PUBLIC SECTOR COMPANIES (CORPORATE GOVERNANCE) RULES, 2013

Amended vide S.R.O. No. 275(I)/2017 dated April 21, 2017

and S.R.O. No. 715(I)/2019 dated July 01, 2019

1. Short title, commencement and applicability. — (1) These Rules may be called the Public Sector Companies (Corporate Governance) Rules, 2013.

(2) They shall come into force on 8th August, 2013.

(3) These rules shall apply to all Public Sector Companies, as defined in clause (g) of rule 2.

(4) In the case of listed Public Sector Companies, where there is any inconsistency with the Code of Corporate Governance, the provisions of these rules shall prevail.

2. **Definitions.__** (1) In these rules, unless there is anything repugnant in the subject or context:

(a) "Board" means board of directors of a Public Sector Company;

(b) "Commission" means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(c) "Executive" means an employee of a Public Sector Company, who is entrusted with responsibilities of an administrative or managerial nature, including the Chief Executive and Executive Director;

(d) "Independent Director" means a Non-Executive Director who is not in the service of Pakistan or of any statutory body or any body or institution owned or controlled by the Government and who is not connected or does not have any other relationship, whether pecuniary

or otherwise, with the Public Sector Company, its associated companies, subsidiaries, holding company or directors.

The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent judgment without being subservient to any form of conflict of interest.

A director shall not be considered independent if one or more of the following circumstances exist,-

(i) he has been an employee of the Public Sector Company, any of its subsidiaries, or holding company during the last two years;

(ii) he has, or has had within the last two years, a material business relationship with the Public Sector Company either directly or indirectly, or director of a body that has such a relationship with the Public Sector Company;

(iii) he has received remuneration in the two years preceding his appointment as a director or has received additional remuneration excluding retirement benefits from the Public Sector Company apart from director's fee or has participated in the Public Sector Company's share option or a performance-related pay scheme;

(iv) he is a close relative (spouse, lineal ascendants and descendants and brothers and sisters) of the company's promoters, directors or major shareholders;

(v) he holds cross-directorships or has significant links with other directors through involvement in other companies or bodies; or

(vi) he has served on the Board for more than two consecutive terms from the date of his first appointment provided that such person shall be deemed independent director after a lapse of one term;

(e) "Non-Executive Director" means a director of a Public Sector Company who is not entrusted with responsibilities of an administrative or managerial nature;

(f) "Act" means the Companies Act, 2017 (XIX of 2017);

(g) “Public Sector Company” means a company, whether public or private, which is directly or indirectly controlled, beneficially owned or not less than fifty one percent of the voting securities or voting power of which are held by the Government or any instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors, and includes a public sector association not for profit, licensed under section 42 of the Act.

(2) All other terms and expressions used but not defined in these rules shall have the same meaning as are assigned to them in the Act.

2A. Criteria for sound and prudent management. - (1) For the purposes of these rules, the following shall be the criteria for sound and prudent management of a Public Sector Company, which shall be bound to comply with it at all times namely: -

(a) the business of the Public Sector Company is carried on with integrity, objectivity, due care and the professional skills appropriate to the nature and scale of its activities;

(b) each director and chief executive officer, by whatever name called, of the Public Sector Company complies with the fit and proper criteria specified under these rules;

(c) the Public Sector Company is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold; and

(d) the Public Sector Company maintains adequate accounting and other records of its business.

(2) Accounting and other records shall not be regarded as adequate for the purposes of these rules unless they are such as_

(a) to enable the business of the Public Sector Company to be prudently managed;

(b) to enable the Public Sector Company to comply with the obligations imposed on it by or under the Act and these rules; and

(c) comply with all professional standards and pronouncements of relevant professional bodies as applicable in Pakistan.

(3) The Public Sector Company shall not be regarded as conducting its business in a sound and prudent manner if it fails to conduct its business with due regard to the legitimate policy objectives and development targets of the Government.

3. Composition of the Board. (1) The Board shall consists of executive and non-executive directors, including independent directors and those representing minority

interests with the requisite range of skills, competence, knowledge, experience and approach so that the Board as a group includes core competencies and diversity considered relevant in the context of the Public Sector Company's operations.

(2) The Board shall have at least one-third of its total members as independent directors. The Public Sector Company shall disclose in the annual report non-executive, executive and independent directors.

(3) No Independent Director shall participate in share options or any similar schemes of the Public Sector Company which entitle him to acquire any interest in the Public Sector Company.

(4) [Omitted].

(5) No person shall be elected or nominated as a director of more than five Public Sector Companies and listed companies simultaneously, except their subsidiaries.

(6) The Public Sector Company shall, where necessary, take necessary steps to ensure that the minority shareholders, as a class, are facilitated by proxy solicitation, for which purpose the Public Sector Company shall,-

(a) annex with the notice issued under sub-section (4) of section 159 of the Act, a statement by a candidate from amongst the minority shareholders who seek to contest election to the Board, and it may include a profile of the candidate;

(b) provide information regarding shareholding structure and copies of the register of members to the candidates representing minority shareholders; and

(c) on a request by the candidates representing minority shareholders and at the cost of the company, annex to the notice issued under sub-section (4) of section 159 of the Act an additional copy of proxy form duly filled in by such candidates.

