

Chapter 3

Board of Directors



This is the most important part of the book and contains, in topic-wise fashion, relevant sections/clauses of the Companies Ordinance 1984, Banking Companies Ordinance 1962, circulars/directives issued and amended by the State Bank of Pakistan and Code of Corporate Governance issued by Securities & Exchange Commission of Pakistan.

3.1 Qualification & Eligibility to Act As A Director

SBP Directives

BSD Cir Let 1 (1/1/02)

**Prior Clearance of State Bank for Appointment of Chairman/President/
Managing Director/Chief Executive -Member BOD of Banks/DFIs**

*1 No person can become Director/Nominee-Director of a bank/NBFI if he falls within one or more categories mentioned below.

1a. Persons who are holding substantial interest (i.e. not less than 20% of the shares) or are working as Chairman, Director, Chief Executive, Chief Financial Officer, Chief Internal Auditor, Research Analyst or Trader (by whatever name/designation called) of a: (i) Money changer (firm or sole proprietorship), (ii) Member of a Stock Exchange, (iii) Corporate Brokerage House, (iv) Any company/entity owned and controlled by the persons mentioned at (i) to (iii) above.

1b. Persons who are acting as consultants, advisers of bank/NBFI in which they intend to be directors.

2. Notwithstanding anything stated above, anyone can become a Director of Bank/NBFI if s/he has a minimum holding of 10% or above in the Bank/NBFI where s/he intends to become a Director/Nominee Director, subject to the approval of State Bank of Pakistan.

3. Banks/NBFIs having directors on their boards who do not fulfill the prescribed criteria [were] asked to regularize their position by 31st July, 2002.

* For reference see BPD Circular 15 (29/06/02)

SBP Directives

BPD Cir 35 (30/11/02)

**Fit and Proper Test For Appointment of President/
Chief Executive and Board of Directors**



In order to promote good corporate governance and to encourage President/Chief Executive and Board of Directors to play an effective role for the capacity building of their institution, certain guidelines under "Fit & Proper Test" have been formulated separately for the appointment of President/Chief Executive and filling of the vacancy of Director on the Board vide BPD Circular No. 16 dated 29th June, 2002 and Circular Letter No. 27 dated 14th October, 2002. Subsequent to that, few changes/amendments were made in "Fit & Proper Test" to make it more comprehensive. In order to consolidate such instructions, the aforesaid Circular and Circular Letter has accordingly been substituted.

2. While applying to SBP for obtaining prior clearance in terms of BPRD Circular No. 12 dated 2nd June 2000, the financial institution shall ensure that guidelines now given under the revised "Fit & Proper Test" have been complied with. In addition to submission of requisite information about appointment of proposed President/Chief Executive and Directors of Board, information in a simple proforma (enclosed at Annexure-I) shall also be provided by the bank/DFI.

3. Accordingly, BPD Circular No. 16 dated 29th June 2002 and BPD Circular Letter No. 27 dated 14th October 2002 shall now stand cancelled.

FIT & PROPER TEST

INTEGRITY, HONESTY AND REPUTATION

It is ensured that the person getting SBP's approval for the post of Director/CEO:

Has not been convicted in any criminal offence, involved in any fraud/forgery, financial crime etc.

Has not been subject to any adverse findings or any settlement in civil/criminal proceedings particularly with regard to investments, financial/business, misconduct, fraud, formation or management of a corporate body etc.

Has not contravened any of the requirements and standards of regulatory system or the equivalent standards of requirements of other regulatory authorities.

Has not been involved with a company or firm or other organization that has been refused registration/license to carry out trade, business etc.



Has not been involved with a company/firm whose registration/license has been revoked or cancelled or gone into liquidation.

Has not been debarred for being Chief Executive, Chairman or Director of a company.

2. EXPERIENCE & MANAGEMENT

This section shall apply separately for Directors and Presidents/Chief Executives as under: -

For Directors on the Board of Bank/DFI

Must have management/business experience of at least 5 years at senior level in an active capacity. In case of lawyers, 7 years experience is required, provided that they are not practicing/involved with any bank(s) or acting as legal counsel/adviser or on payroll of a bank.

Must have knowledge of or be familiar with the banking field.

Minimum qualification is graduation. Higher education in the discipline of banking and finance may be an added qualification. However, this condition shall not be applicable on the existing director of the boards of the bank/DFI.

For Presidents/Chief Executive Officers of Bank/DFI

Must be a career banker having experience of at least 15 years, including minimum of 3 years at senior level viz. SEVP or equivalent i.e. Group Head or Functional/Business Line Head at Head Office of banks incorporated in Pakistan or at Country Office for foreign banks.

Minimum qualification is graduation. Higher professional education in the disciplines of banking, finance, economics and related fields may be an added qualification. This condition shall not, however, be applicable to those who have/are already working as President/Chief Executive of the bank/DFI.

Relaxation in number of years of overall experience can be considered in case of experience as President/CEO of financial institutions other than banking institutions, for a period of not less than three years with a proven track record.

3. TRACK RECORD



The person must have an impeccable track record in the companies he/she has served either in the capacity of an employee or director/chief executive or as chairman.

Has not been terminated or dismissed in the capacity of employee, director/chairman of a company.

4. SOLVENCY & FINANCIAL INTEGRITY

Has not been associated with any illegal activity especially relating to banking business.

Has not been in default of payment of dues owed to any financial institution and/or default in payment of any taxes individual capacity or as proprietary concern or any partnership firm or in any private unlisted and listed company.

Has sufficient means to discharge his/her financial obligations.

5. CONFLICT OF INTEREST

Is not a director of any other financial institution. The term financial institution will include any bank, investment finance company, non-banking finance company, venture capital company, housing finance company, leasing company or Modaraba Company.

