

SEC Guide

SERIES

**SECURITIES AND EXCHANGE COMMISSION
OF PAKISTAN**



Directors and Secretaries Guide

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Introduction

The Law recognizes a company, as a “person” which in its own rights, is capable of owning property, making contracts, committing wrongs and conducting litigations. When we look at these matters from practical angle, and at the way in which this artificial legal person functions; its corporate will is manifested, its decisions taken and its acts performed, we see that a company cannot do any thing at all except through those human beings who are its members and officers and, for vicariously, through its agents and servants. The companies appoint these officers as required by the Companies Ordinance, 1984 (hereinafter referred to as “the Ordinance”). The Ordinance necessitates the appointment of at least one director and a company secretary for a single member company, two directors for a private limited company, three directors for an unlisted public company and seven directors and a company secretary for a public listed company. The director, or directors, must manage the company’s affairs in accordance with its memorandum and articles of association and the law. Certain responsibilities apply to all directors, whether executive or non-executive.

This booklet:

- explains some of the main responsibilities of a company's officers; and
- deals with some of the key requirements of the Ordinance in relation to the filing of documents with the Securities and Exchange Commission of Pakistan (the Commission) and the Company Registration Offices (CROs). The booklet will not tell you everything about being a director or secretary, but it will give you a good idea of your responsibilities as they relate to the Commission and Company Registration Offices.

If, after reading this booklet, you are in doubt about your responsibilities, you should seek professional advice from a legal adviser or a professional accountant.

Chapter

1

Limited companies: the basics

1. Do I really need to incorporate a limited company?

Vast majority of business organizations do not incorporate as companies. The rationale for having a corporate status of a company are varied, for example, it could involve ownership of property, obtaining investment funds, taxation or contractual relationships. Many businesses function satisfactorily as sole traders or partnerships.

The key point to recognise is that a company is a separate entity.

- This means that it is a legal and distinct person in its own right.
- It is separate from those who own or run it, and has 'limited liability'.

2. What does limited liability mean?

This means that if a company is put into liquidation, the people who own the company will only be required to pay what they have already paid or agreed to pay towards settling its debts. Limited liability gives the owners of the company (its members) protection if the company fails.

3. How do I set up a limited company?

If you decide, may be after taking professional advice, that a limited company is the best thing for your business, you can incorporate a company with the Company Registration Office under the Ordinance - for details see our booklet “Promoters’ Guide” and guidelines for “Company Name Selection” on Commission’s web-site.

4. What can I do with an unwanted company?

If you decide that you do not need a company that you have set up, you should consider putting it into voluntary liquidation. If the company cannot afford this, you may be able to apply for its “compulsory liquidation” or to apply for it to be “struck off the register”.

Role of a company director

1. Who can be appointed as a director?

Generally it is up to the members to appoint the people they believe will run the company well on their behalf. The only ineligibilities that prevent anyone becoming a director are;

If he:

- is a minor;
- is of unsound mind;
- has applied to be adjudicated as an insolvent and his application is pending;
- is an undischarged insolvent;
- has been convicted by a court of law for an offence involving moral turpitude;
- has been debarred from holding such office under any provision of this Ordinance;
- has betrayed lack of fiduciary behaviour and a declaration to this effect has been made by the Court under section 217 at any time during the preceding five years;
- is not a member ; This disqualification shall not apply in the case of a person representing the Government or an institution or authority which is a member, a whole-time director who is an employee of the company, a chief executive or a person representing a creditor;

- has been declared by a Court of competent jurisdiction as defaulter in repayment of loan to a financial institution, exceeding Rs. 1,000,000* and
 - is a member of a Stock Exchange engaged in the business of brokerage, or is a spouse of such member*.
- (* The restrictions are applicable only in case of listed companies).

2. What responsibilities does a director have towards Commission and the registrar?

Every company director has a personal responsibility to ensure that statutory documents are filed with the Registrar and the Commission as and when required under the Ordinance. In particular:

- audited accounts (only for public limited companies);
- annual returns (Form A/B);
- particulars of directors or other officers (Form 29); and
- notice of change of registered office (Form 21).

Chapter 4 summarizes what documents a limited company has to file with the Commission and the Registrar.

3. What happens if accounts or annual returns are not filed?

All the directors of the company could be prosecuted. Failure to deliver documents on time is an **offence** under the Ordinance. On conviction, a director could be penalized with a fine or in some case be imprisoned.

4. Are directors really prosecuted?

Yes. On average of more than 2,000 directors are adjudicated / prosecuted each year for failing to file accounts and after statutory returns with the Registrar within the prescribed time. Persistent failure to comply with the statutory requirements on time may also lead to a director being disqualified and the company may also be wound up under certain circumstances.