(7) The appointing authorities, including the Government and other shareholders, shall apply the fit and proper criteria given in the Annexure in making nominations of the persons for election as Board members under the provisions of the Act:

Provided that the requirement to comply with the fit and proper criteria is without prejudice to compliance with any other requirement for the fitness and propriety of directors issued under any special law, rules or regulations by a sector regulator or authority governing a specified sector.

3A. Term of office and removal of directors. - (1) A director, once appointed or elected under section 161 or section 159 of the Act, shall hold office for a period of three years, unless he resigns or is removed in accordance with the provisions of the Act.

(2) Any casual vacancy arising in the Board in the manner specified in sub-section (1) of section 161 of the Act shall be filled in by the directors in accordance with sub-section (2) of section 161 of the Act.

(3) A director nominated by the Government shall hold office in accordance with section 165 of the Act.

(4) The removal of an elected director shall take place in accordance with section 163 of the Act and the removal of a nominated director shall only take place_

(a) if the director has not performed up to a standard, determined through a performance evaluation;

(b) if the director is found to be in non-compliance with the provisions of the Act or these rules;

(c) if the director fails to fulfil his duties and responsibilities under these rules;

(d) if the director fails to comply with or deliberately ignores policy directives of the Government;

(e) for any administrative reasons such as posting, transfer, retirement, etc., the Government decides to withdraw the nomination; or

(f) in the event of his misconduct.

Explanation. - For the purpose of this clause, misconduct includes -

(i) indulging in a competing professional or personal conflict of interests' situation;

(ii) using the funds, assets and resources of the Public Sector Company without due diligence and care;

(iii) failing to treat the colleagues and the staff of the Public Sector Company with respect, or using harassment in any form of physical or verbal abuse;

(iv) making public statements without authorization by the Board;

(v) receiving gifts or other benefits from any sources external to the Public Sector Company offered to him in connection with his duties on the Board; or

(vi) abusing or misusing his official position to gain undue advantage or assuming financial or other obligations in private institutions or for persons which may cause embarrassment in the performance of official duties or functions:

Provided that the notice of removal to a nominated director shall give reasons for removal of the director.

4. Role of the chairman and chief executive and separation of the two positions.- (1) The office of the chairman shall be separate, and his responsibilities distinct, from those of the chief executive.

(2) The chairman of the Board shall,-

(a) ensure that the Board is properly working and all matters relevant to the governance of the Public Sector Company are placed on the agenda of Board meetings;

(b) conduct the Board meeting including fixing the agenda; and

(c) ensure that all the directors are enabled and encouraged to fully participate in the deliberations and decisions of the Board. The chairman has a responsibility to lead the Board and ensure its effective functioning and continuous development, he shall not be involved in day to day operations of the Public Sector Company.

(3) The chief executive is responsible for the management of the Public Sector Company and for its procedures in financial and other matters, subject to the oversight and directions of the Board, in accordance with the Act and these rules. His responsibilities include implementation of strategies and policies approved by the Board, making appropriate arrangements to ensure that funds and resources are properly safeguarded and are used economically, efficiently and effectively and in accordance with all statutory obligations.

(4) The chairman of the Board shall be elected by the Board of Directors of the Public Sector Company. However, this provision shall not apply where chairman of the Board is appointed by the Government.

5. Responsibilities, powers and functions of the Board. - (1) The directors of a Board shall be persons who, in opinion of the Government, shall assist the Public Sector Company to achieve its principal objective and the Board shall accordingly exercise its powers and carry out its fiduciary duties with a sense of objective judgment and in the best interest of the company. This provision shall apply to all directors, including ex officio directors.

(2) The Board shall evaluate the candidates based on the fit and proper criteria and the guidelines specified by the Commission for appointment to the position of the chief executive and recommend at least three candidates to the Government for its concurrence for appointment of one of them as chief executive of the Public Sector Company, except where the chief executive is nominated by the Government. On receiving concurrence or nomination of the Government, as the case may be, the Board shall appoint the chief executive in accordance with the provisions of the Act. The Board shall also be responsible for development and succession planning of the chief executive.

(3) The Board shall ensure that obligations to all shareholders are fulfilled and they are duly informed in a timely manner of all material events through shareholder meetings and other communications as are considered necessary.

(4) The Board shall ensure that professional standards and corporate values are in place that promotes integrity for the Board, senior management and other employees in the form of a "Code of Conduct". The code of conduct shall articulate acceptable and unacceptable behaviors. The Board shall ensure that appropriate steps are taken to communicate throughout the company the code of conduct it sets together with supporting policies and procedures, including posting the same on the company's website. The Board shall also ensure that adequate systems and controls are in place for the identification and redressal of grievances arising from unethical practices.