The conflict of interest shall not apply in case of:-

a. Directors nominated by the Government. b. Managing Directors and other nominated officials of National Investment Trust (NIT) and Investment Corporation of Pakistan (ICP) till the privatization of these two financial institutions. c. Nominees of foreign and local investors, provided that they are appointed on the boards of dissimilar financial institutions. For the sake of clarity, the term "dissimilar" implies as an example, that one person appointed as director on the board of an investment bank may not again be appointed in any other investment bank.

SBP Directives

.....**BPD Cir Letter No. 10 (18/03/03)**

According to circular referred above, BPD Circular No. 35 dated 30-11-2002 alongwith its enclosures which was issued to all banks/DFIs, it has been decided that the criteria laid down therein for the appointment of Chief Executive shall



henceforth be equally applicable to the Country Heads of the foreign banks operating in Pakistan.

SECP's Code

Para iii to v

Qualification and Eligibility to Act as a Director

- iii) No listed company shall have as a director, a person who is serving as a director of ten other listed companies.
- iv) No person shall be elected or nominated as a director of a listed company if:
 - a) his name is not borne on the register of National Tax Payers except where such person is a non-resident; and
 - b) he has been convicted by a court of competent jurisdiction as a defaulter in payment of any loan to a banking company, a Development Financial Institution or a Non-Banking Financial Institution or he, being a member of a stock exchange, has been declared as a defaulter by such the stock exchange; and
- v) A listed company shall endeavor that no person is elected or nominated as a director if he or his spouse is engaged in the business of stock brokerage (unless specifically exempted by the Securities and Exchange Commission of Pakistan).

3.2 Election of New Director

BCO 1962

Section 15

Election of new directors

- 1) The State Bank may, by order, require any banking company to call a general meeting of the shareholders of the company within such time, not less than two months from the date of the order, as may be specified therein or within such further time as the State Bank may allow in this behalf, to elect in accordance with the voting rights permissible under this Ordinance fresh directors, and the banking company shall be bound to comply with the order.



(2) Every director elected under sub-section (1) shall hold office until the date up to which his predecessor would have held office, if the election had not been held.

(3) Any election duly held under this section shall not be called in question in any court.

CO 1984

Section 178, 179

178. Procedure for election of directors:

(1) The directors of a company shall, subject to section 174, fix the number of elected directors of the company not later than thirty-five days before the convening of the general meeting at which directors are to be elected, and the number so fixed shall not be changed except with the prior approval of a general meeting of the company.

(2) The notice of the meeting at which directors are proposed to be elected shall among other matters, expressly state –

- (a) the number of elected directors fixed under sub-section (1); and
- (b) the names of the retiring directors.

(3) Any person who seeks to contest an election to the office of director shall, whether he is a retiring director or otherwise, file with the company, not later than fourteen days before the date of the meeting at which elections are to be held, a notice of his intention to offer himself for election as a director:

Provided that any such person may, at any time before the holding of election, withdraw such notice.

(4) All notices received by the company in pursuance of sub-section (3) shall be transmitted to the members not later than seven days before the date of the meeting, in the manner provided for sending of a notice of general meeting in the normal manner or in the case of a listed company by publication at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which its securities are listed is situate.

(5) The directors of a company having a share capital shall, unless the number of persons who offer themselves to be elected is not more than the number of



directors fixed under sub-section (1), be elected by the members of the company in general meeting in the following manner, namely: -

- (a) a member shall have such number of votes as is equal to the product of the number of voting shares or securities held by him and the number of directors to be elected;
- (b) a member may give all his votes to a single candidate or divide them between more than one of the candidates in such manner as he may choose; and
- (c) the candidate who gets the highest number of votes shall be declared elected as director and then the candidate who gets the next highest number of votes shall be so declared and so on until the total number of directors to be elected has been so elected.

179. Circumstances in which election of directors may be declared invalid:

The Court may, on the application of members holding not less than twenty per cent of the voting power in the company, made within thirty days of the date of election, declare election of all directors or any one or more of them invalid if it is satisfied that there has been material irregularity in the holding of the elections and matters incidental or relating thereto.

3.3 Appointment of Directors by SBP

BCO 1962

Section 15A

Appointment of director by the State Bank:

Notwithstanding anything contained in the Companies Act, 1913 (VII of 1913), or in the memorandum or articles of association of any banking company, the State Bank may appoint not more than one person to be a director of a banking company, whether or not he holds any qualification shares.

3.4 Consent to act as Director

CO 1984

Section 184



Consent to act as director to be filed with registrar

(1) No person shall be appointed or nominated a director or chief executive of a company or represent as holding such office, nor shall any person describe or name any other person as a director or proposed director or chief executive or proposed chief executive of any company, unless such person or such other person has given his consent in writing to such appointment or nomination and that consent has been filed by the company with the registrar before such appointment or nomination or being described or named as a director or proposed director or chief executive or proposed chief executive of the company, as the case may be.

(2) Within seven days of the issue of certificate of incorporation of a company, the subscribers to the memorandum of association shall file with the registrar a list of persons who have consented to act as directors of the company along with their consent to do so.

(3) This section shall not apply to a private company, not being a private company which is a subsidiary of a public company

3.5 Tenure of Director

BCO 1962

Section 15B

Restriction on term of office of directors:

1) A director of a banking company, not being its chief executive, by whatever name called, or a director nominated under section 15A, shall not hold office for more than six consecutive years.

Explanation.—In computing the period of six consecutive years for the purpose of this sub-section, any break of less than three years in the continuity of office shall be disregarded.

(2) A director of a banking company vacating office in pursuance of sub-section (1) shall not be eligible for re-election as a director of that banking company unless a period of three years has elapsed since the date on which he so vacated his office:



Provided that a director who has to so vacate his office may continue in his office for a period of not more than six months from the commencement of the Banking Companies (Amendment) Act, 1972, or until a new director is elected or co-opted in his place whichever is earlier.

