



POLICY FRAMEWORK

Guidelines on matters regarding **Board of Directors** of Public Sector Companies and Autonomous Bodies in Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

<http://www.finance.gkp.pk>

CONTROL TABLE			
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Table of Contents

NOTIFICATION	1
1. Background.....	4
2. Rationale.....	4
3. Legal framework for Board	5
3.1 Public Sector Companies (PSCs).....	5
3.2 Autonomous Bodies (ABs).....	5
4. Board Structure.....	5
5. Nomination and selection of Directors	6
6. Term of office and removal of directors.....	8
7. Board Meetings.....	8
7.1 Assignment of office by Directors	9
7.2 Quorum	9
7.3 Record of resolution and meetings of Board	9
7.4 Passing of resolution by the directors through circulation.....	9
8. Orientation session	10
9. Directors’ remuneration.....	10
10. Board Committees	11
11. Roles and Responsibilities	12
12. Performance Evaluation.....	13
13. Disclosure of Interests by Directors and Officers.....	14
14. Training programs for effective leadership.....	14
15. Effective date and scope of policy	14
References.....	15
Annexure-A.....	16

NOTIFICATION

The Provincial Government is pleased to approve the following policy framework to be followed by Public Sector Companies and Autonomous Bodies for matters relevant to the Board of Directors.

Aspect	Framework
Board nomination	<ul style="list-style-type: none"> • Nomination committee of the Board, preferably consisting of not more than three members, comprising of a majority of Non-Executive Ex-Officio Directors and an independent director. • The consent of all the directors including executive and non-executive directors shall be placed on record. • Nomination committee to assess the suitability of potential candidates against a clear and appropriate selection criterion. • Independent directors shall be shortlisted from the pool of certified directors (databank maintained by approved SECP Institute). • Directors other than independent may be shortlisted from the pool of certified directors or through advertisement or direct headhunting or existing directors, or other sources as deemed appropriate. • The entity shall maintain complete database of its Board members and comply for maintenance of database in governance management system.
Board appointment	<ul style="list-style-type: none"> • Profiles of shortlisted candidates forwarded to the appointing authority. • Appointing authority to apply fit & proper criteria.
Board size	<ul style="list-style-type: none"> • Board size recommended to not exceed 10 members.
Board composition	<ul style="list-style-type: none"> • Chairman: independent director elected by the BoD or the Government (as the case may be) • Independent directors: at least 1/3 members • Executive directors • Non-executive ex-officio
Board committees	<ul style="list-style-type: none"> • Board to decide the necessary committees according to the entity's operations • Standard committees normally formed e.g., audit, risk management, human resource, nomination and procurement committees • Committees to be chaired by non-executive directors • Chairman of the Board shall not be member of any committee

Board responsibilities	<ul style="list-style-type: none"> • Mission statement & strategy formulation • Business process manuals • Develop & monitor internal audit processes • Identify, monitor & mitigate risks • Recruitment & removal of CEO & other top management • Approval of annual reports & managing conflict of interest
Board meetings	<ul style="list-style-type: none"> • Board shall appoint a Company Secretary for its facilitation • Board to meet at least once each quarter (in person or through video call) • Meeting quorum shall not be less than one-third of number of directors or four, whichever is greater except for entities with small sized Boards where they may follow their own specific rules on quorum • Meeting material and agenda to be circulated at least 7 days in advance of the meeting except in emergency situations • Entity to maintain record of (a) all resolutions passed by circulation (b) detailed meeting minutes • Meeting minutes to be signed by the Chairman and to be circulated to all directors within 14 days of meeting
Directors' remuneration	<ul style="list-style-type: none"> • Directors' remuneration to be decided by Board subject to Government approval • No variable performance-based incentives for Non-Executive Directors • No directors' remuneration for Executive directors
Term of office and removal	<ul style="list-style-type: none"> • A director once appointed or elected shall hold office for a period of three years or at the pleasure of the Government, unless he resigns or is removed in accordance with the provisions of Companies Act 2017 or any special law governing autonomous bodies.
Performance evaluation	<ul style="list-style-type: none"> • Board to establish a clear performance evaluation criterion in consultation with respective administrative department. • Nomination committee to act as the performance evaluation committee • The Government may also initiate the performance evaluation exercise of a Board either directly or through a third-party • Performance evaluation of Board as a whole, individual directors and Board Committees to be carried out at least annually. • Nomination committee to submit evaluation report to Chairman of the Board for onward submission to the Administrative department and the Government for their consideration. • Government may pass appropriate orders with or without modifications.