(5) The Board shall establish a system of sound internal control, which shall be effectively implemented at all levels within the Public Sector Company, to ensure compliance with the fundamental principles of probity and propriety; objectivity, integrity and honesty and relationship with the stakeholders, in the following manner, namely:-

(a) the principle of probity and propriety entails that company's assets and resources are not used for private advantage and due economy is exercised so as to reduce wastage. The principle shall be adhered to, especially with respect to the following, namely:-

(i) handling of public funds, assets, resources and confidential information by directors, executives and employees; and

(ii) claiming of expenses;

(b) the principle of objectivity, integrity and honesty requires the following, namely:-

(i) the directors and executives of a Public Sector Company do not allow a conflict of interest to undermine their objectivity in any of their activities, both professional and private and that they do not use their position in the Public Sector Company to further their private gains in a social or business relationship outside the Public Sector Company. If a situation arise where an actual or potential conflict of interest exists, there shall be appropriate identification, disclosure and management of such conflict of interest;

(ii) An appropriate conflict of interest policy is developed and duly enforced. Such a policy shall clearly lay down circumstances or considerations when a person may be deemed to have actual or potential conflict of interest, and the procedure for disclosing such interest:

Explanation: For the purposes of this clause a person shall be deemed to have an interest in a matter if he has any stake, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to objectively perform his functions under these rules so

that his ability to consider and decide any matter impartially or to give any advice without bias, may reasonably be regarded as impaired;

(iii) where a director, executive or other employee has a conflict of interest in a particular matter, such person shall play no part in the relevant discussion, decision or action;

(iv) a "register of interests" is maintained to record all relevant personal, financial and business interests, of directors and executives who have any decision making role in the company, and the same shall be made publicly available. Such interests may include, for instance, any significant political activity, including office holding, elected positions, public appearances and candidature for election, undertaken in the last five years;

(v) a declaration by the directors and executives that they shall not offer or accept any payment, bribe, favor or inducement which might influence, or appear to influence, their decisions and actions; and

(vi) the Board shall also develop and implement a policy on "anti-corruption" to minimize actual or perceived corruption in the company; and

(c) the principle of relationship with stakeholders requires the following, namely:-

(i) ensuring that the directors and executives uphold the reputation of the company by treating the general public, institutional investors and other stakeholders with courtesy, integrity and efficiency, and ensuring service quality;

(ii) ensuring equality of opportunity by establishing open and fair procedures for making appointments and for determining terms and conditions of service. The Board may nominate a committee consisting of one of its members or senior Executives for investigating, where necessary on a confidential basis, any deviation from the company's code of conduct; and

(iii) ensuring compliance with the law and the Public Sector Company's internal rules and procedures relating to public procurement, tender regulations, purchasing and technical standards, when dealing with suppliers of goods and services. The Board shall ensure that quality standards are followed with due diligence and that suppliers comply with the standards specified and are paid for supplies or services within the time agreed.

(6) The Board shall adopt a vision or mission statement and corporate strategy for the Public Sector Company.

(7) The Board shall also formulate significant policies of the Public Sector Company, which may include the following, namely:-

(a) the formal approval and adoption of the annual report of the Public Sector Company, including the financial statements;

(b) the implementation of an effective communication policy with all the stakeholders of the Public Sector Company;

(c) the identification and monitoring of the principal risks and opportunities of the Public Sector Company and ensuring that appropriate systems are in place to manage these risks and opportunities, including, safeguarding the public reputation of the Public Sector Company;

(d) procurement of goods and services so as to enhance transparency in procurement transactions;

(e) marketing of goods to be sold or services to be rendered by the Public Sector Company;

(f) determination of terms of credit and discount to customers;

(g) write-off of bad or doubtful debts, advances and receivables;

(h) acquisition or disposal of fixed assets and investments;

(i) borrowing of moneys up to a specified limit, exceeding which the amounts shall be sanctioned or ratified by a general meeting of shareholders;

(j) Corporate social responsibility initiatives including, donations, charities, contributions and other payments of a similar nature;

(k) determination and delegation of financial powers to Executives and employees;

(l) transactions or contracts with associated companies and related parties;

(m) health, safety and environment;

(n) development of whistle-blowing policy and protection mechanism;

(o) capital expenditure planning and control;

(p) protection of public interests; and

(q) human resource policy including succession planning.

(8) Any service delivered or goods sold by a Public Sector Company as a public service obligation where decisions are taken in fulfilling social objectives of the Government but are not in its commercial interests, outlay of such action shall be quantified and request for appropriate compensation there-for shall be submitted to the Government for consideration.

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

(10) The Board shall define the level of materiality, keeping in view the specific context of the Public Sector Company and the recommendations of any committee of the Board that may be set up for the purpose.

(11) The Board shall ensure compliance with policy directions received from Government from time to time.

(12) The Board shall ensure compliance with the reporting requirements received from the Government within the specified time-frame, related to, including but not limited to, audit, finance, parliamentary business, performance and ancillary matters:

Provided that the Board shall nominate the company secretary or any other official at appropriate level as focal person for maintaining liaison with the Government regarding the aforesaid matters.

6. Meetings of the Board.- (1) The Board shall meet at least once, each quarter of a year, to ensure that it discharges its duties and obligations to shareholders and other stakeholders efficiently and effectively. In case of non-compliance, the same shall be reported to the Commission with reasons of non-compliance, within fourteen days of the end of the quarter in which the meeting should have been held.

(2) Written notices of meetings, including the agenda, duly approved by the Chairman, 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 by the Board.

