



## **POWERS, RIGHTS & DUTIES OF COMPANY DIRECTORS: THE CASE OF BANGLADESH, CHINA & UK**

### **Author**

**Md. Zikrul Alam Mandol**

LL.M on Economic Law

Shanghai University of Finance & Economics, China. E-mail: zikrulam@gmail.com

### **Co-Author**

**Md. Zahir Rayhan Mandol**

MCM, Shanghai University, Shanghai, China. E-mail: zrayhan@gmail.com

### **Md. Mahedi Hassan**

BB.A, Ningbo University, Zhejiang, China. E-mail: princemahadi@yahoo.com

### **Abstract**

This article carries out analysis of the Bangladesh Company Law, Chinese Company Law and UK Company law's relating to powers, rights and duties of directors. It provides an overview of the Bangladesh, China and UK Company's directors' power, right and role or duties with company law. It also looks at powers, rights and duties in relation to company's directors. The article moves on to examine the consequences of the activity of directors in a company. This article contents more sub topics likes powers, rights & duties of directors in China, chairperson of the board, chairing the shareholder's general meeting, convening and chairing board meeting, examining the management team's implementation of board resolutions, duties of directors. The powers, rights & duties of directors in UK, the decisions which must be made by a resolution of the members, directors' decisions that need members' consent. The powers, rights & duties of directors in Bangladesh, restrictions on power of directors and restriction on Managing Director, If we see the powers, rights and duties of directors in companies that are not same Chinese to other countries. Bangladesh, China and UK company law are provides more information about power, rights and duties of directors, here Uk and Bangladesh company law all most same but Chinese company law is more different from its.

**Keywords:** Powers, Rights & Duties of Company Directors, Bangladesh Company Law, Chinese Company Law and UK Company law

## **Introduction**

The powers, rights and duties of directors are the term of Chinese company Law that are one - tier-board system and two - tier- board system, basically used to classify corporate governance systems of different jurisdictions. There are also other species of systems that do not strictly fit in any of the two major descriptions that has been the trend in the development of all systems that the centre of corporate governance shifts from the members' meeting to the board of directors. So the powers of corporate management are basically conferred on the board of directors in most systems. The directors thus become crucial to the commercial performance of corporations that are held accountable for the conduct and activities of corporations<sup>1</sup>. Directors have such powers as are conferred on them by the articles of the company. The Most of companies have articles based on either the Model Articles that articles allow the directors collectively to delegate powers to individual directors.

The decisions of the directors are taken collectively by the board of directors. Decisions are either taken by majority vote at board meetings or by the signing by all the directors of a written resolution. In UK, The director's role and his powers are primarily defined in the company's articles, if he is also an employee or in his service contract. Most of directors are also employees of the company with specific powers delegated to them and managing director usually has extensive powers to take day-to-day decisions on behalf of the company<sup>2</sup>. Director's role all times dependent on law and regulation, Major contracts and commitments should always be authorized by board resolution. Here a Director who exceeds his powers –like by signing a contract not authorized by the board, may incur personal liability for the performance if the companies obligations under the contract that one is great term, in Bangladesh company law also provide such kinds of power, Rights and duties of directors when a company starts its work that time all of term of directors needed according to the company rule.

### **Powers, Rights & Duties of Company Directors in Bangladesh:**

Bangladesh Company Act, Part-IV provides more states the framework for regulating the management and administration of companies, the requirements for having a registered office of a company with a distinct name at a specific place. The provisions for penalties for non-disclosure of name, and the way to show the authorized, subscribed and paid up capital of companies. It contains the procedures and rules for holding meetings of companies, provisions and procedures for appointment of company directors their responsibilities, rights and obligations, powers, tenure, loans to and from a company, and their relationship with the managers, and managing agents of a company according to the company Law .

This part includes the rules and conditions for appointment of managing agent, the provision for contracts and

<sup>1</sup> Directors Duties under Chinese Law, A Comparative Review, By Dr. Yuwa wei

<sup>2</sup> Directors, <http://united-kingdom.taylorwessing.com/twtechfocus/duties.php>

execution of deeds, power of companies to use their seal abroad, rules regarding company prospectus, the powers of a company to pay interests, commissions and discounts and to allocate and issue additional shares, the provisions for information and procedure as to mortgage and other unregistered charges<sup>3</sup>.

Section-107 Part IV of Bangladesh company Act explains that the directors of a company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting: (a) sell or dispose of the undertaking of the company, and (b) remit any debt due by a director<sup>4</sup>. Bangladesh Company Act Section-109, Part IV, explains about restriction on managing director.

1. No public company and no private company which is a subsidiary of public company shall, after the commencement of this Act, appoint any person as managing director, if he is a managing director or manager of another company. Provided the no appointment under this section shall be made without the consent of the company in a general meeting.

2. Notwithstanding anything contained in sub-section (1) the government may, by order, permit any person to be appointed as a managing director of more than two companies if the government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common managing director<sup>5</sup>.

Section-111 of Bangladesh Company Act provides that Compensation for loss of office not permissible to managing or whole time directors or directors who are managers. 1. Payment may be made by a company, except in the cases specified in sub-section 3 and subject to the limit specified in sub-section 4. to a managing director, or a director holding the office of manager or in the whole time employment of the company, by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement.

No payment shall be made to a managing or other director in pursuance of sub-section (1) in the following cases namely: where the director resigns his office in view of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing director, managing agent, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation<sup>6</sup>. So, there are more terms that included in company Act.