5. What happens if accounts are filed late?

As a director of a *public limited company*, you normally have a maximum of 5 months from the close of accounting year for filing your company's audited accounts.

If accounts are received late, the company will not only pay additional filing fee but the company and its officers can also be punished with fine and imprisonment in case of non-preparation, non-circulation and non-presentation of accounts before the general meeting. The additional filing fee is deposited in addition to any fine imposed by the registrar, the Commission or the Court. The additional fee in addition to the normal fee will be payable as under:

<i>Period of delay</i>	<i>Additional Filing Fee</i>
(a) If a document is filed with a delay of not more than fifteen days.	Additional fee equal to the usual fee specified for the document in the Sixth Schedule.
(b) If a document is filed with a delay of more than fifteen days but not more than forty-five days.	Additional fee equal to two times of the usual fee specified for the document in the Sixth Schedule.
(c) If a document is filed with a delay of more than forty-five days.	Additional fee equal to three times of the usual fee specified for the document in the Sixth Schedule.

6. How can prosecution and penalties be avoided?

Make sure your company complies within prescribed time with all its filing obligations, not only pertaining to its accounts and annual returns, but also with regard to all other prescribed documents required under the Ordinance and rules made thereunder.

7. Isn't my legal/corporate consultant supposed to do all this?

Your legal/corporate consultant's responsibilities depend on the agreement between you and him or her. However, the responsibility to file accounts and other statutory documents rests entirely with the *directors*.

Ensure that your legal/corporate consultant have all the necessary information to prepare your accounts and get them audited on time. If necessary, chase your consultants. Don't just assume they are getting on with the job.

*Accountants, legal, corporate and financial advisers
do not get adjudicated / prosecuted or penalized for late filing.
You do!*

8. Why does the Company Registration Office need this information?

In exchange for the benefits of trading with limited liability, companies must deliver certain information about themselves to the Registrar, who makes this information available for inspection by the public so that they can make informed decisions about companies that they may wish to invest in or do business with.

Remember; filing of documents does not take place until they reach the Registrar.

Role and duties of a company secretary

1. Does every company need a secretary?

No. Companies Ordinance requires only a listed company to have a whole time secretary and a single member company to have a secretary.

2. Does a company secretary need any qualifications?

- The secretary to be appointed by a listed company and a single member company must be a member of a recognized body of professional accountants, or a member of a recognized body of corporate / chartered secretaries or a person holding a masters degree in Business Administration or Commerce or being a Law Graduate from a university recognized by Higher Education Commission and having at least two years relevant experience. Further, a person being engaged by a company as secretary before the 26th October, 2002 is permitted to continue as such if he has practical experience of five years in that position.

3. What are the duties of a company secretary?

They are not specified by the Ordinance, but are usually contained in an employment contract.

Special duties

As the secretary is an officer of the company, he may be liable for defaults committed by the company, for example failure to file, within the prescribed period, any change in the particulars of the company's directors and officers, and the company's annual return.

The secretary may also have to make out a statement of the company's affairs if an administrative receiver or a provisional liquidator is appointed, or if a winding-up order is made by the Court.

Other duties

The company secretary usually undertakes the following duties:

(a) ***Maintaining the statutory registers***- These are:-

- the register of transfer of shares and debentures (section 76);
- the register of buy-backed shares by a company (section 95A);
- the register of mortgages, charges etc. (section 135);
- the register of members (section 147);
- the register of debenture-holders (section 149);
- the register of directors and other officers (section 205);
- the register of contracts (section 219);
- the register of directors' shareholdings (section 220); and
- the register of Pakistani members, directors and officers, in case of a foreign company (section 454).

(b) ***Ensuring that statutory forms are filed promptly***. You cannot simply send a letter to notify the Registrar that you wish to change the situation of the company's registered office or that change has occurred among directors or secretaries or auditors or particulars. You should normally use forms 21 and 29 as appropriate. You may also use the Form A/B for filing the annual return in same circumstances if the return is due at the current time. Changes in directors and secretaries or in time particulars must be notified to the Registrar within 14 days. There are many other forms that need to be delivered to the Registrar. See Chapter 4, 'What you have to send to the Commission and the Registrar for more information.