(3) The chairman of the Board shall ensure that minutes of meetings of the Board are appropriately recorded by approving them under his signature. The minutes of meetings shall be circulated after approval of the chairman, to directors and officers entitled to attend Board meetings, not later than fourteen days thereof, unless a shorter period is provided in the articles of association of the Public Sector Company.

(4) In the event that a director of a Public Sector Company is of the view that his dissenting note has not been satisfactorily recorded in the minutes of a meeting of the Board, he may refer the matter to the company secretary, or the chairman of the Board. The director may require the note to be appended to the minutes, failing which he may file an objection with the Commission.

(5) A Board meeting held and attended through video-conferencing shall be a valid meeting, as long as its proceedings are properly recorded and the requirements specified by the Commission for public companies for holding Board meetings through video-conferencing are met.

7. Key information to be placed for decision by the Board .- (1) The Board shall establish appropriate arrangements to ensure it has access to all relevant information, advice and resources necessary to enable it to carry out its role effectively. Significant issues shall be placed before the Board for its information and consideration, in order to formalize and strengthen the corporate decision making process.

(2) For the purpose of sub-rule (1), significant issues shall, *inter-alia*, include the following, namely:-

(a) annual business plans, cash flow projections, forecasts and long term plans; budgets including capital, manpower and expenditure budgets, along with variance analyses;

(b) internal audit reports, including cases of fraud or major irregularities;

(c) management letters issued by the external auditors;

(d) details of joint ventures or collaboration agreements or agreements with distributors, agents, etc;

(e) promulgation or amendment of a law, rule or regulation or, enforcement of an accounting standard or such other matters as may affect the Public Sector Company;

(f) status and implications of any lawsuit or judicial proceedings of material nature, filed by or against the Public Sector Company;

(g) any show cause, demand or prosecution notice received from any revenue or regulatory authority, which may be material;

(h) material payments of government dues, including income tax, excise and customs duties, and other statutory dues including penal charges thereon;

(i) inter-corporate investments in and loans to or from associated concerns in which the business group, of which the Public Sector Company is a part, has significant interest;

(j) policies related to the award of contracts and purchase and sale of raw materials, finished goods, machinery etc;

(k) default in payment of principal or interest, including penalties on late payments and other dues, to a creditor, bank or financial institution or default in payment of public deposit;

(l) failure to recover material amounts of loans, advances, and deposits made by the Public Sector Company, including trade debts and inter-corporate finances;

(m) any significant accidents, dangerous occurrences and instances of pollution and environmental problems involving the Public Sector Company;

(n) significant public or product liability claims made or likely to be made against the Public Sector Company, including any adverse judgment or order made on the conduct of the Public Sector Company or of any other company that may bear negatively on the Public Sector Company;

(o) disputes with labor and their proposed solutions, any agreement with the labor union or collective bargaining agent and any charter of demands on the Public Sector Company;

(p) payment for goodwill, brand equity or intellectual property;

(q) annual, quarterly, monthly or other periodical accounts as are required to be approved by the Board for circulation amongst its members;

(r) reports on governance, risk and compliance issues;

(s) whistle-blower protection mechanism;

(t) report on Corporate Social Responsibility (CSR) activities; and

(u) related party transactions.

8. Performance evaluation. - (1) The performance evaluation of members of the Board including the chairman and the chief executive shall be undertaken annually by the Government for which the Government shall enter into performance contract with each member of the Board at the time of his appointment.

(2) The Board shall monitor and assess the performance of senior management on a periodic basis, at least once a year, and hold them accountable for accomplishing objectives, goals and key performance indicators set for this purpose.

9. Related party transactions. - (1) The details of all related party transactions shall be placed before the audit committee of the Public Sector Company and upon recommendations of the audit committee, the same shall be placed before the Board for review and approval.

(2) The related party transactions which are not executed at arm's length price shall also be placed separately at each Board meeting along with necessary justification for consideration and approval of the Board on recommendation of the audit committee of the Public Sector Company.

(3) The Board shall approve the pricing methods for related party transactions that were made on the terms equivalent to those that prevail in arm’s length transaction only if such terms can be substantiated.

(4) Every Public Sector Company shall maintain a party wise record of transactions, in each financial year, entered into with related parties in that year along with all such documents and explanations. The record of related party transaction shall include the following particulars in respect of each transaction, namely:-

(a) name of related party;

(b) nature of relationship with related party;

(c) nature of transaction;

(d) amount of transaction; and

(e) terms and conditions of transaction, including the amount of consideration received or given.

(5) The Public Sector Company may seek a general mandate from its members for recurrent related party transactions of revenue or trading nature or those necessary for its day-to-day operations such as the purchase and sale of supplies and materials, but not in respect of the purchase or sale of assets, undertakings or businesses. A general mandate is subject to annual renewal.

10. Quarterly and Monthly Financial Statements and Annual Report. –

(1) Every Public Sector Company shall, within one month of the close of first, second and third quarter of its year of account, prepare a profit and loss account for, and balance-sheet as at the end of, that quarter, whether audited or otherwise, for the Board's approval. Annual report including annual financial statements shall be placed on the Public Sector Company's website:

Provided that Public Sector Companies which are listed on the exchange shall prepare half-yearly accounts within such time period and undertake limited scope review by the auditors as specified by the Commission from time to time.