SECP'S CODE

Para vi

The tenure of office of Directors shall be three years. Any casual vacancy in the Board of Directors of a listed company shall be filled up by the directors within 30 days thereof.

3.6 RESPONSIBILITIES & POWERS OF THE BOD

SBP Directives

BSD Cir 15 (13/6/02)

Prudential Regulation No. XXIX – Responsibilities of Board of Directors

The State Bank attaches a great importance to effective corporate governance, clear lines of responsibility, elaborate mechanism of accountability, and existence of proper checks and balances in each bank/financial institution. The corporate governance means the way in which business and affairs of each institution is directed and managed by their 'Board of Directors' and the 'Management'. To promote safe and sound banking practices, it is imperative that the 'Board of Directors' assumes its role independent of the influence of the Management. Members of the Board should know their responsibilities and powers in clear terms. Further, it should be ensured that the Board of Directors focus on policy making and general direction, oversight and supervision of the affairs and business of the bank/DFI and does not play any role in the day-to-day operations, as that is the role of the 'Management'.

2) In order to improve the prevailing corporate governance and to make the Board of Directors of banks/DFIs more effective, the following guidelines are being issued:

- i) The Board shall approve and monitor the objectives, strategies and overall business plans of the institution and shall oversee that the affairs of the institution are carried out prudently within the framework of existing laws and regulations and high business ethics.



ii) All the members of the Board should undertake and fulfill their duties and responsibilities keeping in view their legal obligations under all the applicable laws and regulations.

iii) The Board shall clearly define the authorities and key responsibilities of both the Directors and the Senior Management without delegating its policymaking powers to the Management and shall ensure that the Management is in the hands of qualified personnel.

iv) The Board shall approve and ensure implementation of policies, including but not limited to, in areas of Internal Audit & Control, Compliance, Risk Management, Human Resources, Credit, Write-offs, Recovery, Rescheduling/Restructuring of debt, Treasury Management, Investments, Acquisition/Disposal of fixed assets, Donations/Charities, Prevention of Frauds & Forgeries and any other operational area which the 'Board' and/or the 'Management' may deem appropriate from time to time. The Board shall also be responsible to review and update existing policies periodically and whenever circumstances justify.

v) The markets are ever-changing and so are their requirements. The Board, therefore, is required to ensure existence of an effective 'Management Information System' to remain fully informed of the activities, operating performance and financial condition of the institution, the environment in which it operates, the various risks it is exposed to and to evaluate performance of the Management at regular intervals.

vi) The Board should meet frequently (preferably on monthly basis, but in any event, not less than once every quarter) and the individual directors of an institution should attend at least half of the meetings held in a financial year. The Board should ensure that it receives sufficient information from management on the agenda items well in advance of each meeting to enable it to effectively participate in and contribute to each meeting. The Board should carry out its responsibilities in such a way that the external auditors and supervisors can see and form judgment on the quality of Board's work and its contributions through proper and detailed minutes of the deliberations held and decisions taken during the Board meetings.

vii) To share the load of activities, the Board may form specialized committees with well-defined objectives, authorities and tenure. These committees, preferably comprising of 'Non-Executive' board members,



shall oversee areas like audit, risk management, recruitment, compensation, credit, etc without indulging in day-to-day operations in these areas. These committees should apprise the full board of their activities and achievements on regular basis.

viii) The Board should ensure that it receives management letter from the external auditors without delay. It should also be ensured that appropriate action is taken in consultation with the Audit Committee of the Board to deal with control or other weaknesses identified in the management letter. A copy of that letter should be submitted to the SBP so that it can monitor follow-up actions.

3) The above guidelines are being issued under the powers vested in the State Bank of Pakistan under the Banking Companies Ordinance, 1962 and are required to be followed by banks incorporated in Pakistan and DFIs. **They will also follow the 'Code of Corporate Governance' issued by the SECP (enclosed at Annexure II) so long as any provision thereof does not conflict with any provision of the Banking Companies Ordinance, 1962, Prudential Regulations and the instructions/guidelines issued by the State Bank.**

4) The branches of foreign banks operating in Pakistan shall intimate to the State Bank, within 30 days from the date of receipt of this Circular, regarding any similar measures taken or policies introduced by their Head Offices with regard to above guidelines. They are required to adhere to these guidelines wherever feasible and applicable. However, they need not necessarily seek approval of their Board of Directors, as stipulated above in the case of local banks/DFIs.

5) All banks/DFIs incorporated in Pakistan are required to place this Circular before their Board of Directors for meticulous compliance and send a written confirmation, within 30 days of receipt of this circular, signed by each board member signifying their understanding of these guidelines.

SECP'S CODE

Para vii, ix

RESPONSIBILITIES, POWERS AND FUNCTIONS OF BOARD OF DIRECTORS

The directors of listed companies shall exercise their powers and carry out their fiduciary duties with a sense of objective judgment and independence in the best interests of the listed company.

Every listed company shall ensure that:



- a. 'Statement of Ethics and Business Practices' is prepared and circulated annually by its Board of Directors to establish a standard of conduct for directors and employees, which Statement shall be signed by each director and employee in acknowledgement of his understanding and acceptance of the standard of conduct;
- b. the Board of Directors adopt a vision/ mission statement and overall corporate strategy for the listed company and also formulate significant policies, having regard to the level of materiality, as may be determined it;

Explanation: Significant policies for this purpose may include:

- ~~///~~ Risk management;
- ~~///~~ Human resource management including preparation of a succession plan;
- ~~///~~ Procurement of goods and services;
- ~~///~~ Marketing;
- ~~///~~ Determination of terms of credit and discount to customers;
- ~~///~~ Write-off of bad/ doubtful debts, advances and receivables;
- ~~///~~ Acquisition/ disposal of fixed assets;
- ~~///~~ Investments;
- ~~///~~ Borrowing of moneys and the amount in excess of which borrowings shall be sanctioned/ ratified by a general meeting of shareholders;
- ~~///~~ Donations, charities, contributions and other payments of a similar nature;
- ~~///~~ Determination and delegation of financial powers;
- ~~///~~ Transactions or contracts with associated companies and related parties; and
- ~~///~~ Health, safety and environment

A complete record of particulars of the above-mentioned policies along with the dates on which they were approved or amended by the Board of Directors shall be maintained.

