

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN



Directors and Secretaries Guide

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Introduction

The Law recognizes a company, as a “legal person” which in its own rights, is capable of owning property, making contracts, conducting litigations and also responsible for doing wrongs. 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 the human beings.

The business of a company is run and managed by its board of directors; which is headed by a Chief Executive. 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 CROs.

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.

Limited companies: the basics

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

The basic features and advantages to carry out the business through a company are as under:-

- **DISTINCT LEGAL ENTITY**
Separate from its shareholders/directors. It has its own rights and liabilities. It can borrow money and invests funds, own property, sue and be sued, enter into contracts etc.
- **LIMITED LIABILITY - PROTECTION OF PERSONAL ASSETS**
Incorporation gives the privilege of limited liability to its members up to a maximum of their investment or share in the entity or undertaken by them in event of winding up.

Debts of company are the debts of this artificial legal person and not of the people running the company or owning shares in it.

Personal property of the shareholders can not be attached for the recovery of debts

- **EASY MEASUREMENT OF INVESTMENT OF EVERY PERSON**
The investment of every person is known / determined
- **EASY TRANSFERABILITY OF OWNERSHIP OF SHARES**
Clear and convenient legal framework for the transferability of interest (shares) -
- **PERPETUAL SUCCESSION**
In distinction to partnership, the death of one or more or even of all the members does not affect its legal status and do not end the company
- **EASY TO RAISE FUNDS**
Preference by the financial sector in extending the financial assistance to documented and organized form of incorporated business
- **PART OF REGULATED AND DOCUMENTED SECTOR**
- **ACCOUNTABILITY AND RESPONSIBILITY**
Preparation and audit of accounts
- **ELEVATION OF BUSINESS STATUS**
Incorporation gives a status higher than partnership and Proprietor-ship in the organizational hierarchy.
- **ESTABLISH CREDIBILITY**
Having an incorporated business would give any business more credibility among potential customers, vendors, partners and employees
- **COMPACT LEGAL AND ORGANIZATIONAL FRAMEWORK**

The entity must function within the limits prescribed through its charter and regulates its existence through a set of bylaws.

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 CRO under the provisions of the provisions of the Ordinance - for details see our booklet “Promoters’ Guide” and guidelines for “Company Name Selection” also available on the Commission’s web-site “http://www.secp.gov.pk/CLD/cld_guides.asp”.

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 winding up. For detailed procedure with regard to winding up of the company, please see our guide booklet titled with “Winding up and Dissolution of Companies”

4. What happens if accounts and other statutory returns are filed late and other statutory returns?

As a director of a public limited company or a private limited company having the paid up capital of Rs. 7.5 million or more you normally have a maximum of 5 months from the close of accounting year for filing your company’s audited accounts.

If the accounts or other return(s) is / are received late, the company will not only pay additional filing fee but the company and its officers can also be punished with fine. In addition to normal the additional fee will be payable as under:-

5. What is the query of non-presentation of annual account in the annual general meeting?

If accounts or copy(ies) of other return(s) is/are received late, the company will not only pay additional filing fee but the company and its officers can also be punished with fine.

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 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 lacked fiduciary behaviour and a declaration to this effect has been made by the Court under section 217 of the Ordinance 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 all the 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 including association not for profit); and private limited companies having paid up capital of Rs. 7.5 million or more);
- 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?

Failure to deliver documents on time is an **offence** under the Ordinance. On conviction, a director could be penalized with a fine and also debarred from becoming director.

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 other 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*, or a private limited company having the paid up capital of Rs. 7.5 million or more you normally have a maximum of 5 months from the close of accounting year for filing your company's audited accounts.

If the accounts or other return(s) is/are received late, the company will not only pay additional filing fee but the company and its officers can also be punished with fine. In addition to normal the additional 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. What are the consequences of non-presentation of Annual Accounts in the Annual General Meeting?

It is the responsibility of the Board of Directors of a company to maintain proper books of accounts get the annual accounts audited by the auditor of the company, present the audited accounts before the Annual General Meeting for approval of the members within the prescribed period as provided under the law. In case of non-compliance, in filing the statutory returns within prescribed period and apart from the other penalties for violating the specific provisions of the Ordinance, which include heavy amounts of fines and prosecution of the management leading to imprisonment of the defaulting directors/officers are liable to pay additional fee (as discussed at para-5 of the guide.