11. Board orientation and learning.- (1) Orientation courses shall be held by a Public Sector Company, to enable directors to better comprehend the specific context in which it operates, including its operations and environment, awareness of Public Sector Company's values and standards of probity and accountability as well as their duties as directors.

(2) In order to ensure that the directors are well conversant with the corporate laws and practices, they are encouraged to have certification under an appropriate training or education program offered by any institution, local or foreign.

(3) In order to acquaint the Board members with the wider scope of responsibilities concerning the use of public resources, to act in good faith and in the best interests of the Public Sector Company, at least one orientation course shall be arranged annually for the directors and the following information in writing, *inter-alia*, shall be provided, namely:-

(a) Public Sector Company's aims and objectives;

(b) control environment and control activities;

(c) key policies and procedures;

(d) risk management and internal control framework;

(e) background of key personnel, including their job descriptions;

(f) delegation of financial and administrative powers;

(g) board and staff structure; and

(h) budgeting, planning and performance evaluation systems.

12. Formation of Board committees.- (1) The Board shall set up the following committees to support it in performing its functions efficiently, and for seeking assistance in the decision making process, namely:-

(a) audit committee, for an efficient and effective internal and external financial reporting mechanism;

(b) risk management committee, in case of Public Sector Companies either in the financial sector or those having assets of five billion rupees or more, to effectively review the risk function;

(c) human resources committee, to deal with all employee related matters including recruitment, training, remuneration, performance evaluation, succession planning, and measures for effective utilization of the employees of the Public Sector Company;

(d) procurement committee, to ensure transparency in procurement transactions and in dealing with the suppliers; and

(e) nomination committee, to identify, evaluate and recommend candidates for vacant positions, including casual vacancies, on the Board, including the candidates recommended by the Government for consideration of shareholders or in case of casual vacancy to the board of directors after examining their skills and characteristics that are needed in such candidates:

Provided that the nomination committee shall submit its proposal within thirty days of a vacancy arising or on a recommendation made by the Government as the case may be.

(2) The Board committees shall be chaired by non-executive directors. However, the independent directors in the committees shall not be less than their proportionate strength. The existence of such committees shall not absolve the Board from its collective responsibility for all matters. Such committees shall have written terms of reference that define their duties, authority and composition, and shall report to the full Board. The minutes of their meetings shall be circulated to all Board members.

(3) The Board shall concern itself with policy formulation and oversight and not the approval of individual transactions except which are of an extraordinary nature or involve materially large amount.

13. Chief Financial Officer, Company Secretary and Chief Internal Auditor – appointment and removal.- (1) The Board shall appoint a chief financial officer, a company secretary and a chief internal auditor by whatever name called.

(2) The appointment, remuneration and terms and conditions of employment of the chief financial officer, the company secretary and the chief internal auditor of Public Sector Company shall be determined with the approval of the Board.

(3) The chief financial officer, the company secretary, or the chief internal auditor of Public Sector Company shall not be removed except with the approval of the Board.

14. Role and qualification of Chief Financial Officer and Company Secretary.- (1) The chief financial officer shall be responsible for ensuring that appropriate advice is given to the Board on all financial matters, for keeping proper financial records and accounts, and for maintaining an effective system of internal financial control.

(2) No person shall be appointed as the chief financial officer of a Public Sector Company unless he is,-

(a) a member of a recognized body of professional accountants with at least five years relevant experience, in case of Public Sector Companies having total assets of five billion rupees or more; or

(b) a person holding a master degree in finance from a university recognized by the Higher Education Commission with at least ten years relevant experience, in case of other Public Sector Companies.

(3) The company secretary shall be responsible for ensuring that Board procedures are followed, and that all applicable laws, rules and regulations and other relevant statements of best practice are complied with. Where the company secretary is not separately appointed, the role of company secretary may be combined with chief financial officer or any other member of senior management.

(4) No person shall be appointed as the company secretary of a Public Sector Company unless he is a,-

(a) member of a recognized body of professional accountants; or

(b) member of a recognized body of corporate or chartered secretaries; or

(c) person holding a master degree in business administration or commerce or being a law graduate from a university recognized by the Higher Education Commission with at least five years relevant experience.

(5) No person shall be appointed to the positions of the chief financial officer and company secretary unless he is fit and proper for the position.

15. Requirement to attend Board Meetings.- (1) The chief financial officer and the company secretary of a Public Sector Company shall attend all meetings of the Board:

Provided that unless elected as a director, the chief financial officer and the company secretary shall not be deemed to be a director or entitled to cast a vote at meetings of the Board for the purposes of these rules:

Provided further that the chief financial officer and the company secretary shall not attend such part of a meeting of the Board, which involves consideration of an agenda item relating to them or that relating to the chief executive or any director.

(2) In pursuance of sub-rule (1), the Board shall ensure that the chief financial officer and the company secretary attend Board meetings, wherever required.

16. Financial Reporting Framework.- Every Public Sector Company shall adopt International Financial Reporting Standards, as are notified by the Commission under sub-section (1) of section 225 of the Act.