The Board of Directors shall define the level of materiality, keeping in view the specific circumstances of the company and the recommendations of any technical or executive sub-committee of the Board that may be set up for the purpose.

- c. the Board of Directors establish a system of sound internal control, which is effectively implemented at all levels within the company;



- d. the following powers are exercised by the Board of Directors on behalf of the company and decisions on material transactions or significant matters are documented by a resolution passed at a meeting of the Board:
- ?? Investment and disinvestment of funds where the maturity period of such investments is six months or more, except in the case of banking companies, trusts, mutual funds and insurance companies;
 - ?? Determination of the nature of loans and advances made by the company and fixing a monetary limit thereof;
 - ?? Write-off of bad debts, advances and receivables and determination of a reasonable provision for doubtful debts;
 - ?? Write-off of inventories and other assets; and
 - ?? Determination of the terms of and the circumstances in which a law suit may be compromised and a claim/ right in favour of the company may be waived, released, extinguished or relinquished;
- e. Appointment, remuneration and terms and conditions of employment of the Chief Executive Officer (CEO) and other executive directors of the listed company are determined and approved by the Board of Directors; and
- f. in the case of a modaraba or a Non-Banking Financial Institution, whose main business is investment in listed securities, the Board of Directors approve and adopt an investment policy, which is stated in each annual report of the modaraba/ Non-Banking Financial Institution.

Explanation: The investment policy shall inter alia state:

that the modaraba/ Non-Banking Financial Institution shall not invest in a connected person, as defined in the Asset Management Companies Rules, 1995, and shall provide a list of all such connected persons;

?? that the modaraba/ Non-Banking Financial Institution shall not invest in shares of unlisted companies; and

?? the criteria for investment in listed securities.

The Net Asset Value of each modaraba/ Non-Banking Financial Institution shall be provided for publication on a monthly basis to the stock exchange on which its shares/ certificates are listed.



IX The Chairman of a listed company shall preferably be elected from among the non-executive directors of the listed company. The Board of Directors shall clearly define the respective roles and responsibilities of the Chairman and Chief Executive, whether or not these offices are held by separate individuals or the same individual.

3.7 Powers of Directors

CO 1984

Section 196

(1) The business of a company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not by this Ordinance, or by the articles, or by a special resolution, required to be exercised by the company in general meeting.

(2) The directors of a company shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely: -

- (a) to make calls on shareholders in respect of moneys unpaid on their shares;
- (b) to issue shares;
- (c) to issue debenture or any instrument in the nature of redeemable capital;
- (d) to borrow moneys otherwise than on debentures;
- (e) to invest the funds of the company;
- (f) to make loans;
- (g) to authorize a director of the firm of which he is a partner or any partner of such firm or a private company of which he is a member or director to enter into any contract with the company for making sale, purchase or supply of goods or rendering services with the company;
- (h) to approve annual or half yearly or other periodical accounts as are required to be circulated to the members;
- (i) to approve bonus to employees; and
- (j) to incur capital expenditure exceeding twenty thousand rupees on any single item or dispose of a fixed asset of the value exceeding ten thousand rupees:

Provided that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of moneys



on deposit by a banking company with another banking company on such conditions as the directors may prescribe, shall not be deemed to be a borrowing of moneys or, as the case may be, a making of loans by a banking company within the meaning of this section.

(3) The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, do any of the following things, namely: -

- (a) sell, lease or otherwise dispose of the undertakings or a sizable part thereof, unless the main business of the company comprises of such selling or leasing; and
- (b) remit, give any relief or give extension of time for the repayment of any debt outstanding against any person specified sub-section (1) of section 195.

(4) Whosoever contravenes any provision of this section shall be punishable with a fine which may extend to five thousand rupees and shall be individually and severally liable for losses or damages arising out of action.

3.8 Executive Directors

SBP Directives

BSD Circular 15 (29/08/1992)

Prudential Regulation IX – MANAGEMENT

No member of the Board of Directors of banking company holding 5 per cent or more of the paid-up capital of the banking company either individually or in concert with family members or concerns/companies in which he/she has the controlling interest, shall be appointed in the bank in any capacity save as the Chief Executive of the Bank (which should not exceed one in any case) and that no payment shall be made or perquisites provided to any such directors other than traveling and daily allowances for attending meetings of the Board of Directors or its Committees. Provided further that not more than 25% of the total directors can be paid executives of the bank.

SECP'S CODE

Para I (c)

Executive directors, i.e. working or whole time directors, are not more than 75% of the elected directors including the Chief Executive: Provided that in special



circumstances, this condition may be relaxed by the Securities and Exchange Commission of Pakistan.

Provided further that nothing contained in this clause shall apply to banking companies, which are required by Prudential Regulation No.9 for Banks to have not more than 25% of the directors as paid executives of the banks.

3.9 Nominee Directors

CO 1984

Section 182, 183

182. Creditors may nominate directors:

In addition to the directors elected or deemed to have been elected by shareholders, a company may have directors nominated by the company's creditors, or other special interests by virtue of contractual arrangements.

