



B A R R I S T E R S - A T - L A W

Advocates of the High Courts & Supreme Court of Pakistan
and Legal & Policy Consultants

Code of Corporate Governance

By

ZAHID U. JAMIL

Barrister-at-law

www.jamilandjamil.com

Securities and Exchange Ordinance, 1969 (XVII of 1969)

s.34. Power to make regulations.-

(4) Where the Commission considers it expedient so to do, it may, by order in writing, direct a Stock Exchange to make any regulation, or to amend or rescind any regulation already made, within such period as it may specify in this behalf.

Overlap:

S. 187(i) and Code iv (b) overlap

Section 187. Ineligibility of certain persons to become director.

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

- (i) has been declared by a Court of competent jurisdiction as defaulter in repayment of loan to a financial institution, exceeding such amount as may be notified by the Commission from time to time; and**

Code iv. No person shall be elected or nominated as a director of a listed company if:

- 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**

s.187(j) and Code v overlap

s.187 (j) is a member of a Stock Exchange engaged in the business of brokerage, or is a spouse of such member:

Code v. A listed company shall endeavour 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).

s.160 (3) and Code x overlap

s.160. Provisions as to meetings and votes:

(3) The *chairman* of the board of directors, if any, *shall preside* as chairman at every general meeting of the company,

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

s.173 and Code xii overlaid

s. 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.

Code xii. (xii) The Chairman of a listed company shall ensure that minutes of meetings of the Board of Directors are appropriately recorded.

Legal lacuna?

s. 224 Trading by director, officers and principal shareholders :

(1) Where any director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company or any person who is directly or indirectly the beneficial owner of more than ten per cent, of its listed equity securities makes any gain by the purchase and sale, or the sale and purchase, of any such security, within a period of less than six months, such director, chief executive, managing agent, chief accountant, secretary or auditor or person who is beneficial owner shall make a report and tender the amount of such gain to the company and simultaneously sent an intimation to this effect to the registrar and the Commission :

Provided that nothing in this sub-section shall apply to a security acquired in good faith in satisfaction of debt previously contracted.

Ordinance overrides Regulations !

DISCLOSURE OF INTEREST BY A DIRECTOR COMPANY'S SHARES

- **Code xxvi. Where any director, CEO or executive or their spouses sell, buy or take any position, whether directly or indirectly, in shares of the listed company of which he is a director, CEO or executive, as thehe shall immediately notify in writing the Company Secretary of his intentions.shall also deliver a written record..... The noticeshall be presented by the Company Secretary at the meeting of the **Board of Directors immediately subsequent to such transaction.****

In the event of default by a director, CEO or executive to give a written notice or deliver a written record, the Company Secretary shall place the matter before the Board of Directors in its immediate next meeting:

- **Provided that each listed company shall determine a closed period prior to the announcement of interim/ final results and any business decision, which may materially affect the market price of its shares. No director, CEO or executive shall, directly or indirectly, deal in the shares of the listed company in any manner during the closed period.**

TAKEOVER PROVISION:

DIVESTURE OF SHARES BY SPONSORS/CONTROLLING INTEREST

Code xxix.

- **Divestiture**
- **not less than 75%**
- **price higher than the market value**
- **allow the transfer after**
- **offer to the minority shareholders**
- **at the same price**

The Rules of Business for NBFİs

Any violation or circumvention of these Rules shall render the NBFİ / officer(s) concerned liable for penalties under the Banking Companies Ordinance, 1962. Banking Policy Department, SBP.

(h) “NBFİ” means Non-Bank Financial Institution and includes:

**DFI,
Modaraba,
Leasing Company,
Housing Finance Company,
Investment Bank,
Discount House
Venture Capital Company.**

(g) “Major Shareholder” means any person holding 5% or more of the share capital.