17. Directors' report to the Shareholders.- (1) The Board shall submit an annual report to the shareholders.

(2) The Board shall make the following statements and provide the following information in their report to the shareholders, prepared under section 227 of the Act, namely:-

(a) the Board has complied with the relevant principles of corporate governance, and has identified the rules that have not been complied with, the period in which such non-compliance continued, and reasons for such non-compliance;

(b) the financial statements, prepared by the management of the Public Sector Company, present fairly its state of affairs, the result of its operations, cash flows and changes in equity;

(c) proper books of account of the Public Sector Company have been maintained;

(d) appropriate accounting policies have been consistently applied in preparation of financial statements and accounting estimates are based on reasonable and prudent judgment;

(e) they recognize their responsibility to establish and maintain sound system of internal control, which is regularly reviewed and monitored; and

(f) the appointment of chairman and other members of Board and the terms of their appointment along with the remuneration policy adopted are in the best interests of the Public Sector Company as well as in line with the best practices.

(3) The disclosure of an Executive's remuneration is an important aspect for a Public Sector Company. The annual report of a Public Sector Company shall contain a statement on the remuneration policy and details of the remuneration of members of the Board. Separate figures need to be shown for salary, fees, other benefits and other performance-related elements.

(4) The directors' report of a Public Sector Company shall also include the following, where applicable, namely:-

(a) where the Public Sector Company is reliant on a subsidy or other financial support from the Government, a detailed disclosure of the fact;

(b) significant deviations from last year in operating results of the Public Sector Company shall be highlighted and reasons thereof shall be explained;

(c) key operating and financial data of last six years shall be summarized;

(d) key performance indicators of the Public Sector Company relating to its social objectives and outcomes which significantly reflect the work and impact of Public Sector Company and a comparison of actual results with the budgeted figures. Such indicators shall focus on as to how well the Public Sector Company has responded to accountability requirements, improved service delivery, reduced costs and adherence to the principles of environmental and corporate social responsibilities;

(e) where any statutory payment on account of taxes, duties, levies and charges is overdue or outstanding, the amount together with a brief description and reasons for the same shall be disclosed;

(f) significant plans and decisions, such as corporate restructuring, business expansion and discontinuance of operations, shall be outlined along with future prospects, risks and uncertainties surrounding the Public Sector Company;

(g) a statement as to the value of investments of provident, gratuity and pension funds, based on their respective audited accounts, shall be included;

(h) the number of Board meetings held during the year and attendance by each director shall be disclosed; and

(i) the pattern of shareholding shall be reported to disclose the aggregate number of shares (alongwith details, stated below) held by,-

(i) Government;

(ii) associated companies, undertakings and related parties (name wise details);

(iii) mutual funds;

(iv) directors, Chief Executive, and their spouse and minor children (name wise details);

(v) Executives;

(vi) Public Sector Companies and corporations;

(vii) banks, development finance institutions, non-banking finance companies, insurance companies, takaful companies, and modarabas; and

(viii) shareholders holding five percent or more voting rights in the Public Sector Company (name wise details).

18. Disclosure of Interests by Directors and Officers. – (1) Every director of a Public Sector Company, if he or his relative, is in any way, directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the Public Sector Company shall disclose the nature of his concern or interest at a meeting of the directors.

(2) Any other officer (including the Chief Executive and other Executives) of a Public Sector Company, if he or his relative, is in any way, directly or indirectly, concerned or interested in any proposed contract or arrangement by the company shall disclose to the Company through a communication to the company secretary, the nature and extent of his interest in the transaction. Such officer and the company shall ensure that such information is properly placed and considered by any forum where the matter relating to such proposed contract or arrangement is to be discussed and approved.

(3) If a director or officer has an existing interest, before joining the Board, he shall disclose such interest to the Board, which shall take such facts into consideration for any current and future decision making.

19. Directors' Remuneration. – (1) There shall be a formal and transparent procedure for fixing the remuneration packages of individual directors. No director shall be involved in deciding his own remuneration.

(2) Directors' remuneration packages shall encourage value creation within the company, and shall align their interests with those of the company. These shall be subject to prior approval of shareholders or Board as required by company's Articles of

Association. Levels of remuneration shall be sufficient to attract and retain the directors needed to run the company successfully.

(3) Subject to the provisions of the company's Articles of Association, the shareholders or Board shall determine the scale of remuneration for non-executive directors. However, it shall not be at a level that could be perceived to compromise their independence.

(4) The Public Sector Company's annual report shall contain criteria and details of the remuneration of each director, including salary, benefits and performance linked incentives.

20. Responsibility for financial reporting and corporate compliance.- No Public Sector Company shall circulate its financial statements unless the chief executive and the chief financial officer, present the financial statements, duly certified under their respective signatures, for consideration and approval of the audit committee and the Board. The Board shall, after consideration and approval, authorize the signing of financial statements for issuance and circulation.

21. Audit Committee.- (1) The Board shall establish an audit committee, whose members shall be financially literate and majority of them, including its chairman, shall be Independent Non-Executive Directors, subject to the provisions of sub-rule (2) of rule 12. The names of members of the audit committee shall be disclosed in each annual report of the Public Sector Company.

(2) The chairman of the Board as well as the chief executive of the Public Sector Company shall not be a member of the audit committee.