7. How can prosecution and penalties/fines be avoided?

Make sure your company complies within the prescribed time, with all its statutory obligation not only pertaining to filing of its accounts and other statutory returns as required to be filed under the provisions of the Ordinance and the rules frame there-under but also with respect to:-

- Issuance of shares certificates to the shareholders. (S.74 to 75)
- Transfer of shares. (S. 76 to 81)
- Registration of Charges (S. 121 to 136)
- Maintenance of Registered Office Address (S. 143)
- Holding of statutory meetings by a public company (S. 157)
- Maintenance of Minute's Book (S. 173)
- Election of Directors (S. 178 to 180)
- Appointment of Chief Executive (S. 198 to 203)
- Appointment of Company Secretary (where applicable) (S. 204A)
- Maintenance of books of accounts and other statutory register (S. 230)
- Preparation, audit and presentation of accounts in the AGM (S. 233)
- Preparation of quarterly accounts by a listed company S. 245)
- Payment of Dividends within the prescribed period (S. 248 to 251)
- Appointment of Auditor (S. 252 to 254)
- Appointment of Legal Adviser (Companies Appointment of Legal Advisor's Act, 1974).

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.

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

Your legal/corporate consultant's responsibilities to you 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 consultants have all the necessary information/document to prepare and file the statutory returns on time. If necessary, change your consultants. Don't just assume that they are getting on with the job.

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

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

Documents / informations maintained by the registrar is the public record and available for inspection by the rest of the world i.e. the creditors, vendors and general public for the purpose of making investment in the company, enter into contract and for other useful purposes.

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 shall 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 is 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 public listed 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. However, the company secretary of a single member company shall be a person holding a bachelor degree from a university recognized by the Higher Education Commission.

3. What are the duties of a company secretary?

These are not specified by the Ordinance, but are usually contained in an employment contract. However, the company secretary generally performs the following functions:-

Functions of secretary:

A. Secretarial functions:

To ensure compliance of the provisions of Ordinance and rules made there-under and other statutes and bye-laws of the company.

To ensure that business of the company is conducted in accordance with its objects as contained in its memorandum of association.

To ensure that affairs of the company are managed in accordance with its objects contained in the articles of association and the provisions of the Ordinance.

To prepare the agenda in consultation with the Chairman and the other documents for all the meetings of the board of directors.

To arrange with and to call and hold meetings of the board and to prepare a correct record of proceedings.

To attend the board meetings in order to ensure that the legal requirements are fulfilled, and provide such information as are necessary.

To prepare, in consultation with the chairman, the agenda and other documents for the general meetings.

To arrange with the consultation of chairman the annual and extraordinary general meetings of the company and to attend such meetings in order to ensure compliance with the legal requirements and to make correct record thereof.

To carry out all matters concerned with the allotment of shares, and issuance of share certificates including maintenance of statutory Share Register and conducting the appropriate activities connected with share transfers.

To prepare, approve, sign and seal agreements leases, legal forms, and other official documents on the company's behalf, when authorised by the broad of the directors or the executive responsible.

To advise, in conjunctions with the company's solicitors, the chief executive or other executive, in respect of the legal matters, as required.

To engage legal advisors and defend the rights of the company in Courts of Law.

To have custody of the seal of the company.

B. Legal obligations of secretary:

Filling of various documents/returns with the Registrar / Commission as required under the provisions of the Ordinance. .

Proper maintenance of books and registers of the company as required under the provisions of the Ordinance.

To see whether legal requirements of the allotment, issuance and transfer of share certificates, mortgages and charges, have been complied with.

To convene/arrange the meetings of directors, on their advise.

To issue notice and agenda of board meetings to every director of the company.

To carry on correspondence with the directors of the company on various matters.

To record the minutes of the proceedings of the meetings of the directors.

To implement the policies formulated by the directors.

To deal with all correspondence between the company and the shareholders.

To issues notice and agenda of the general meetings to the shareholders.

To keep the record of the proceedings of all general meetings.

To make arrangement for the payment of the dividend within prescribed period as provided under the provisions of the Ordinance.