2. The Provincial Cabinet is further pleased to approve:

- The activities mentioned above shall be applicable with prospective effect

- The currently serving Boards of Directors shall not be affected by the guidelines presented in this policy framework for their current tenure. However, the process of re-appointment shall be followed as per the guidelines of the policy framework provided
- Detailed guidelines on matters regarding Board of Directors can be downloaded from <https://www.finance.gkp.pk/articles/about/wings/corporate-governance-unit-cgu>
- In order to operationalize the policy framework, the Finance department may issue guidelines within the broad scope of this policy framework from time to time
- As far as practicable, and prospectively, the administrative departments shall align the provisions of respective legislation of autonomous bodies in-line with principles laid out in these policy frameworks.

3. The Cabinet further directed that all the administrative departments shall take a review of their respective public sector companies / autonomous bodies on these policy framework parameters and shall submit a compliance report to the Chief Secretary office within 60 days from the date of notification of these policy frameworks.

4. It is therefore requested that necessary action may kindly be taken accordingly.

1. Background

1.1. Public Sector Companies (PSCs) and Autonomous Bodies (ABs) have been established to increase efficiency, reduce costs and improve effectiveness of public service delivery across various sectors in Khyber Pakhtunkhwa. There are 168 PSCs and ABs under the ownership and control of the Government of Khyber Pakhtunkhwa (GoKP). These entities have been set-up under different modes such as not for profit companies under section 42 of Companies Ordinance, 1984 (superseded by Companies Act, 2017), as well as statutory bodies under special enactments. The performance, effectiveness and operational efficiency of entities is lacking, with significant scope for improvements in the management of entities. PSCs/ABs have low levels of own source revenue and they are significantly reliant on funding from the GoKP. The aggregate costs of funding PSCs and ABs to GoKP is likely to be rising substantially. In the absence of a functioning mechanism to track performance and costs of PSCs/ABs, the Finance Department has initiated an exercise to determine the cost of PSCs/ABs by collecting data from entities across departments.

1.2. As a first step to improve the performance of PSCs/ABs, the Finance Department is developing policy guidelines for PSCs/ABs to adopt corporate governance best practices in aspects relating to boards, Chief Executive Officers (CEOs), human resources management, financial management, accounting, Government oversight and performance management. The guidelines are being developed by reviewing relevant legislation, sub-legislation in Pakistan, Corporate Governance Assessments of PSCs in Khyber Pakhtunkhwa conducted by the Finance Department, and international practice, including from Organization for Economic Co-operation and Development (OECD) countries and non-OECD countries.

2. Rationale

2.1. The Board occupies a central position and role in the corporate governance in practice across the globe. The Board formulates strategy, oversees management and ensures a robust internal control system. As the Board assumes the ultimate responsibility for the stewardship and performance of the company, its nomination, selection and subsequent appointment process needs to be well defined and transparent.

2.2. The mandate, role and functions of the board as a component of the organization should be defined along with performance oversight, management and reporting protocols. Board is expected to act as a fiduciary of the government ensuring their interest at all times. This policy framework provides broad guidelines covering roles, composition, skills, nomination, appointment, conflict of interest, performance evaluation, termination of boards of PSC/ABs in the province.

3. Legal framework for Board

3.1 Public Sector Companies (PSCs)

- a. Relevant sections of the Companies Act 2017.
- b. Public Sector Companies (Corporate Governance) Rules, 2013 issued by the Securities and Exchange Commission of Pakistan and amended from time to time

3.2 Autonomous Bodies (ABs)

The relevant laws for appointment and removal of the Board of Directors.