(3) The chief financial officer, the chief internal auditor, and a representative of the external auditors shall attend all meetings of the audit committee at which issues relating to accounts and audit are discussed:

Provided that at least once a year, the audit committee shall meet the external auditors without the presence of the chief financial officer, the chief internal auditor and other executives being present, to ensure independent communication between the external auditors and the audit committee:

Provided further that at least once a year, the audit committee shall meet chief internal auditor and other members of the internal audit function without the chief financial officer and the external auditors being present.

(4) The Board shall determine the terms of reference of the audit committee. The terms of reference shall be in writing, specifying the mandate of the audit committee. The audit committee shall have full and explicit authority to investigate any matter within its terms of reference and shall be provided with adequate resources and access to all relevant information.

(5) The audit committee shall, *inter-alia*, be responsible for recommending to the Board the appointment of external auditors by the Public Sector Company's shareholders and shall consider any questions of resignation or removal of external auditors, audit fees and provision by external auditors of any service to the Public Sector Company in addition to audit of its financial statements. In the absence of strong grounds to proceed otherwise, the Board shall act in accordance with the recommendations of the audit committee in all these matters. However, the Board shall not be deemed to absolve itself of its overall responsibility for the functions delegated to the audit committee.

(6) The terms of reference of the audit committee may also include the following, namely:-

(a) determination of appropriate measures to safeguard the Public Sector Company's assets;

(b) review of financial results;

(c) review of quarterly, half-yearly and annual financial statements of the Public Sector Company, prior to their approval by the Board, focusing on,-

(i) major judgment areas;

(ii) significant adjustments resulting from the audit;

(iii) the going-concern assumption;

(iv) any changes in accounting policies and practices; and

(v) compliance with applicable accounting standards.

Explanation.- The appropriateness of the use of the going concern assumption in the preparation of the financial statements is generally not in question when auditing Public Sector Company having funding arrangements backed by the Government. However, where such arrangements do not exist, or where Government funding of the Public Sector Company may be withdrawn and the existence of the Public Sector Company may be at risk, International Standards on Auditing provide useful guidance. This issue is increasingly important for Public Sector Companies which have been privatized;

(d) facilitating the external audit and discussion with external auditors of major observations arising from interim and final audits and any matter that the auditors may wish to highlight (in the absence of management, where necessary);

(e) review of management letter issued by external auditors and management's response thereto;

(f) ensuring coordination between the internal and external auditors of the Public Sector Company;

(g) review of the scope and extent of internal audit and ensuring that the internal audit function has adequate resources and is appropriately placed within the Public Sector Company;

(h) consideration of major findings of internal investigations and management's response thereto;

(i) ascertaining that the internal control system including financial and operational controls, accounting system and reporting structure are adequate and effective;

(j) review of the Public Sector Company's statement on internal control systems prior to endorsement by the Board;

(k) recommending or approving the hiring or removal of the chief internal auditor;

(l) instituting special projects, value for money studies or other investigations on any matter specified by the Board, in consultation with the chief executive and to consider remittance of any matter to the external auditors or to any other external body;

(m) determination of compliance with relevant statutory requirements;

(n) monitoring compliance with the best practices of corporate governance and identification of significant violations thereof;

(o) overseeing whistle-blowing policy and protection mechanism; and

(p) consideration of any other issue or matter as may be assigned by the Board.

(7) The audit committee shall be responsible for managing the relationship of Public Sector Company with the external auditors. In managing the Public Sector Company's relationship with the external auditors on behalf of the Board, the audit committee's responsibilities include,-

(a) suggesting the appointment of the external auditor to the Board, the audit fee, and any questions of resignation or dismissal;

(b) considering the objectives and scope of any non-financial audit or consultancy work proposed to be undertaken by the external auditors, and reviewing the remuneration for this work;

(c) discussing with the external auditors before the audit commences the scope of the audit and the extent of reliance on internal audit and other review agencies;

(d) discussing with the external auditors any significant issues from the review of the financial statements by the management, and any other work undertaken or overseen by the audit committee;

(e) reviewing and considering the external auditors' communication with management and management's response thereto; and

(f) reviewing progress on accepted recommendations from the external auditors.

(8) The recommendations of the audit committee for appointment of retiring auditors or otherwise, as mentioned in sub-rule (7) above, shall be included in the directors' report. In case of a recommendation for change of external auditors before the lapse of three consecutive financial years, the reasons for the same shall be included in the directors' report.

(9) The audit committee shall appoint a secretary of the Committee, who shall circulate minutes of its meetings to the all members, directors and the chief financial officer, within fourteen days of the meeting.

22. Internal Audit.- (1) There shall be an internal audit function in every Public Sector Company. The chief internal auditor, who is the head of the internal audit function in the Public Sector Company, shall be accountable to the audit committee and have unrestricted access to the audit committee.

(2) No person shall be appointed to the position of the chief internal auditor unless he is considered and approved as "fit and proper" for the position by the Audit Committee. No person shall be appointed as the Chief Internal Auditor of a Public Sector Company unless he has five years of relevant audit experience and is a,-

(a) member of a recognized body of professional accountants; or

(b) certified internal auditor; or

(c) certified fraud examiner; or

(d) certified internal control auditor; or

(e) person holding a master degree in finance from a university recognized by the Higher Education Commission.