C. To maintain the following statutory books

- the register of transfer of shares (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 and index thereof (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 and debentures (section 220);
- the register of Pakistani members, directors and officers, in case of a foreign company (section 454);
- Minute books;
- Proxy register;
- Register of beneficial ownership;

- Register of deposits;
- Register of director's share holding; and
- Register of contracts, arrangements and appointments in which directors etc are interested

D. Other duties

The company secretary usually undertakes the following duties:

- (a) ***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 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.
 - (b) ***Providing members and auditors with notice of meeting.*** You must give them 21 days written notice for holding of annual and other general meetings.
 - (c) ***Sending the Registrar copy of special resolutions.*** You must file with the Registrar special resolution on Form-26 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 D.

eneral 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 every 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 company secretary has any powers?

The Ordinance allows him 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 applicable).

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. 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. 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 – Form 29

Form 29 is used for:-

- the appointment of an officer (Chief Executive, Director, Company Secretary, Chief Accountant, Chief Financial Officer, Auditor, Legal Adviser)
- an officer ceasing to act (resignation, removal, death etc.)

- a change in particulars of an officer, for example, a change of name or new residential address.
- a change in particulars 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 – Form 26

The Special Resolution passed by a company is to be filed with the registrar within 15 days from the date of passing.

Quality of documents

What happens to documents sent to the registrar?

1. Electronic Documents

The documents filed electronically i.e. through eServices are examined and if found in order, are accepted by the concerned registrar and saved in the system in the electronic form

2. Physical documents

The documents and forms you file with the registrar in the physical form 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 that not only 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.

3. 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).

4. 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 requirement specified by the registrar relating to the legibility of that document.

Briefly, documents should be on A4 size, plain white paper between 80 grams and 100grams 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: colored 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.**

5. 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 051-9205869.
For guidance on acceptable floppy diskette and formats,
contact 051-9207091-4/ext304.

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.

The quickest way to get the statutory forms and guide-booklets is through SECP's website i.e. www.secp.gov.pk

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

If in doubt about your responsibilities, seek professional advice.

NOTE: For filing of returns on Form-29, i.e. notifying the particulars of directors and secretary to the registrar please see our guide-booklets titled with “Filing of Return Guide”.

3. How information can be sent to the registrar?

You may file documents to the registrar concerned through eServices. The detailed procedure for filing the documents is provided in the “filing of statutory returns guide”. Alternatively, the documents may be filed to the registrar concerned in physical form (personally or by sending by post or by courier service).

If documents are sent by post or courier it should be addressed to any one of the following Company Registration Offices (CROs), having territory/ jurisdiction on your company:-

1. Company Registration Office,
State Life Building, 7-Blue Area, Islamabad.
Phone No.: 051-9208740 Fax No: 051-9208740
Email: croislamabad@secp.gov.pk
2. Company Registration Office,
4th Floor, SLIC Building No.2,
Wallace Road, Karachi.
Phone No: 021-99213272 Fax No. 021-99213278
Email: crokarachi@secp.gpv.pk
3. Company Registration Office,
3rd & 4th Floor, Associated House,
7-Egerton Road, Lahore
Phone No. 042-99204962 - 6 Fax No: 042-99202044
Email: crolahore@secp.gov.pk

4. Company Registration Office,
63-A, 2nd Floor,
Nawa-e-Waqt Building,
Adbali Road, Multan.
Phone No: 061-9200530/9200920 Fax No: 061-9200920
Email: cromul@mul.paknet.com.pk
5. Company Registration Office,
356-A, Akram Plaza, Small D ground.
Peoples Colony No. 1, Faisalabad.
Phone No: 041-9220284 Fax No: 041-9220152
Email: crofsb@fsd.paknet.com.pk
6. Company Registration Office,
1st Floor, State Life Building, The Mall,
Peshawar Cantt.
Phone No: 091-9212178 , Fax No: 091-9213178
Email: croqta@qta.paknet.com.pk
7. Company Registration Office,
382/3, (IDBP House), Shahrah-e-Hali,
Quetta Cantt.
Phone No: 081-2844136 Fax No: 081-2899134
Email: croskr@hotmail.com
8. Company Registration Office,
28-D, Hamdard Housing Society,
Airport Road, Sukkur,
Phone No: 071-5630517 Fax No: 071-5633757
Email: croskr@hotmail.com