4. Board Structure

- 4.1.** The Board shall be led by a Chairman with strong leadership and shall be an independent Director. The Chairman of the Board shall be elected by the Board of Directors of the AB/PSC or the Government, as the case may be.
- 4.2.** The Board shall preferably be no larger than 10 members and have a balanced composition with at least one-third of the Board made up of independent directors.
- 4.3.** The Board of Directors shall have requisite skills, competence, knowledge and experience with respect to commercial, specific industry, technical, management, financial, human resource, audit so that the Board as a group includes core competencies and diversity considered relevant in the context of the AB/PSC operations.
- 4.4.** No person shall be selected or nominated as a director of more than five public sector companies, autonomous bodies and listed companies simultaneously, except their subsidiaries.

5. Nomination and selection of Directors

- 5.1. The AB/PSC shall have a nomination committee of the Board, preferably consisting of not more than three members, comprising of a majority of Non-Executive Ex-Officio Directors and an independent director. The nomination committee shall be responsible for recommending potential candidates to the appointing authority for their consideration. The consent of all the directors including executive and non-executive directors shall be placed on record.
- 5.2. The nomination committee shall assess the suitability of potential candidates against a clear and appropriate selection criterion for Directorships, based on annual review of the Board's required mix of skills and experiences, considering the current and future needs of the AB/PSC.
- 5.3. The nomination committee may shortlist candidates from a databank maintained by an institute approved by the commission or through advertisement or direct headhunting or of existing directors, or other sources as deemed appropriate.
- 5.4. Once the shortlisted candidates are finalized, the nomination committee shall forward the names to the appointing authority for their consideration and if deemed appropriate by the appointing authority for their appointment.
- 5.5. The appointing authorities shall apply the fit and proper criteria, annexed as “Annexure-A” in nominating persons for selection as Board members. 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.
- 5.6. An independent director who is to be appointed under any law, rules, regulations or code, shall be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any institute, body or association, as may be notified by the Securities and Exchange Commission of Pakistan (SECP). Currently, such a data bank is maintained by the Pakistan Institute of Corporate Governance.

5.7. The Administrative Department shall exercise due diligence before recommending a person from the data bank as an independent director.

An independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest.

No director shall be considered independent if one or more of the following circumstances exist-

- a. he has been an employee of the company, any of its subsidiaries or holding company within the last two years;*
- b. he is or has been the chief executive officer of subsidiaries, associated company, associated undertaking or holding company in the last two years;*
- c. he has, or has had within the last two years, a material business relationship with the company either directly, or indirectly as a partner, major shareholder or director of a body that has such a relationship with the company.*

Explanation: The major shareholder means a person who, individually or in concert with his family or as part of a group, holds 10% or more shares having voting rights in the paid-up capital of the company;

- d. he has received remuneration in the three years preceding his/her appointment as a director or receives additional remuneration, excluding retirement benefits from the company apart from a director's fee or has participated in the company's stock option or a performance-related pay scheme;*
- e. he is a close relative of the company's directors or major shareholders:*

Explanation: “close relative” means spouse(s), lineal ascendants and descendants and siblings;

- f. he holds cross-directorships or has significant links with other directors through involvement in other companies or bodies not being the associations licensed under section 42;*
- g. 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;*

5.8. The AB/PSC shall maintain complete databank of its Directors with respect to Name, CNIC Number/Passport Number, Nationality, Professional Qualification, Contact No., Email ID, date of nomination, experience details, number of directorship in other companies and shall comply for maintenance of database in governance management system.

5.9. Any casual vacancy occurring among the directors may be filled up by the directors, subject to approval of the appointing authority and the person so appointed shall hold office for the remainder of the term of the director in whose place he/she is appointed.

6. Term of office and removal of directors

6.1. A director once appointed or elected shall hold office for a period of three years or at the pleasure of the Government, unless he resigns or is removed in accordance with the provisions of Companies Act 2017 or any special law governing autonomous bodies.