- (c) ***Providing members and auditors with notice of meeting.*** You must give them 21 days written notice for holding of annual and other general meetings.
- (d) ***Sending the Registrar copy of special resolutions.*** You must send the Registrar copy of every special resolution within 15 days of its being passed.
- (e) ***Supplying a copy of the accounts to every member of the company, every debenture holder and every person who is entitled to receive notice of general meetings.*** You must send annual audited accounts at least 21 days before a meeting at which they are to be laid - see section 233 of the Ordinance.
- (f) ***Keeping or arranging for the having of minutes of directors' meetings and general meetings.*** Apart from monitoring the Directors and Members minutes books, copies of the minutes of board meetings should also be provided to secretary / director within 15 days of the meeting.
- (g) ***Ensuring that people entitled to do so, can inspect company records.*** For example, members of the company are entitled to a copy of the company's register of members, and to inspect the minutes of its general meetings and to have copies of these minutes.
- (h) ***Custody and use of the common seal.*** Companies are required to have a common seal and the secretary is usually responsible for its custody and use. (Common seals can be bought from seal makers)

4. Does a companies secretaries have any powers?

No, but the Ordinance allows them to sign the statutory returns and applications to be furnished to the Registrar and the Commission.

5. What are the rights of a company secretary?

The rights of a company secretary depend on the terms of his or her contract with the company. The secretary has no special rights under the Ordinance.

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

Company directors and secretaries are responsible for filing various returns containing information to the Commission and the Registrar. There are over 46 forms that companies could file. The following information deals only with the most common forms and documents that companies will use.

1. **Accounts.-**

All limited companies, whether trading or not, must keep accounting records but only public companies (including associations not for profit, and by guarantees) are required to file annual audited accounts with the Registrar. Listed companies are also required to send quarterly accounts to the Commission and the Registrar.

The accounts will include:

- directors' report signed by the chief executive and a director;
- a balance sheet signed by the chief executive and a director;
- a profit and loss account (or income and expenditure account if the company is not trading for profit);
- an auditors' report signed by the auditor;
- notes to the accounts; and
- consolidated accounts (if appropriate).

Accounts must be produced to a standard that we can scan to reproduce electronically - see chapter 5.

Directors are personally responsible for ensuring that accounts are prepared and delivered to the Commission and the Registrar. Failure to do so may result in a criminal conviction for the director(s) and financial penalties as well.

2. Annual returns (Form A/B)

An annual return is a snapshot of general information about a company giving details of its chief executive, directors, chief accountant, secretary, legal adviser and auditors, registered office address, shareholders and share capital. If you file the annual return late or not at all, the company and its director(s) and secretary can be prosecuted under the Ordinance.

Please note that *annual returns* are quite separate from *annual accounts*.

3. Change of registered office - Form 21

Every company must have a registered office: it is the 'home' of the company to which all official documents, notices and court papers have to be sent by law. The address must be a physical location, not just a post office box. This is because people have the right to visit your office to inspect certain registers and documents, and to deliver documents by hand. It is vital that you keep us informed of the location of your registered office to send all formal communications.

You can change your registered office address by filing a notice for change on Form 21 with the Registrar within 28 days of such change. The change becomes legally effective only when the Registrar registers the form. E-mail address must also be mentioned in all of your communications so that relevant information and communications are sent to you through e-mail.

4. Particulars of directors and other officers - Forms 29

Form 29 is used for:-

- the appointment of an officer.
- an officer ceasing to act (resignation, removal, death etc).

- a change in details of an officer, for example, a change of name or new residential address.

All changes in particulars of directors and other officers must be sent to the Registrar within 14 days of the change.

5. Allotments of shares - Form 3.

This form should be sent to Registrar within 30 days of the shares being allotted.

6. Mortgages and charges – Forms 10, 11, 13, 14, 16 and 17.

Particulars of any mortgage or charge created by the company, modification or satisfaction thereof must be sent to Registrar within 21 days of its creation or satisfaction.

7. Special Resolutions

Quality of documents

1. What happens to documents sent to the Registrar?

The documents and forms you file with the Registrar are scanned to produce an electronic image. The original documents are then kept in files and the electronic image would be used as working documents.

When your business contacts would view and get copies of your company record, they would see the electronic image, copy it or simply make inspection. So it is important not only that the original is legible, but a clear copy can also be made of it.

This chapter lays down a few quality guidelines to follow when preparing a document for filing with the registrar.

2. What happens if your documents do not meet the guidelines?

Section 468 of the Ordinance allows the Registrar to reject document that is insufficiently legible or is written upon paper, which is not durable, giving a notice to file a revised document. An acceptable document must be delivered within the time mentioned in the notice (otherwise the Registrar treats the original as not having been filed).

3. How should documents be set out?

Every document delivered to the Registrar must state in a prominent position the registration number of the company, and must comply with any

requirements specified by the Registrar relating to the legibility of that document.

