

Securities and Exchange Commission of Pakistan

Islamabad, the 3rd March, 2015

In exercise of the powers conferred by section 506B of the Companies Ordinance, 1984 (XLVII of 1984) read with sub-rule (2) of rule 5 of the Public Sector Companies (Corporate Governance) Rules, 2013 (the Rules), the Securities and Exchange Commission of Pakistan is pleased to issue the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015.

Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015

1. Short title, application and commencement.- (1) These guidelines shall be called the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015.

(2) These guidelines shall apply to all Public Sector Companies, as defined in the Rules.

Provided that such Public Sector Companies as are also required to comply with any specific law relating to their business activity, including the provisions for appointment as well as fitness and propriety of the chief executive, by whatever name called, shall be required to comply with such guidelines so far as these are not inconsistent with their enabling law or enactment.

(3) These shall come into force at once, and would also be applicable on the re-appointments made after this date.

2. Procedure for Appointment of Chief Executive – (1) Every public sector company shall appoint its chief executive in accordance with the procedure specified in Schedule-I to the Guidelines.

(2) Every public sector company shall ensure that the articles of association of the company state the terms and conditions of appointment of its chief executive.

3. Fit and Proper Criteria for Chief Executive - While making appointment of the chief executive, the board shall evaluate the candidates based on the fit and proper criteria specified in Schedule-II to the Guidelines.

(2) The Board may seek the assistance of its Nomination Committee (hereinafter referred to as Committee) to facilitate it in making appointment of the chief executive in accordance with rule 5 of the Rules.

(3) Where, at any point of time, it has been found that the chief executive has failed to meet the fit and proper criteria during the term of his office, the directors or the company may remove him before the expiration of his term of office in accordance with the provisions of section 202 of the Ordinance.

SCHEDULE-I

[See paragraph 2]

Procedure for Appointment of Chief Executive

The principles of transparency, merit and equal opportunities shall be followed while making appointment to the position of the chief executive. Following procedure may be followed by the Board of a public sector company while making appointments to the position of chief executive:

1. Development of Job Profile/Job Description.- The Board shall develop a job profile containing job description for the chief executive in the light of the job requirements and the fit and proper criteria specified by the Commission.

2. Advertisement for the Position. - (1) The Board shall initiate the appointment process, at least three months before the term of the incumbent chief executive is going to expire, by issuing a public advertisement in the print media, inviting applications for appointment against the vacant position. The advertisement shall also be posted on the website of the public sector company or that of the line ministry. Direct applications shall also be acceptable, and the fact may be specified in the advertisement.

(2) The applicant shall be required to complete and sign an Application Form, as per Annexure "A" to these Guidelines, to demonstrate his fitness and propriety for the position of the

chief executive. Copies of the degrees/testimonials, duly verified by the Higher Education Commission or the professional body or association, whichever is relevant, shall also be provided alongwith the application.

(3) The applicant shall also submit a declaration on a non-judicial stamp paper of requisite value, as per Annexure "B" to these Guidelines, that he is not ineligible to act as a chief executive, in accordance with the provisions of the Ordinance, the Rules and these Guidelines.

(4) The appointing authority may hire the services of an executive search agency for assistance in the appointment process, including issuance of the advertisement.

3. Shortlisting process. - The Board shall shortlist the applicants from the following sources:

- (1) Those shortlisted through the database,
- (2) Those applying against the public advertisement, and
- (3) Those derived through the succession plan.

4. Evaluation of Candidates. - (1) The Board shall undertake evaluation of the shortlisted candidates on the basis of the Fit and Proper Criteria specified by the Commission.

(2) The Board shall arrange necessary due diligence and pre-appointment scrutiny of the shortlisted candidates through the concerned departments/agencies, including SECP, FBR, NADRA, SBP, HEC, concerned sectoral regulator/professional body or association and others, as deemed appropriate.

5. Interviewing Process. - The Board shall conduct the preliminary interview of the candidate keeping in view the following:

- (a) The chief executive has the primary responsibility for the management of the public sector company's affairs, its performance as well as implementation of corporate strategy. Accordingly, the interview for the position of chief executive shall primarily focus on having the candidate present his strategic vision for running the affairs, and/or turning around the performance of the public sector company.
- (b) The candidate's skill set including his technical expertise/sectoral knowledge, leadership, strategic vision, as well as communication skills, etc., shall be thoroughly evaluated.
- (c) Interviews shall be conducted on merit and against clear criteria, as set out in the fit and proper test as well as the vacancy profile. Reasons for decisions shall be recorded. Only the candidates who meet the criteria shall be interviewed.
- (d) It shall be ensured at interview that the candidates demonstrate that they are committed to, and have an understanding of, the value and importance of the principles of public service.