183. Certain provisions not to apply to directors representing special interests:

Nothing in section 178, section 180 or section 181 shall apply to –

- (a) directors nominated by the Pakistan Industrial Credit and Investment Corporation Limited or by a corporation or company formed under any law in force and owned or controlled, whether directly or indirectly, by the Federal Government or a Provincial Government on the board of directors of a company in or to which the said Corporation or such corporation or company has made investment or otherwise extended credit facilities;
- (b) directors nominated by the Federal Government or a Provincial Government on the board of directors of the company; or
- (c) directors nominated by foreign equity holders on the board of the Pakistan Industrial Credit and Investment Corporation Limited, or of any other company set up under a regional co-operation or other co-operation arrangement approved by the Federal Government:

Provided that, where a director referred to in clause (a), (b) or (c) is nominated, such number of the votes computed in the manner laid down in sub-section (5) of section 178 as is equal to the minimum number of votes which would have been



sufficient to elect such director if he had offered himself for election shall stand excluded from the total number of votes otherwise available at an election of the directors to the authority or person nominating him:

Provided further that a director nominated under this section shall hold office during the pleasure of the corporation, company, Government. or authority which nominates him.

SBP Directives

BSD Cir 30 (22/8/01)

**Treatment of Nominee Directors Represented on The Boards
of Public Sector Enterprises / Autonomous Bodies**

As you would be aware, Directors nominated by the Government on the board of Public Sector Enterprises (PSE) do not represent any beneficial interest in such entities and as such their position on the boards is distinct from those represented on the boards of entities by virtue of majority shareholdings. These persons are placed on the boards by the Government owing to their professional competence, experience and qualifications.

A person represented as a nominee director in any PSE may as well be represented on the board of other private corporate entities. Banks / NBFIs while furnishing CIB data in respect of their borrowers to the State Bank of Pakistan however, do not make any distinction between these two classes of directorship. In case the PSE is in default, commercial interest of nominee directors are affected as banks / NBFIs are reluctant to extend further financing to all such concerns because of default of the PSE. This situation has resulted in reluctance of competent, qualified and experienced persons to accept their nomination as directors on the boards of PSEs.

In order to redress this situation, it has been decided that private sector directors nominated on the boards of PSE's will not be treated as defaulters on the basis of any overdue/default of the PSE reported to CIB. However, any overdue/default in a private sector company on which the said director is an elected director, shall continue to be governed under the existing rules. Henceforth banks / NBFIs may while furnishing data to the Credit Information Bureau (CIB) in respect of PSEs should also separately indicate the type of directors (elected or nominee). A revised format of database file structure of permanent data (CIB- 1) is enclosed. This will facilitate consideration of financing facilities by banks/NBFIs to the other companies of the nominee directors.



3.10 Independent Directors

SECP'S CODE

Para I (a, b)

All listed companies shall encourage effective representation of independent non-executive directors, including those representing minority interests, on their Boards of Directors so that the Board as a group includes core competencies considered relevant in the context of each listed company. For the purpose, listed companies may take necessary steps such that:

- a) minority shareholders as a class are facilitated to contest election of directors by proxy solicitation, for which purpose the listed companies may: annex to the notice of general meeting at which directors are to be elected, a statement by a candidate(s) from among the minority shareholders who seeks to contest election to the Board of Directors, which statement may include a profile of the candidate(s); provide information regarding shareholding structure and copies of register of members to the candidate(s) representing minority shareholders; and on a request by the candidate(s) representing minority shareholders and at the cost of the company, annex to the notice of general meeting at which directors are to be elected an additional copy of proxy form duly filled in by such candidate(s) and transmit the same to all shareholders in terms of section 178 (4) of the Companies Ordinance, 1984;
- b) the Board of Directors of each listed company includes at least one independent director representing institutional equity interest of a banking company, Development Financial Institution, Non-Banking Financial Institution (including a modaraba, leasing company or investment bank), mutual fund or insurance company; and

[Explanation: For the purpose of this clause, the expression "independent director" means a director who is not connected with the listed company or its promoters or directors on the basis of family relationship and who does not have any other relationship, whether pecuniary or otherwise, with the listed company, its associated companies, directors, executives or related parties. The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent business judgment without being subservient to any apparent form of interference.



Any person nominated as a director under sections 182 and 183 of the Companies Ordinance, 1984 shall not be taken to be an "independent director" for the above-said purposes. The independent director representing an institutional investor shall be selected by such investor through a resolution of its Board of Directors and the policy with regard to selection of such person for election on the Board of Directors of the investee company shall be disclosed in the Directors' Report of the investor company.]

3.11 Independence of BOD

SBP Directives

BSD Cir Letter 32 (23/11/01)

Management – Board of Directors

It has been noted that as a matter of practice some of the banks have 50% of their sponsor directors from the same family on the board of the bank. With the passage of time it has been observed that sometimes the key investors puts four of his family members as directors while raising the total number of Directors to eight by including the Chief Executive or some technical person on the board and thus takes control of the bank's management. In this way the bank becomes one man show which is not only against the interest of depositors but also detrimental to the financial institution itself.

2. Keeping the above in view it has now been decided to discontinue this practice & reduce the existing number of directors of the same family on the board of all banks as well as NBFIs from 50% to 25%. The term family member has already been defined in Section 5(ff) of the Banking Companies Ordinance, 1962.

3.12 Minimum Number of Directors

CO 1984

Section 174

Minimum number of directors of company:

Every listed company shall have not less than seven directors to be elected in a general meeting in the manner provided in this Ordinance.



3.13 Prohibition of Common Director

BCO 1962

Section 20

Prohibition of common directors:

1) Except with the permission of the State Bank, no banking company incorporated in Pakistan shall have as a director any person who is a director—

- (i) of any other banking company; or
- (ii) of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of the banking company.

