers of directors

Directors are overall managers of the company's business they are empowered to take a lot of decisions in the interest of the company. Directors shall exercise the following powers by ‘passing a resolution’ in board meeting:

- To issue shares, debentures etc.
- To make loans etc. in case of banking companies etc.
- To approve annual and periodical accounts and to approve bonus for employees
- To incur capital expenditure exceeding Rs. 1 million or to sell/dispose of assets having book value exceeding Rs. 100,000.
- To undertake leasing obligation exceeding Rs. 1 million rupees.
- To take over a company or acquire a controlling or substantial stake in another
- To declare interim dividend
- To authorize any of the following for entering into transactions with the company Director of the company
  - Partnership firm in which director of the company is a partner.
  - Private Company in which director of the company is a director.
  - If the amount is material as per generally accepted accounting principles.
- To write off bad debts
- To write of inventories and other assets
- To determine the terms and circumstances on which a law suit may be compromised or a claim in favor of company be vanished or reduced.
- Any other specified matter
Duties of directors

- Act in accordance with the AoA.
- Act in good faith in order to promote the objects of the company for the benefit of its members, its employees, shareholders, community and for the protection of environment.
- Discharge his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- Shall not involve in a situation in which he may have a direct or indirect interest that conflicts, with the interest of the company.
- Shall not achieve any undue gain either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- Shall not assign his office and any assignment so made shall be void.
Loans to directors

The company is not allowed, without approval by members through resolution, additionally approval of SECP is also required in case of a listed company, to provide any of these financial facilities to: a director of the company, a director of the holding company or any of their relatives (spouse and minor children);

Provide guarantee or security in connection with a loan made by any person to such a director; or to any of his relatives;

Exceptions The above restrictions do not apply to a company which in the ordinary course of its business provides loans or gives guarantees for the due repayment of any loan.
Quorum and frequency of meeting

• The quorum for a meeting of directors of a listed company will not be less than 1/3rd of their number or 4, whichever is greater and the participation of the directors by VC etc. shall also be counted.

• Quorum for other than listed company shall be as provided in the articles.

• If there are not enough directors to form a quorum to fill a casual vacancy, all the remaining directors shall be deemed to constitute a quorum for this limited purpose.

• The directors of a public company are required to meet at least once in each quarter of a year.

Passing of resolution by the directors through circulation

• A resolution in writing signed by all the directors/committee of directors for the time being entitled to receive notice of a meeting shall be as valid and effectual as if it had been passed at a meeting of directors/committee duly convened and held.

• Before passing it, the resolution should be circulated with necessary papers to all directors.

• Such resolution shall be noted at a subsequent meeting of board/committee and made part of the minutes of such meeting.

• Directors’ agreement to a written resolution, passed by circulation, once signified, may not be revoked.
Limitations of directors

Prohibition regarding making of political contributions and distribution of gifts
A company is not allowed to contribute any amount—
  • to any political party; or for any political purpose to any individual or body.

A company is also not allowed to distribute gifts to its members in its meeting.

Restriction on director’s remuneration, etc.
The remuneration of a director for performing extra services is determined by the directors or the company in general meeting as per AoA.
The remuneration to be paid to any director for attending the meetings of the directors shall not exceed the scale approved by the company.

Restriction on non-cash transactions involving directors
Unless prior approval is accorded in the of general meeting, no company shall enter into an arrangement by which
  • A director of company or person connected with him acquires assets for consideration other than cash, from the company; or
  • Company acquires assets for consideration other than cash, from such director or person so connected;

Notice for approval of resolution shall include the particulars of arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Restriction on cash transactions involving directors
The company shall ensure that all cash transactions with its directors are conducted only through banking channels.
Disclosure of directors’ interest

Why to disclose interest or concern

As the directors are agents of the members and they are in a fiduciary relationship, so they are required to make all contracts and all transactions in good faith and in the best interest of the company.

Hence if they make any transaction or contract on behalf of the company in which they are themselves interested by any means, they should give a complete disclosure of the fact so that their integrity is not questioned.

There must not be any conflict of interest between the company and the directors.
Chief executive

Definition:
Chief Executive [Section 2(14)] "Chief executive", in relation to a company means an individual who subject to the control and directions of the directors, is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of the company, and includes a director or any other person occupying the position of a chief executive, by whatever name called, and whether under a contract of service or otherwise;
Chairman

Board of a listed company shall within 14 days from date of election of directors, appoint a chairman from among the non-executive directors.

The chairman shall be responsible for leadership of board and ensure that the board plays an effective role in fulfilling its responsibilities.

Chairman shall hold office for 3 years unless he earlier resigns, becomes ineligible or disqualified under any provision of this Act or removed by the directors
Sole purchase, sale or distribution agent

No company (incorporated in Pakistan or outside) which is carrying on business in Pakistan shall, without the approval of Commission, appoint any sole purchase, sale or distribution agent.

Exception to this rule
Company incorporated, or person ordinarily residing, outside Pakistan are not required.
Company secretary

The Act requires the appointment of a qualified company secretary for public companies.

He shall be an employee of the company and his responsibilities include making sure that company complies with all relevant corporate requirements.
Share registrar

Listed companies are further required to appoint independent share registrar to handle the transfer of shares and all other obligations of the company as an issuer towards shareholder.

In case of listed companies all applications for transfer of shares are directed to the share registrar instead of company.

The name of share registrar of the company is mentioned in the notice of general meetings as well.