BANKING COMPANIES ORDINANCE, 1962 (LVII of 1962)

3A.@ Limited application of Ordinance to certain financial institutions._

(1) The provisions of sections 6,25A, 25AA, 29,31,32,33,40, 41,41A, 41B, 41C, 41D, 42, 83, 84, and 94 of this Ordinance shall, with such modifications as the State Bank may determined from time to time in relation to activities which have implications for the monetary or credit policies of the State Bank, apply to the Investment Corporation of Pakistan, the National Investment Unit Trust, the Pakistan Industrial Credit and Investment Corporation, the House Building Finance Corporation, the National Development Finance Corporation, the Bankers Equity Limited, the Pak-Libya Holding Company Limited, the Pakistan Kuwait Investment Company Limited, the Saudi-Pak Industrial and Agricultural Investment Company Limited, the Small Business Finance Corporation, the Regional Development Finance Corporation, Investment Finance Companies, Venture Capital Companies, Housing Finance Companies, Corporations or Institutions which carry on one or more of the businesses enumerated in section 7 of this Ordinance, save and except for leasing companies and modaraba companies, as the Federal Government may from time to time, by notification in the Official Gazette, specify in this behalf.

COMPANIES ORDINANCE

SECP

PART VIII A. - NON-BANKING FINANCE COMPANIES

PROVISIONS AS TO ESTABLISHMENT AND REGULATION OF NON-BANKING FINANCE COMPANIES

282A. Application of this Part.- The provisions of this Part shall apply to-

(a) non-banking finance companies (NBFCs) which include companies licensed by the Commission to carry out any one or more of the following forms of business, namely.-

(i) Investment Finance Services;

(ii) Leasing;

(iii) Housing Finance Services;

(iv) Venture Capital Investment;

(v) Discounting Services;

(vi) Investment Advisory Services;

(vii) Asset Management Services; and

(viii) any other form of business which the Federal Government may, by notification in the official Gazette specify from time to time;

282B. Power to make Rules.-

The Federal Government may make rules for establishment and **regulation of NBFCs** and such rules may, *inter alia*, in addition to anything already provided in this Ordinance, provide for conditions relating to qualifications of directors, chief executive, chairman, auditors, for licensing, capital and audit requirements; and any other matter which the Commission may deem fit for the effective regulation of NBFCs and companies established under the rules framed hereunder.

282C. Incorporation of NBFC.- (1) A NBFC shall **not be incorporated** without prior approval of the Commission.

**THE NON-BANKING FINANCE COMP
(ESTABLISHMENT AND
REGULATION) RULES, 2003**

Investment Banking:

(xxvii) “investment finance company” means a company licensed by the Commission to provide investment finance services as mentioned in rule 14;

(xxviii) “investment finance services” include money market activities, capital market activities, project finance activities, corporate finance services and general services as described in rule 14;

Code (i) (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),

Code (iv) (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

Examples:

(i) (b)

(iv) (b)

(viii) (d) &

Explanation

(xix) (i)

SECP

NBFCs

**THE NON-BANKING FINANCE COMPANIES
(ESTABLISHMENT AND REGULATION) RULES, 2003**

?

SBP

NBFIs

PRUDENTIAL REGULATIONS

The thrust of the Code is to:

safeguard

interest of diversified stakeholders

by ensuring duties and responsibilities of those having significant say in the affairs of the company are discharged with propriety and the desired degree of accountability.

In the context of Pakistan, the need for good corporate governance assumes a more significant dimension given the corporate culture and infact the overwhelming number of companies which are closely held.

The need for reasonable representation in corporate decision making process for those not belonging to the controlling interest thus assumes a striking significance in the scheme of corporate governance in Pakistan and accordingly

the Code expects the Board of Directors having appropriate representation of minority interest through non-executive directors to discharge their fiduciary responsibilities in the larger interest of all the stakeholders in a transparent, informed, diligent and timely manner.

ICAP - Two Categories of Shareholders:

“SHALL”

Majority A **Equal or more than 10%** **-Not more than 80% Directors**

Minority B **Less than 10%** **-Not less than 2 Directors, 20% or 1
(if aggregate less than 20%)**

SECP CODE:

“MAY”

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);**

“Independent Director”:

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.

WHO DECIDES INDEPENDENCE?

US SEC – The Board Decides

SECP & ICAP

SECP

(iii) No listed company shall have as a director, a person who is serving as a director of ten other listed companies.

ICAP

2.2 b) The maximum age limit for being eligible to be appointed as a director shall be 70 years on the date of filing nomination for the election.