(IA) No banking company incorporated in Pakistan shall have as a director any person who is—

- (a) a Federal Minister, a Minister of State or a Provincial Minister; or
- (b) a person in the service of Pakistan who is not appointed or nominated by Government as a director by virtue of his office.

(2) If immediately before the commencement of this Ordinance any person holding office as a director of a banking company is also a director of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of the banking company he shall, within such period from such commencement as the State Bank may specify in this behalf—

- (a) either resign his office as a director of the banking company; or
 - (b) choose such number of companies as among themselves are not entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholder of the banking companies as companies in which he wishes to continue to hold the office of a director and resign his office as a director in the other companies.
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3.14 Orientation Course

SECP's Code

Para xiv

All listed companies shall make appropriate arrangements to carry out orientation courses for their directors to acquaint them with their duties and responsibilities and enable them to manage the affairs of the listed companies on behalf of shareholders.

3.15 Meetings of BOD

SBP Directives

BSD Cir 15 (13/6/02)

Para 2 Sub-Para vi: The Board should meet frequently (preferably on monthly basis, but in any event, not less than once every quarter) and the individual directors of an institution should attend at least half of the meetings held in a financial year. The Board should ensure that it receives sufficient information from management on the agenda items well in advance of each meeting to enable it to effectively participate in and contribute to each meeting. The Board should carry out its responsibilities in such a way that the external auditors and supervisors can see and form judgment on the quality of Board's work and its contributions through proper and detailed minutes of the deliberations held and decisions taken during the Board meetings.

BPRD Cir 5 (21/1/98)

SBP has noticed that some Pakistani Banks have been holding meeting of their boards of Directors outside the country. This tendency on the part of banks leads to wastage of resources without any benefit to depositors/customers.

All Pakistani scheduled banks/NIBFIs incorporated in Pakistan are, therefore, directed that they should not ordinarily hold their Boards of Directors meeting abroad. In case it is considered necessary to hold meeting abroad for certain valid reasons, prior approval from the State bank of Pakistan should invariably be obtained.

SECP's Code

Para X, XI

The Chairman of a listed company, if present, shall preside over meetings of the Board of Directors.



The Board of Directors of a listed company shall meet at least once in every quarter of the financial year. Written notices (including agenda) of meetings shall be circulated not less than seven days before the meetings, except in the case of emergency meetings, where the notice period may be reduced or waived.

3.16 Minutes of Meetings

CO 1984

Section 173

Minutes of proceedings of general meetings and directors:

- (1) Every company shall cause a fair and accurate summary of the minutes of all proceedings of general meetings and meetings of its directors and committee of directors, along with the names of those participating in such meetings, to be entered in properly maintained books.
- (2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.
- (3) Until the contrary is proved, every general meeting of the company or meeting of directors or committee of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had there at to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.
- (4) The book containing the minutes of proceedings of the general meetings of a company and those of the meetings of the directors and committee of directors shall be kept at the registered office of the company.
- (5) In the event of failure to comply with the provisions of sub-section (1) or sub-section (4), the company and every officer of the company who is knowingly in default shall be liable to a fine which may extend to five thousand rupees and to a further fine which may extend to one hundred rupees for every day after the first day during which the failure continues.
- (6) The books containing the minutes of proceedings of the general meetings shall be open to inspection by members without charge during business hours, subject to such reasonable restrictions as the company may by its articles or in



general meeting impose so that not less than two hours in each day be allowed for inspection.

(7) Any member shall at any time after seven days from the meeting be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a certified copy of the minutes of any general meeting at such charge not exceeding the prescribed amount as may be fixed by the company.

(8) If any inspection required under sub-section (6) is refused, or if any copy required under sub-section (7) is not furnished within the time specified therein, the company and every officer of the company who is knowingly and willfully in default shall be liable in respect of each offence to a fine which may extend to one thousand rupees and to a further fine which may extend to fifty rupees for every day after the first day during which the default continues, and the registrar may direct immediate inspection or supply of copy, as the case may be.

SBP Directives

BPRD Cir 3 (31/10/00)

**Directive Under Banking Companies Ordinance 1962-Minutes of
The Board Of Directors Meeting**

It has been decided that effective from 1st January, 2000 all banks incorporated in Pakistan/NBFIs, shall furnish copies of the minutes of the meeting of their respective Boards of Directors to the Director, BPRD, State Bank of Pakistan, Central Directorate, Karachi in the form of diskette as well as duly certified hard copy within 7 days from the date of the meeting in which these minutes were approved along with the particulars of the directors present in the said meeting. The minutes approved in the board meetings held in January, 2000 may kindly be furnished to us latest by 15.02.2000.

BSD Circular Letter 06 (10/04/03)

MINUTES OF THE BOARD OF DIRECTORS' MEETINGS

In terms of Para 2(vi) of Prudential Regulation No. XXIX regarding “**Responsibilities of Board of Directors**” issued vide BSD Circular No.15 dated the 13th June, 2002, the banks/DFIs are, interalia, required to record detailed minutes of the meetings of their Board of Directors so that the deliberations and contributions of the Board can be properly evaluated by the external auditors and the regulators.



It has been observed that some of the banks/DFIs are not meticulously observing the above requirement of recording detailed minutes of the meetings of the Board of Directors. In the absence of detailed minutes, the role played by the Board in policy formulation and its contribution in institutional strengthening cannot be properly evaluated.

In order to improve transparency in decision making and to form a judgment on the quality of the Board's work, it is hereby reemphasized that the proceedings of the meetings of the Board of Directors of banks/DFIs should invariably be recorded in detail so as to reflect all significant deliberations made and decisions taken during the meetings.

SECP's Code

Para XII

The Chairman of a listed company shall ensure that minutes of meetings of the Board of Directors are appropriately recorded. The minutes of meetings shall be circulated to directors and officers entitled to attend Board meetings not later than 30 days thereof, unless a shorter period is provided in the listed company's Articles of Association.