7. Board Meetings

The Board shall appoint a Company Secretary / Secretary to the Board with relevant experience and skills to ensure that board meetings are effective and that Directors are adequately prepared.

The Board shall meet at least once in each quarter.

The Board will conduct business whether in person or via video call or through circulation.

7.1 Assignment of office by Directors

A director of AB/PSC shall not assign his office to any other person and any such appointment shall be void ab-initio.

7.2 Quorum

The quorum for a meeting of Board shall not be less than one-third of number of directors or four, whichever is greater except for entities with small size Boards where they may follow their own specific rules on quorum and the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of quorum.

7.3 Record of resolution and meetings of Board

The meeting shall be called only after approval of the Agenda by the Chairman of the Board or the Chairman of the respective Committee, as the case may be.

The agenda of the meeting along with working papers shall be circulated at least 7 days before the date fixed for the meeting. In case of emergency meetings, the notice may be reduced or waived by the Board and the same shall be recorded in minutes.

The AB/PSC shall maintain record comprising:

- a. All resolutions of the Board passed by circulation
- b. Minutes of all proceedings of board meetings or committee of directors along with the names of participants, to be entered in properly maintained books.

The minutes of the meeting shall be authenticated by the Chairman of the meeting.

The minutes of meeting shall be furnished to every director within fourteen days of the date of meeting.

The records must be kept at the registered office of the AB/PSC from the date of the resolution, meeting or decision simultaneously in physical and electronic form and it shall be preserved for at least ten years in physical form and permanently in electronic form.

7.4 Passing of resolution by the directors through circulation

A resolution along with necessary papers shall be circulated to all directors for passing of resolution through circulation.

A resolution approved by all the directors in writing or the committee of directors for the time being entitled to receive notice of a meeting of the directors or committee of

directors shall be as valid and effectual as if it had been passed at a meeting of the directors or the committee of directors duly convened and held.

The resolution through circulation shall be ratified at a subsequent meeting of the board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

8. Orientation session

8.1. Orientation courses shall be held by an AB/PSC, to enable directors to better comprehend the specific context in which it operates, including its operations and environment, awareness of Company's values and standards of probity and accountability as well as their duties as directors.

8.2. 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 an institution, approved by the SECP.

8.3. 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 AB/PSC, 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. AB/PSC 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.

9. Directors' remuneration

9.1. The Board shall review the compensation of their Chairman and Directors and shall align them to attract and retain the directors needed to run the AB/PSC successfully.

The remuneration package shall be subject to prior approval of the Government or Board, as the case may be.

9.2. Non-executive directors shall not be eligible for variable performance linked incentive schemes due to the need to maintain appropriate checks and balances and to avoid focus on short term actions.

9.3. Executive Directors shall not receive any additional compensation to sit on the Board.

10. Board Committees

10.1. The Board shall establish only those committees which are necessary depending on the size and complexity of the AB/PSC and size of the Board. Most Boards establish the following committees:

- a. Nomination Committee
- b. Human Resource Committee
- c. Audit Committee
- d. Risk Management Committee
- e. Procurement Committee

10.2. The Committees shall be chaired by non-executive directors and the Chairman of the Board shall not be member of any committee.

10.3. The Audit Committee shall consist of non-executive directors, with majority of whom must be independent directors including Chairman of the Audit Committee.

10.4. The Board must decide if additional committees are required but should be careful never to assume management's role and responsibilities.

10.5. The Board shall clearly lay down the role and responsibilities of the Committee by establishing a charter or terms of reference. The terms of reference shall clearly specify the boundaries between the committee and management to ensure that the committees do not assume management's role and responsibilities.

10.6. The TORs of the Committee shall be reviewed every two years to assess its need with respect to AB/PSC current situation.