Provided that individuals serving as chief internal auditor of the Public Sector Company for the last five years at the time of coming into force of these rules shall be exempted from the above qualification requirement.

(3) Every Public Sector Company shall ensure that internal audit reports are provided for the review of external auditors. The external auditors shall discuss any major findings in relation to the reports with the audit committee, which shall report matters of significance to the Board.

(4) The internal audit function shall have an audit charter, duly approved by the audit committee and shall work, as far as practicable, in accordance with the standards for the professional practice of internal auditors issued by the Institute of Internal Auditors Inc., (the global professional organization of internal audit profession).

23. External Auditors.- (1) Every Public Sector Company shall ensure that its annual accounts are audited by external auditors, as envisaged under section 246 of the Act. When carrying out audit of a Public Sector Company, the external auditors shall take into account the specific requirements of any other relevant regulations, ordinances or ministerial directives which affect the audit mandate and any special auditing requirements.

(2) In assessing materiality, the external auditor must, in addition to exercising professional judgment, consider any legislation or regulation which may impact that assessment.

(3) The external auditors shall independently report to the shareholders in accordance with statutory and professional requirements. They shall also report to the Board and audit committee the matters of audit interest, as laid down in the International Standards on Auditing.

(4) No Public Sector Company shall appoint as external auditors a firm of auditors which firm or a partner of which firm is non-compliant with the International Federation of Accountants' (IFAC) Guidelines on Code of Ethics, as applicable in Pakistan.

(5) The external auditors shall observe applicable guidelines issued by the International Federation of Accountants with regard to restriction of non-audit services. The audit committee shall also ensure that the external auditors do not perform management functions or make management decisions, responsibility for which remains with the Board and management of the Public Sector Company.

(6) Every Public Sector Company in the financial sector shall change its external auditors every five years. Financial sector, for this purpose, means banks, non-banking finance companies, mutual funds, modarabas, *takaful* companies and insurance companies. Every Public Sector Company other than those in the financial sector shall, at a minimum, rotate the engagement partner after every five years.

(7) No Public Sector Company shall appoint a person as its chief executive, chief financial officer, chief internal auditor or director who was a partner of the firm of its external auditors (or an employee involved in the audit of the Public Sector Company) at any time during the two years preceding such appointment.

(8) Every Public Sector Company shall require external auditors to furnish a management letter to its Board not later than thirty days from the date of audit report.

24. Compliance with the rules.- (1) Every Public Sector Company shall publish and circulate a statement along with its annual report to set out the status of its compliance with these rules, and shall also file with the Commission and the registrar concerned such statement alongwith its annual report.

(2) Every Public Sector Company shall ensure that the statement of compliance with the rules is reviewed and certified by external auditors, where such compliance can be objectively verified, before publication by the Public Sector Company.

(3) Where the Federal Government is satisfied that it is not practicable to comply with any of these rules, the Federal Government may, for reasons to be recorded, relax the same subject to such conditions as it may deem fit to impose.

25. Penalty for contravention of the rules.- Whoever fails or refuses to comply with, or contravenes any provision of these rules, or knowingly and willfully authorises or permits such failure, refusal or contravention shall, in addition to any other liability under the Act, be punishable with fine and, in the case of continuing failure, to a further fine, as provided in sub-section (2) of section 508 of the Act.

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ANNEXURE

[See Rule 3(7)]

CRITERIA FOR DETERMINING A 'FIT AND PROPER PERSON'

(1) For the purpose of determining as to whether a person proposed to be appointed as director is a 'fit and proper person', the appointing authorities shall take into account any consideration as it deems fit, including but not limited to the following criteria, namely:-
The person proposed for the said position –

(a) is at least graduate;

(b) is a reputed businessman or a recognised professional with relevant sectoral experience;

(c) has financial integrity;

(d) has no convictions or civil liabilities;

(e) is known to have competence;

(f) has good reputation and character;

(g) has the traits of efficiency and honesty;

(h) does not suffer from any disqualification to act as a director stipulated in the Ordinance;

(i) has not been subject to an order passed by the Commission cancelling the certificate of registration granted to the person individually or collectively with others on the ground of its indulging in insider trading, fraudulent and unfair trade practices or market manipulation, illegal banking, forex or deposit taking business;

(j) has not been subject to an order passed by the Commission or any other regulatory authority, withdrawing or refusing to grant any license or approval to him which has a bearing on the capital market;

(k) is not a stock broker or agent of a broker; and

(l) does not suffer from a conflict of interest; this includes political office holders whether or not in a legislative role.

(2) A director shall cease to be considered as a "fit and proper person" for the purpose, if he incurs any of the following disqualifications, namely:-

(a) he is convicted by a court for any offence involving moral turpitude, economic offence, disregard of securities and company laws or fraud;

(b) an order for winding up has been passed against a company of which he was the officer as defined under section 305 of the Ordinance;

(c) he or his close relatives have been engaged in a business which is of the same nature as and directly competes with the business carried on by the Public Sector Company of which he is the director;

(d) he does not conduct his duties with due diligence and skill; or

(e) his association with the Public Sector Company is likely, for whatever reason, to be detrimental to the interest of the Public Sector Company, or be otherwise undesirable.