Briefly, documents should be on A4 size, plain white paper between 80gsm and 100gsm in weight with a matt finish. Text should be black, clear, legible, and of uniform density. Letters and numbers must not be less than 1.8mm high, with a line width of not less than 0.25mm.

When you fill in a form:

- use black ink or black type;
- use bold lettering ;
- don't send a carbon copy;
- don't use a dot matrix printer; and
- remember - photocopies can result in a grey shade that will not scan well.

When you complete other documents, please remember:

- the points already made relating to completing forms;
- to use A4 size paper with a good margin;
- to supply them in portrait format (that is with the shorter edge across the top);
- to include the company registration number in the top right-hand corner of the first page.

Important: coloured ink can drop out (disappear) when a document is scanned to produce an image. To prevent this - **always use black ink to complete and sign all documents.**

4. What are the most common mistakes to avoid?

Glossy accounts

If you are producing colour-printed glossy accounts, please save them for your members and others who will appreciate them. We still need black ink on white paper with a matt finish. A typed unbound version or printer's proof is ideal, provided it has the necessary signatures.

Members lists

Our requirements on document quality apply equally to the lists of members / shareholders that accompany annual returns and allotment forms.

If these are computer prints, it is essential that the print quality is good. We have particular problems with lists printed on green-lined computer paper. It would be better if the member's list is provided on A4 size paper.

Listed companies are required to send to the Commission their Annual Return (Form A) containing list of members on floppy diskette.

5. How to get further guidance on quality of documents?

For further guidance, contact 051-9206306 and 051-9206514.

For guidance on acceptable floppy diskette and formats, contact 051-9207091-4/ext236.

Further information

1. Can I obtain information about a company from Commission and the registrar?

Yes. Company information is vital for informed decision-making.

In the concerned Company Registration Office, you'll find information on every company registered with the CRO, from names and addresses to annual returns and accounts. But note that private companies do not have to file their accounts.

You can also get information about foreign companies that establish a place of business in this country or open a branch here.

You can order a company search by visiting any of our CRO.

2. Where do I get forms and guidance booklets?

This is one of a series of the Commission's booklets which provide a simple guide to the Ordinance.

Statutory forms and guidance booklets are available, free of charge, from the Commission and its Regional Offices (CROs). The quickest way to get them is through the Commission's web site www.secp.gov.pk

If you prefer you can write to our CROs.

Forms can also be obtained from stationers, accountants, legal advisers and corporate practitioners.

If in doubt about your responsibilities, seek professional advice.

3. How do I send information to the Registrar?

You may file documents to the concerned Registrar by hand (personally or by post or through courier).

If you send documents by post, please address them one of the following Company Registration Offices (CRO) concerning your company:

1. The Joint Registrar of Companies,
Company Registration Office,
State Life Building, 7-Blue Area, Islamabad
Phone: 051-9208740, Fax 051-9208740
Email: croisb@isb.paknet.com.pk
2. The Additional Registrar of Companies,
Company Registration Office,
4th Floor, SLIC Building No.2, Karachi.
Phone: 021-2415855, 2416778, Fax 021-2416788
Email: crokhi@khi.paknet.com.pk
3. The Additional Registrar of Companies,
Company Registration Office,
3rd & 4th Floors, Associated House
7-Egerton Road, Lahore.
Phone: 042- 9200274, Fax 042-9202044
Email: crolhr@lhr.paknet.com.pk
4. The Deputy Registrar of Companies,
Company Registration Office,
63-A, Nawa-i-Waqt Building, Abdali Road, Multan.
Phone: 061-9200920 Fax 061-9200920
Email: cromul@mul.paknet.com.pk

5. The Joint Registrar of Companies,
Company Registration Office,
356-A, Al-Jamil Plaza,
1st Floor, Peoples Colony, Small D Ground, Faisalabad.
Phone: 041-9220284 Fax: 9220284
Email: crofsb@fsd.paknet.com.pk
6. The Joint Registrar of Companies,
Company Registration Office,
1st Floor, State Life Building,
The Mall, Peshawar Cantt.
Phone: 091-9213178, Fax 091-9213178
Email: cropsh@psh.paknet.com.pk
7. The Deputy Registrar of Companies,
Company Registration Office,
382/3, (IDBP House), Shahrah-e-Hali, Quetta Cantt.
Ph:081-844136
Email: croqta@qta.paknet.com.pk
8. The Assistant Registrar of Companies,
Company Registration Office,
B-30, Sindhi Muslim Housing Society,
Airport Road, Sukkur.
Ph: 071-30517