11. Roles and Responsibilities

11.1. The roles, responsibilities, and functions of boards of public sector companies in Pakistan are codified in “Rule 5 of the Public Sector Companies (Corporate Governance) Rules, 2013”. The rules require board members, whether ex officio or otherwise, to exercise its powers with a sense of objective judgement. The following should be the key functions of the board:

- Adopt a vision or mission statement and corporate strategy for the AB/PSC.
- Provide key inputs to the PSC’s business strategy and plan and approve once finalized.
- Ensure a business process manual is in place elaborating on the PSC’s financial management, human resource management, procurement management and audit procedures, among other key business processes.
- Approve the annual report of the PSC, including financial statements.
- Identify, monitor, and mitigate key risks, including risks that could harm the PSC’s public reputation.
- Conduct recruitment process and recommend at least three candidates to the Government for its concurrence for appointment of one of them as CEO of the AB/PSC.
- Appoint Chief Executive Officer on receiving concurrence from Government.
- Appoint and remove key management personnel.
- Ensure a “Code of Conduct” and supporting policies covering professional standards, ethical standards and corporate values are in place and communicated throughout the company.
- Establish and ensure compliance of a system of sound internal controls regarding the use of assets, procurement, resources and information.
- Develop and implement a conflict of interest (CoI) policy and anti-corruption policy.

- Independent directors to meet with executives and senior management without the presence of CEO for there to be more opportunities for board members to obtain a diverse view of the management of the company.
- Prepare for succession of leadership by identifying and testing senior executives for future leadership positions in the company, including for CEO.
- Develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent corporate organ.
- Monitor and manage potential conflicts of interest of management, board members, and shareholders, including misuse of corporate assets and abuse in so-called related-party transactions.

12. Performance Evaluation

12.1. The Board shall establish a clear performance evaluation criterion in consultation with the respective administrative department and communicate to all Directors.

12.2. The Board shall undertake an annual evaluation of the effectiveness of the Board as a whole, the committees of the Board, and individual directors.

12.3. The nomination committee shall also act as the performance evaluation committee and the performance shall be carried out at least annually.

12.4. The nomination committee shall evaluate the performance of the Board as a whole, of the individual directors and of the Board committees on an annual basis and shall submit its evaluation report to Chairman of the Board for onwards submission to the respective administrative department and the Government for their consideration.

12.5. The Government may also initiate the performance evaluation exercise of a Board either directly or through a third-party.

12.6. The chairman, administrative department, any of the regulatory departments may submit a case to the Government for special evaluation of performance of board/individual directors along with grounds/needs of such evaluation. The said evaluation will be carried out by and on terms and conditions as approved by the Government.

12.7. On receipt of annual performance report/ special evaluation report, the Government may pass appropriate orders with or without modifications.

12.8. The representation against such action shall lie with the cabinet.

13. Disclosure of Interests by Directors and Officers

13.1. Every director of an AB/PSC, 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 AB/PSC shall disclose the nature of his concern or interest at a meeting of the directors.

14. Training programs for effective leadership

14.1. The Chairman shall ensure that directors individually and board collectively have access to necessary training programs or materials which are tailored to enhance the quality of board effectiveness. The programs shall match identified development areas and shall not become an exercise to indicate that training has occurred.

15. Effective date and scope of policy

15.1. This Policy framework is effective from 01.02.2022 and PSCs/ABs shall comply with this policy framework on or after effective date of this policy framework.

15.2. This policy is applicable to Public Sector Companies / Autonomous Bodies owned by the Government of Khyber Pakhtunkhwa and notified by the Finance Department from time to time.

References

1. *Companies Act 2017.*
2. *Public Sector Companies (Corporate Governance) Rules, 2013 issued by the Securities and Exchange Commission of Pakistan and amended from time to time.*
3. *Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 issued by the Securities and Exchange Commission of Pakistan and amended from time to time.*
4. *World Bank Toolkit on Corporate Governance of State-owned Enterprises*

Annexure-A

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 recognized 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 Companies Act, 2017;
 - (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 PSC/AB or any other entity of which he was the officer;
- (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 PSC/AB of which he is the director;
- (d) he does not conduct his duties with due diligence and skill; or
- (e) his association with the PSC/AB is likely, for whatever reason, to be detrimental to the interest of the entity, or be otherwise undesirable.