In the event that a director of a listed company is of the view that his dissenting note has not been satisfactorily recorded in the minutes of a meeting of the Board of Directors, he may refer the matter to the Company Secretary. The director may require the note to be appended to the minutes, failing which he may file an objection with the Securities and Exchange Commission of Pakistan in the form of a statement to that effect.

3.17 Loans to Directors

SBP Directives

Prudential Regulation - I

Limit on Bank's Exposure to a Single Person

Prudential regulation, inter alia, provides that no banking company shall:

- (a) make any loans or advances against the security of its own share; or
- (b) grant unsecured loans or advances to, or make loans and advances on the guarantee of:



- (i) any of its directors;
 - (ii) any of the family members of any of its directors;
 - (iii) any firm or private company in which the banking company or any of the persons referred to in (i) or (ii) is interested as director, proprietor or partner; or
 - (iv) any public limited company in which the banking company or any of the persons as aforesaid is substantially interested; and
 - (v) its Chief Executive and its shareholders holding 5 (five) percent or more of the share capital of the bank, including their spouses, parents, and children or to firms and companies in which they are interested as partners, directors or shareholders holding 5 (five) percent or more of the share capital of that concern.
- (c) Make loans or advances to any of its directors or to individuals, firms or companies in which it or any of its directors is interested as partner, director or guarantor, as the case may be, its Chief Executive and its shareholders holding 5 (five) percent or more of the share capital of the bank, including their spouses, parents, and children or to firms and companies in which they are interested as partners, directors or shareholders holding 5 (five) percent or more of the share capital of that concern without the approval of the majority of the directors of that banking company excluding the director concerned.

CO 1984

Section 195

- (1) Save as otherwise provided in sub-section (2), no company, hereafter in this section referred to as "the lending company", shall, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by, -
- (a) any director of the lending company or of a company which is its holding company or any partner or relative of any such director;
 - (b) any firm in which any such director or relative is a partner;
 - (c) any private company of which any such director is a director or member;



(d) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by an such director or his relative, or by two or more such directors together or by their relatives; or

(e) any body corporate, the directors or chief executive whereof are or is accustomed to act in accordance with the directions or instructions of the chief executive, or of any director or directors, of the lending company:

Provided that a company may, with the approval of the Authority, make a loan or give any guarantee or provide any security in connection with a loan made by any other person to a director who is in the whole-time employment of the company for the purpose of acquisition or construction of a dwelling house or land therefore or for defraying the cost of any conveyance for personal use or household effects or for defraying any expense on his medical treatment or the medical treatment of any relative as are ordinarily made or provided by the company to its employees.

Explanation. - "Relative" in relation to a director means his spouse and minor children.

(2) Sub-section (1) shall not apply to -

(a) any loan made, guarantee given or security provided -

(i) by a private company, unless it is a subsidiary of a public company; or

(ii) by a banking company;

(b) any loan made by a holding company to its subsidiary; or

(c) any guarantee given or security provided by a holding company in respect of any loan made to its subsidiary.

(3) Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Ordinance could not have been made, given or provided, if this section had then been in force, the lending company shall within six months from the commencement of this Ordinance enforce the repayment of the loan made or, as the case may be, of the loan in



connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary:

Provided that this sub-section shall not apply where the loan made, guarantee given or security provided to a whole-time director is approved by the Authority as provided in the proviso to sub-section (1).

(4) Every person shall within fourteen days of his appointment as director or chief executive of a company file with the registrar the particulars of any loan taken, or guarantee or security obtained, prior for to his becoming director or chief executive of the lending company which could not have been taken or obtained without the prior approval of the Authority had he at the time of taking the loan or obtaining the guarantee or security been the director or chief executive of the lending company.

(5) Every person who is knowingly a party to any contravention of this section, including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security provided, shall be punishable with fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months:

Provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

(6) All persons who are knowingly parties to any contravention of sub-section (1) or (3) shall be liable, jointly and severally, to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay by virtue of. the guarantee given or the security provided by such company.

(7) Sub-section (1) shall apply to any transaction represented by a book-debt which was from its inception in the nature of a loan or an advance.

(8) No officer of the lending company or of the borrowing body corporate shall be punishable under sub-section (5) or shall incur the liability referred to in sub-section (6) in respect of any loan made, guarantee given or security provided after the commencement of this Ordinance in contravention of clause (d) or (e) of



sub-section (1), unless at the time when the loan was made, the guarantee was given or the security was provided by the lending company, he knew or had express notice that that clause was being contravened thereby.

3.18 Remuneration of Directors

CO 1984

Section 191

Restriction on director's remuneration, etc:

(1) The remuneration of a director for performing extra services, including the holding of the office of chairman, shall be determined by the directors or the company in general meeting in accordance with the provisions in the company's articles.

(2) The remuneration to be paid to any director for attending the meetings of the directors or a committee of directors shall not exceed the scale approved by the company or the directors, as the case may be, in accordance with the provisions of the articles.

3.19 Dealing with Directors

SBP Directives

Prudential Regulation VII - BSD Circular 15 (29/08/1992)

Dealing with Directors, Major Share-Holders and employees of The Banks

Banks shall not without the prior approval in writing of the State Bank of Pakistan enter into leasing, renting and sale/purchase of any kind with their directors, officers, employees or persons who either individually or in concert with family members beneficially own 10 percent or more of the equity of the bank.