SECP: NIL

ICAP:

2.2 d) Members of a Stock Exchange, engaged in the business of brokerage, and their spouses, shall not be entitled to become a director of Listed Public Companies

SECP:

(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).

ICAP:

c) The Board of Directors at a meeting within 4 months of its constitution, shall formally approve and adopt a vision/mission statement, overall corporate strategy and formulate policies of a company relating to:

succession plan

SECP:

(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;

preparation of a succession plan;

ICAP:

- **Budgetary Controls**
- **Production Management**
- **Treasury management**

SECP:

NIL

ICAP:

c) The dissenting note, if any, of a director shall be recorded as a matter of statutory obligation and the director concerned may make a representation, in respect of his dissent, at the next general meeting following the Board meeting.

SECP:

NIL

ICAP:

2.6 KEY INFORMATION TO BE PLACED FOR DECISION BY THE BOARD OF DIRECTORS

In order to strengthen the working of the Board and formalize decision-making process on key and significant issues, the following information and matters shall be placed for consideration and decision of the Board:

SECP:

Significant issues for this purpose may include:

ICAP:

NIL

SECP:

failure to recover material amounts of loans, advances, and deposits made by the listed company, including trade debts and inter-corporate finances;

ICAP:

NIL

SECP:

Provided further that the CFO and/ or the Company Secretary shall not attend such part of a meeting of the Board of Directors, which involves consideration of an agenda item relating to the CFO, Company Secretary, CEO or any director.

ICAP Recommendations:

12.f

Disseminate to the SECP/Stock Exchange:

all the material information relating to the business and other affairs of the company that can affect the share price of the company,

joint venture, merger or acquisition or loss of any material contract, purchase or sale of significant assets, any unforeseen or undisclosed impairment of assets due to technological obsolescence, etc.,

delay/loss of production due to strike. fire, natural calamities, other major breakdown, etc.

issue or redemption of any securities, any major change in borrowing including any default in repayment or rescheduling of loan, change in the management, change of chairman/chief executive and directors.

United Kingdom

Board of Directors:

Non-executive directors should:

scrutinise performance of management in meeting agreed goals and objectives

monitor the reporting of performance.

satisfy themselves on the integrity of financial information

- **financial controls**

- **systems of risk**

- **management are robust and defensible.**

- **undertake that they will have sufficient time to meet what is expected of them.**

They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, executive directors, and in succession planning.

- determining appropriate levels of remuneration of executive directors**
- prime role in appointing, and where necessary removing, executive directors, and in succession planning**

A.1.5

The company should arrange appropriate insurance cover in respect of legal action against its directors.

A.3.1 The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement.

A.3.2 At least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent.

A.4.4 The terms and conditions of appointment of non-executive directors should be made available for inspection

B.1.1 & B.2.1 Remuneration committee & Policy at least three non-executive directors

Institutional Shareholders Committee

U.S.A - SEC

- **No director qualifies as "independent" unless the board affirmatively determines that the director has no material relationship with the company**
- **Material relationships include: commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others.**
- **Disclose the basis for the independence determination in its annual proxy statement or, in the company's annual report filed with the SEC.**

Codes must be posted on the company's website.

Many companies have already adopted codes of conduct, especially in the wake of In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996).

In light of these developments, it would, in my opinion, be a mistake to conclude that our Supreme Court's statement in Graham concerning "espionage" means that corporate boards may satisfy their obligation to be reasonably informed concerning the corporation, without assuring themselves that information and reporting systems exist in the organization that are reasonably designed to provide to senior management and to the board itself timely, accurate information sufficient to allow management and the board, each within its scope, to reach informed judgments concerning both the corporation's compliance with law and its business performance.

But it is important that the board exercise a judgment that the corporation's information and reporting system is in concept and design adequate to assure the board that appropriate information will come to its attention in a timely manner as a matter of ordinary operations, so that it may satisfy its responsibility.

Thus, I am of the view that a director's obligation includes a duty to attempt in good faith to assure that a corporate information and reporting system, which the board concludes is adequate, exists, and that failure to do so under some circumstances may, in theory at least, render a director liable for losses caused by non-compliance with applicable legal standards.

