



Year 2018 Volume 2

### In This Issue

**Article:** Different types of directors and their liabilities under Bangladesh laws Pages 1-2

**LAW IN FOCUS**

Rahman's Chambers

© All Rights Reserved



#### HEADQUARTERS

Suite 5B, 4<sup>th</sup> Floor, Ataturk Tower  
22, Kemal Ataturk Avenue  
Banani C/A, Dhaka-1213

DHAKA: HEADQUARTERS | MOTIJHEEL  
| SCBA | DINAJPUR | CHATTOGRAM

#### CONTACT US:

TEL: (+8809)678662666  
Email: [info@rahmansc.com](mailto:info@rahmansc.com)  
Web: [www.rahmansc.com](http://www.rahmansc.com)

### ARTICLE:

## DIFFERENT TYPES OF DIRECTORS AND THEIR LIABILITIES UNDER BANGLADESH LAWS\*\*

**Mohammed Forrukh Rahman\***

The word "director" has been defined under the Companies Act 1994<sup>1</sup> in a plain and simple language without any further classification. The Companies Act also outlined the duties of Board of Directors without making any such distinction.<sup>2</sup>

However, the Security and Exchange Commission rules and regulations<sup>3</sup> introduced the concept of an "Independent Director", who is a member of the Board of Director required to fulfil certain qualifications and criteria, in order to be appointed and does not enjoy any indemnity from liabilities. Similarly, the Security and Exchange Commission rules also use the term "Sponsor Director", which also refers to a promoter and board member. At the time of formation and listing of the company certain liabilities were imposed on the Sponsor Director, relating to secure the interests of public Share-holders associated with the listing of a company.

Furthermore, Tax Law<sup>4</sup> makes several distinctions between directors, such as "Share-holder director", "Sponsor director" and "Managing director" etc, allowing for various tax exemptions and imposing different tax liabilities. The Bank Company Ain<sup>5</sup>, uses the term "shareholding-director", which is associated with the defaulting list of names of the Share-holder director in the CIB report related to loan-default of main borrowers.<sup>6</sup>

On the other hand, the Negotiable Instrument Act,<sup>7</sup> imposes criminal liabilities on directors for dishonour of cheque, for example, if the director has knowledge of the offence and has been the signatory of the cheque etc. The Act do not make any distinction among various kinds of directors.

A few offences are also created against the directors under the Company Act 1994 related to failure to comply with duties imposed by the said without making distinctions among the different types of directors.<sup>8</sup> Delinquent directors are subject to both civil and criminal liability under the Companies Act at the time of liquidation.

This document is for general information only and is not legal advice for any purpose



The word “Director” is actually used on many occasions for defining different roles. For example, “Nominee Director” is used mostly for the persons who are appointed by a company holding share in another company; “Managing Director” or “Executive Director”, is used for person who may or may not be a member of the Board of directors but performing major executive functions within a company.

“Non-executive Director” is used mainly for persons, who performs a managerial roles below the position of the managing/executive directors, who are also not a member of the Board of Directors. By using simplified usage of the term “Director”, different laws impose different obligations and associated risks and liabilities on different persons by simply using the term without going into the details. The person who are not intended to be covered by the legislatures are often harassed simply because of the over simplified use of the term.

A Director’s liability should be associated with their involvement in certain activities, the nature of their appointment, the power and authority they exercise. Such distinctions are often not required, in the case of strict liability offences which impose only a small monetary punishment, for example as under the section 81<sup>9</sup> of Companies Act only imposes not more than TK 10,000 fine for the offence involving Annual General Meeting.

On the other hand, few liabilities and duties are of so serious in nature and consequences of a breach are so severe that a general use of the term “director” often results in injustices. For example, in 27 Ka Ka of the Bank Company, Defaulting borrower’s list (ককা খেলাপী ঋণ গ্রহীতার তালিকা, ইত্যাদি, makes a director liable for the company’s loan default.

The director’s name appears in the CIB report along with the company. The consequence is that the director and his/her other associated companies whose names are appearing in the CIB report are not entitled to obtain any kind of facilities from the bank. Similarly, Artha Rin Adalat<sup>10</sup> do not make any such distinction between different kind of directors. Hence, independent, nominee director irrespective of their roles, involvement, and authority can be made liable and civil imprisonment order can also be imposed against them.

Since, independent director or nominee director often high official of Government etc, having no or substantial shareholding or ownership in the company and are actually holds or performs an honorary role, should not be made liable for the default of the borrower. The confusion under section 27 of Ka Ka of Bank Company Ain with the term “Shareholding director” may be clarified by saying that it does not include nominee or independent director.

1 Section 2(1) (f) of Companies Act 1994

2 Section 2(1) (f) of Companies Act 1994.

3 Corporate Governance code of Bangladesh Security and Exchange Commission

4 The Income –tax Ordinance, 1984

5 Section 5 of the Bank Company Act (Bangladesh), 1991

6 ২৭(ককা খেলাপী ঋণ গ্রহীতার তালিকা, ইত্যাদি) of Bank Company law 1991.

7 The Negotiable Instruments Act, 1881

8 Section 184 of Companies Act 1994

9 Section 81, Companies Act 1994

10 Artha Rin Adalat ain 2003

\***Mr. Mohammed Forrukh Rahman** is an Advocate of the Supreme Court of Bangladesh.

This document is for general information only and is not legal advice for any purpose