- (e) The interview shall be used to explore any potential conflicts of interest declared by the candidates. Even if a candidate does not declare a conflict of interest, the nomination committee still needs to reassure that no conflict of interests exists.
- (f) If any conflict of interest situation explored during the interview is resolved by the candidate, he may be considered to be shortlisted for the position.
- (g) The interview shall also be used to explain the importance of adhering to the public sector company's code of conduct, and to emphasize the importance placed on maintaining high standards of propriety in the conduct of the public sector company's business.

6. Recommendation from the Board to the Competent Authority. – (1) The Board shall recommend a minimum of three candidates to the line ministry for appointment to the position of Chief Executive.

(2) Copy of the minutes of meeting of the Board recommending the shortlisted candidates shall be forwarded to the line ministry for information and perusal.

(3) If the line ministry does not concur to appoint any of the proposed candidates, it shall highlight the reasons for non-concurrence and refer the matter back to the public sector company for reconsideration and with the direction to identify additional/alternative candidates.

(4) The Board may either re-evaluate the candidates from the pool of available applicants or reinitiate the appointment process, if none of the shortlisted candidates is found fit and proper for the position.

(5) The candidates shall be recommended to the line ministry in the order of preference based on the results of evaluation.

7. Appointment of Chief Executive. - (1) Upon concurrence of the competent authority, the Board shall appoint the chief executive and issue him a contract letter, with the requisite terms and conditions of appointment, signed by the Chairman, or other person authorized by the Board.

(2) It shall be ensured that the appointment of chief executive is finalized at least thirty days before the date of expiry of the term of the incumbent chief executive so that the appointment is made by the Board within the period stipulated under sections 198 and 199 of the Ordinance.

SCHEDULE-II

[See paragraph 3]

Fit and Proper Criteria for Appointment as Chief Executive of a Public Sector Company

1. In order to determine whether a candidate proposed to be appointed as a chief executive of a public sector company is fit and proper for the position, the following factors shall be taken into consideration:

- (1) **Competence and capability** – he must have the necessary skills, experience, ability and commitment to carry out the role efficiently and effectively.
- (2) **Probity, personal integrity and reputation** – he must possess personal qualities such as honesty, integrity, diligence, independence of mind and fairness, and has the ability to represent a cohesive vision and strategy to all.
- (3) **Financial integrity** – he must be capable to manage his debts or financial affairs prudently.

2. The Board of the public sector company shall also ensure that that the person is not ineligible to act as a chief executive pursuant to section 201 read with section 187 of the Companies Ordinance, 1984.

3. The assessment of the above criteria shall have regard to the considerations set out below:

(1) Competence and Capability:

- (a) Competence and capability are demonstrated by a person who possesses the relevant competence, experience and ability to understand the technical requirements of the business, the inherent risks and the management process required to perform his role effectively as a chief executive.
- (b) In assessing a person's competence and capability, the appointing authority shall consider matters including, but not limited to the following:
 - (i) whether the person has the appropriate qualification, training, skills, practical experience and commitment to effectively fulfill the role and responsibilities of the position; and

- (ii) whether the person has satisfactory past performance or expertise in the nature of the business being conducted.
- (c) To undertake the aforesaid assessment effectively, the following parameters are prescribed for consideration:
- (i) He must
 - I. Possess a graduate degree from a well-reputed institute or such other professional qualification relating to the principle line of business of the public sector company, including manufacturing, mining, science, technology, agriculture, social science, or any other field commensurate to the job, or
 - II. Be a member of a recognized body of professional accountants, or
 - III. Be a recognized businessman or professional with a postgraduate degree in business administration or public administration or finance or commerce or marketing or equivalent; and
 - (ii) He must possess demonstrated experience of not less than ten years:
 - I. in governance or business administration or public administration or finance or commerce or marketing or any other field commensurate to the job in significant organizations with a commercial orientation, or
 - II. as chief executive or at a senior management level in similar organizations that have commercial attributes, or
 - III. at senior positions in relevant professional areas including, inter-alia, science, technology, finance, law, business, agriculture, social sciences, etc., or
 - IV. in community or professional organizations; or
 - V. at the level of member of governing body of a professional institute or as a head of department.

(2) Probity, Personal Integrity and Reputation:

- (a) Probity, personal integrity and reputation are values that are demonstrated over time. These attributes demand a disciplined and on-going commitment to high ethical standards.
- (b) In assessing a person's level of probity, integrity and reputation to hold a position of a chief executive, the appointing authority shall consider matters including, but not limited to the following:

- (i) whether the person is or has been subject to any adverse findings or any settlement in civil/criminal proceedings particularly with regard to investments, formation or management of a company or body corporate, or the commission of financial business misconduct, fraud, financial crime, default in payment of taxes or statutory dues, etc.;
- (ii) whether the person is or has been removed/dismissed in the capacity of an employee, director/chairman or from a position of trust, fiduciary appointment or similar position because of issues arising on account of his misconduct;
- (iii) whether the person is or has, directly or indirectly, i.e. through his spouse or minor children, been engaged in any business which is of the same nature as and directly competes with the business carried on by the company of which he is the chief executive or by a subsidiary of such company;
- (iv) whether the person has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies;
- (v) whether the person, or any business in which he has a controlling interest or exercises significant influence, has been disciplined, suspended or reprimanded by a regulatory or professional body, a court or tribunal, whether publicly or privately;
- (vi) whether the person has been engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct;
- (vii) whether the person has been associated as a partner or director with a company, partnership or other business association that has been refused registration, authorisation, membership or a license to conduct any trade, business or profession, or has had that registration, authorisation, membership or license revoked, withdrawn or terminated;
- (viii) whether the person has been a director, partner or chief executive of any company, partnership or other business association which is being or has been wound up by a court or other authority competent to do so within or outside Pakistan, or of any licensed institution, the license of which has been revoked under any law;
- (ix) whether the person is free from any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgment when acting in the capacity of a director or chief executive or member of a governing body which would be disadvantageous to the interest of the public sector company; and

(x) whether the person is a Pakistani citizen or a foreign national or both.

(3) Financial Integrity:

- (a) Financial integrity is demonstrated by a person who manages his own financial affairs properly and prudently.
- (b) In assessing a person's financial integrity, the appointing authority shall consider all relevant factors, including but not limited to the following:
 - (i) whether such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;
 - (ii) whether the latest Credit Information Bureau report of the person shows no overdue payments or default to a financial institution;

Provided that such a person will be treated as a defaulter if he has failed to repay his loan exceeding one million rupees to a financial institution or is a defaulter of a stock exchange.
 - (iii) whether the person has been and will be able to fulfil his financial obligations, whether in Pakistan or elsewhere, as and when they fall due; and
 - (iv) whether the person has been the subject of a judgment debt which is unsatisfied, either in whole or in part, whether in Pakistan or elsewhere.
- (c) The fact that a person may be of limited financial means does not in itself, affect the person's ability to satisfy the financial integrity criteria.

4. While making appointment of chief executive to a public sector company, the appointing authority shall conform to a merit-based selection procedure and shall also give due consideration to the following:

- (a) Sectoral expertise
- (b) Organizational awareness;
- (c) An understanding of the role of the government as a shareholder;
- (d) Financial literacy and business acumen, irrespective of the professional background;
- (e) A knowledge of the statutory responsibilities of a chief executive;
- (f) The capability for a wide perspective on issues; and
- (g) Leadership qualities.

Annexure "A"

**APPLICATION FORM FOR THE POST OF CHIEF EXECUTIVE OF
PUBLIC SECTOR COMPANY**



(Photograph)

1. Post applied for _____

2. Name _____

3. Father's Name _____

4. Date of Birth _____

5. Nationality _____

6. CNIC No. _____

7. National Tax No. _____

8. Full Mailing address (with Telephone-landline & Mobile No. and E-Mail address)

9. Educational & Professional Qualification (From Graduation)

S.No.	Course	Subjects	University/Institute	Year of Passing	Division/Class
1.					
2.					
3.					

10. Work Experience

S.No.	Organization	Post Held	Period (From - To)		Nature of Work/ Area of Specialization
1.					
2.					
3.					

11. Fitness and propriety for the job in line with the Fit and Proper Criteria (not more than 500 words):

12. Strategic vision for improving the performance and financial position as the potential chief executive of the public sector company (not more than 500 words):

13. Directorship in other companies:

(a) Past (during last five years) _____

(b) Present _____

Signature:

Full Name (in Block Letters),
Designation, NIC Number,
and Full Address

Date _____

(Note: Any information not provided will render the application incomplete and liable for rejection.)

Annexure "B"

**DECLARATION TO ACCOMPANY THE APPLICATION FORM FOR THE POST OF
CHIEF EXECUTIVE OF PUBLIC SECTOR COMPANY**

i. I son of, holder of CNIC No. hereby declare that I am not ineligible to act as a Chief Executive in terms of the Fit and Proper Criteria issued by the Securities and Exchange Commission of Pakistan vide the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 as required in terms of the Public Sector Companies (Corporate Governance) Rules 2013, or any other relevant provisions of the Companies Ordinance, 1984; and

ii. I further declare that I am not suffering from any present or perceived conflict of interests, which would interfere with the exercise of independent judgment when acting in the capacity of chief executive of the company, and would be disadvantageous to the interests of the public sector company.

Signature:

Full Name (in Block Letters),
Designation, NIC Number,
and Full Address

Date:

Place:



Witness to the signature:

Signature:

Full Name, Father's/ Husband's
Name (in Block Letters)
NIC Number, Occupation
Full Address

Note: To be made on stamp paper of requisite amount duly verified by Oath Commissioner

[CLD/RD/ROC/CG/2004]

(Muhammad Siddique)
Registrar of Companies