- **director qualification standards,**
- **director responsibilities,**
- **director access to management and outside advisors,**
- **director compensation.**
- **management succession plans,**
- **director orientation**
- **continuing education,**
- **annual self-evaluation of the board.**
- **Post the corporate guidelines on its website**
- **State in annual report that available in print to any requesting shareholder.**

Nominating/Corporate Governance Committee

composed entirely of independent directors:

- (i)the committee's purpose;**
- (ii)annual performance evaluation**
- (iii)the duties and responsibilities.**

Audit Committee:

financially literate Directors

CEO Certificate:

CEO required to certify to the NYSE each year that he or she is not aware of any violation by the company of the NYSE's corporate governance listing standards.

Public Reprimand Letter:

The NYSE is allowed to issue a public reprimand letter to any listed company that violates an NYSE listing standard.

Citigroup - or rather, its investment banking Salomon Smith Barney - headed a list of 10 of Wall Street's biggest and most prestigious firms forced to pay a total of \$US1.4 billion to atone for the misdeeds of various employees, thought to have contributed significantly to the excesses and subsequent collapse of the US tech boom.

They included the use of equities research as a marketing tool to win investment banking or corporate finance business, and 'IPO spinning' - the practice of allocating stock in initial public offerings on a preferential basis to corporate clients.

**Former
Citigroup Salomon Smith Barney
analyst Jack Grubman**

Banned for life from functioning as a broker, dealer, or investment advisor, and cannot be employed by an investment company or a municipal securities dealer, under the terms of a "global resolution" of state and federal Wall Street investigations.

a \$15 million payment, with half of the fine going to the state and half going to the federal government.

**Citigroup Salomon Smith Barney to pay:
\$300 million in state and federal fines,
\$75 million to an independent research fund, and
\$25 million for investor education.**

CHARGES – THAT SSB:

- **failed to manage conflicts of interest between its research and investment banking divisions;**
- **published fraudulent and misleading research that promoted investment banking clients and harmed investors, in a manner which violated New York's Martin Act;**
- **ignored internal warnings that its research product had become "basically worthless;"**
- **its star telecom analyst, Jack Grubman, had undisclosed conflicts of interest;**
- **engaged in improper spinning and public offering stock distribution practices;**

SSB paid the largest fine of any firm.

Adopt measures above and beyond the ones outlined in the global resolution which include:

- **The CEO of Smith Barney (SSB's research division) will report to three separate committees of the Citigroup Board of Directors on the objectivity, independence and quality of the company's research and on the company's progress in complying with terms and provisions of the global settlement; The CEO of Smith Barney will also advise the attorney general on an annual basis that the reports have been made;**
- **SSB will adopt procedures preventing senior executives of Citigroup who function as an investment banker on a company from directly communicating about that company with research analysts covering the company;**
- **Citigroup Global will make a public statement of contrition for failing to address conflicts of interest.**

'global resolution'

to

'radically change behavior on Wall Street'.

Eliot Spitzer, New York Attorney General who led regulators in securing this Resolution.

•A clear separation of the research and investment banking divisions at firms – analysts will be insulated, and they will no longer be allowed to solicit business or accompany investment bankers on pitches and roadshows, or identify investment banking prospects. Investment banking will not be allowed input into analyst evaluation and compensation;

•A new mechanism for providing independent research to investors at no cost to help them make more informed decisions – independent research will guarantee that the retail customer has alternative views, and as important, let the analyst know that he or she is being judged by comparative independent analysis;

•Transparency of rating information– certain analyses: generated by an investment house will be made public within 90 days after the conclusion of each quarter. Each firm will publish the information on its website in a downloadable format. This will enable investors to compare and evaluate the performance of analysts from different firms and permit the market to generate objective rankings;

•(JCR/VIS)

- **A ban on IPO spinning – investment firms will no longer be allowed to allocate to officers or directors of public companies preferential access to valuable IPO shares of corporations from which they have sought or obtained investment banking business;**
- **Independent monitors for each firm – a monitor will report to regulators on the firm's compliance with the terms of the agreement;**
- **Investor education – programs will be established to help investors protect themselves against securities fraud; and**
- **The largest overall monetary payments in Wall Street history – \$1.4 billion.**

QUESTIONS

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