3.20 Power of SBP to supersede BOD

BCO 1962

Section 41B

Power of the State Bank to supersede Board of Directors of banking company:



- 1) where the State Bank is satisfied that –
 - (a) the association of the Board of Directors (by whatever name called) of a banking company is or is likely to be detrimental to the interests of the banking company or its depositors or otherwise undesirable; or
 - (b) for all any of the reasons mentioned in sub-section (1) of section 41A; it is necessary so to do, the State Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of a banking company with effect from such date and for such period as may be specified in the order.
- (2) The period of suppression specified in an order under sub-section (1) may from time to time be extended by the State Bank so, however, that the total period of suppression does not exceed three years.
- (3) All orders and duties of the Board of Directors shall, during the period of suppression, be exercised and performed by such person as the State Bank may from time to time appoint in this behalf.
- (4) The provisions of sub-sections (2), (3), (4), and (5) of section 41A shall, with the necessary modification, apply to an order made under sub-section (1) or sub-section (3).

3.21 Vacation of Office

BCO 1962

Section 15C

A director of a banking company shall vacate his office if in relation to the banking company he has failed to pay any advance or loan or any installment thereof or interest thereon or any amount due on any guarantee, or to do or perform any act agreed to or undertaken in writing to be done or performed by him, and such failure continues for a period of one month after notice in writing has been served on him by the banking company calling upon him to make the payment or to do or perform the act.

CO 1984

Section 188

Vacation of office by the directors:



- (1) A director shall ipso facto cease to hold office if. -
- (a) he becomes ineligible to be appointed a director on any one or more of the grounds enumerated in clauses (a) to (h) of section 187;
 - (b) he absents himself from three consecutive meetings of the directors or from all the meetings of the directors for a continuous period of three months, whichever is the long, without leave of absence from the directors;
 - (c) he or any firm of which he is a partner or any private company of which he is a director –
 - (i) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of chief executive or a legal or technical adviser or a banker; or
 - (ii) accepts a loan or guarantee from the company in contravention of section 195.
- (2) Nothing contained in sub-section (1) shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on any grounds additional to those specified in that sub-section.
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3.22 Retirement of Directors

CO 1984

Section 177

Retirement of directors:

On the date of the first annual general meeting of a company all directors of the company for the time being who are subject to election shall stand retired from office and thereafter all such directors shall retire on the expiry of the term laid down in section 180: Provided that the directors so retiring shall continue to perform their functions until their successors are elected: Provided further that the directors so continuing to perform their functions shall take immediate steps to hold the election of directors and in case of any impediment report the circumstances of the case to the registrar within fifteen days of the expiry of the term laid down in section 180.



3.23 Removal of Director

BCO 1962

Section 41A

Power of the State Bank to remove directors or other managerial persons from office:

- 1) where the State Bank is satisfied that—
 - (a) the association of any chairman or director or chief executive (by whatever name called) or other officer of a banking company, not being lower in rank than a branch manager, is or is likely to be detrimental to the interests of the banking company or its depositors or otherwise undesirable; or
 - (b) in the public interest; or
 - (c) to prevent the affairs of a banking company being conducted in a manner detrimental to the interest of its depositors or in a manner prejudicial to the interests of the banking company; or
 - (d) to secure the proper management of any banking company; it is necessary so to do, the State Bank may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any chairman or director or chief executive (by whatever name called) or other officer of the banking company .
- (2) No order under sub-section (1) shall be made unless the chairman or director or chief executive or other officer has been given a reasonable opportunity of making a representation to the State Bank against the proposed order:

Provided if, in the opinion of the State Bank, any delay would be detrimental to the public interest or the interest of the banking company or its depositors, the State Bank may, at the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, by order direct that—

- (i) the chairman or, as the case may be, director or chief executive or other officer shall not, with effect from the date of the order,—



- (a) act as such chairman or director or chief executive or other officer of the banking company; or
 - (b) in any way, whether directly or indirectly, be concerned with, or take part in the management of the banking company; and
- (ii) any person authorised by the State Bank in this behalf shall act as such chairman or director or chief executive of the banking company; and
- (3) Where any order under sub-section (1) is made in respect of a chairman or director or chief executive or other officer of a banking company, he shall cease to be a chairman or, as the case may be, a director or chief executive or other officer of the banking company and shall not in any way, whether directly or indirectly, be concerned with, or take part in, the management of the banking company or any other banking company for such period not exceeding three years as may be specified in the order.
- (4) Any person appointed as chairman or director or chief executive under sub-section (2) shall—
- (a) hold office during the pleasure of the State Bank subject to such conditions as may be specified in the order of his appointment and, subject thereto, for such period, not exceeding three years as the State Bank specify; and
 - (b) not incur any obligation or liability for anything which is done or intended to be done in his capacity as such chairman or director or chief executive.
- (5) No person removed from office under-section (1) shall be entitled to claim any compensation for the loss or termination of office.

CO 1984

Section 181

Removal of director:

A company may by resolution in general meeting remove a director appointed under section 176 or section 180 or elected in the manner provided for in section 178:



Provided that a resolution for removing a director shall not be deemed to have been passed unless the number of votes cast in favor of such a resolution is not less than

- (i) the minimum number of votes that were cast for the election of a director at the immediately preceding election of directors, if the resolution relates to removal of a director elected in the manner provided in sub-section (5) of section 178; or
- (ii) the total number of votes for the time being computed in the manner laid down in sub-section (5) of section 178 divided by the number of directors for the time being, if the resolution relates to removal, of a director appointed under section 176 or section 180.

3.24 Prosecution of Director

BCO 1962

Section 41D

Prosecution of directors, chief executives or other officers:

Notwithstanding anything contained in section 41A, the State Bank may direct prosecution of a director or chief executive by whatever name called or other officer who, in its opinion, has knowingly acted in manner causing loss of depositors' money or of the income of the banking company.

Explanation:- For the purpose of this section a director or chief executive or other officer shall be deemed to have acted knowingly if he has departed from established banking practices and procedures or circumvented the regulations or related credit restrictions laid down by the State Bank of Pakistan from time to time.