<sup>3</sup> See : [http://en.banglapedia.org/index.php?title=Companies\\_Act\\_1994](http://en.banglapedia.org/index.php?title=Companies_Act_1994)

<sup>4</sup> See, section:107 of Bangladesh Company Act, 1994

<sup>5</sup> See, section:109 of Bangladesh Company Act, 1994

<sup>6</sup> See, section:111 of Bangladesh Company Act, 1994

Meeting of Board, In the case of every company a meeting of its Board of Directors shall be held at least once in every three and at least four such meetings shall be held in every year.<sup>7</sup>

In the view of point, Bangladesh law is common law. All of the term is common law term but some article are change to different circumstance, now a company's director play role according to the rule and regulation of a company law of Bangladesh. Directors have to right, duties to do in company according to the company law.

### **Powers, Rights & Duties of Directors in China**

In China, There are hybrid regime of corporate governance features a two-tier board system; comprising a board of directors with decision- making functions and supervisory board that monitors the directors and managers.

So, Chinese Company Law insures and mentions all of the powers, rights and duties of board of directors. If we see the important aspect of the system of the board of directors in China that concerns the key functions and powers. According to Articles 47 & 109 of the company Law that the board is accountable to the shareholders meeting<sup>8</sup>. Those articles provides the stator power –

- convene the shareholders general meeting and report on its works to the general meeting,
- implement the resolutions of the general meeting,
- decide on the company's business operation plans and investment proposals,
- formulate the company's annual financial budget and financial accounting plan,
- formulate the company's profit distribution plan and loss recovery plan,
- formulate the plans for increase or reduction of the company's registered capital and issuance of corporate bonds,
- formulate the plans for merger, division, dissolution or change of the corporate structure,
- decide on the establishment of the company's international management organs,
- appoint and remove the general manager of the company and decide on his remuneration, decide, based on the recommendations of the general manager, on the appointment and dismissal of the company's deputy general managers and chief financial officer, as well as on their remunerations,
- formulate the basic management system of the company,
- perform any other duties and exercise powers granted by the corporate charter Here, the Model Charter

<sup>7</sup> See,section:96 of Bangladesh Company Act, 1994

<sup>8</sup> See, Company Law of china, Article 47 & 109

gives additional power for the board of listed companies to,

- formulate plans for major acquisitions and share repurchase,
- Decide, within the authorization of the shareholders general meeting, on the company's external investment, buying and selling assets, external guarantee, related-party transactions, etc.
- appoint and dismiss the board secretary and decide on his remuneration,
- manage the company's information management,
- recommend that the general meeting hire or dismiss the company's outside auditor,
- listen to the general manager's work report and inspect his work performance,
- Perform any other duties and exercise powers given by the corporate charter.

The above those powers can be categorized into three groups, like decisional power, appointment powers and oversight powers. The decisional powers make the board of directors a management board to some extent, by virtue of which the board has the power to set the course of the company by determining its business operation plans and investment plans and to formulate plans concerning profit distribution and loss recovery, change in the registered capital, issuance of corporate bonds and fundamental changes of corporate form and structure, appointment powers entitle the board to select corporate officers and to determine their compensation, among which the most important function of the board is to choose the company manager<sup>9</sup>.

The Separation of power between the board and the General meeting that the allocation of decisional power in Chinese companies with a critical eye, one may not find a clear separation of power between the board of directors and the general meeting. In this view, the shareholder centered nature of corporate governance in china has produced a mixture of competences in the allocation of functions and powers between the board and the general meeting. For example, the general meeting is in charge of determining the company's business strategy and investment plans, while the board has the power to decide on the company's business operation plans and business operation plans and investment proposals. It is not clear where to draw a line between business strategy and investment plans and business operation plans and investment proposals. The authority to decide profit distribution rests exclusively in the hands of the general meeting, although the board has the power to initiate dividend distribution plans<sup>10</sup>. So, it will be dependent between board of director and the general meeting that one separation of power.

### **Chairperson of the Board**

<sup>9</sup> See, pages-169,170 of Company Law in China, by Jiangyu wang

<sup>10</sup> See, Pages- 170,171, Company Law in China, by Jiangyu Wang

A board must have a chairperson. In Chinese company law provides the board of directors must have a chairperson, which is normally the most influential position in the company, It is up to the corporate charter of an LLC<sup>11</sup> to decide the methods and procedures for appointing the chairperson and deputy chairpersons., But the chairperson and vice chairpersons of JSLC<sup>12</sup> board must be selected by over half of all the directors. According to the Company law that chairperson has the following functions and powers on top of the normal rights and powers given to the directors

### **Duties of directors**

Duties of directors in a company that if a company has a relatively small number of shareholders and is relatively small in scale that it can have an executive director instead of a board of directors. The functions and powers of the executive director should be stipulated in the company's articles of association. Other hand the largest companies like a limited liability company in China is required to set up a board of directors comprising of three to thirteen members that is accountable to the shareholders assembly. A board of directors should have a chairman and could have a vice-chairman, with the measures for the election of the chairman and vice-chairman of the board stipulated in the company's articles of association. So, director's duty of loyalty and diligence to the companies that they serve and in carrying out their duties must abide by PRC<sup>13</sup> laws and administrative regulations. The PRC Company Law stipulates that directors, managers and supervisors must not-

- take a bribe or accept any other unlawful gain by taking advantage of his/her position or expropriating the company's assets,
- deposit company funds in accounts in their own or another person's name,
- in violation of the Articles of Association, without consent of the shareholders or the board of directors, loaning the company's fund to others or providing any guaranty to any other person using the company's property,
- conclude contracts or trade with the company, except as allowed by the company's Articles of Association or approved by the shareholders,
- accept for themselves commissions for transactions between the company and other parties,
- disclose company secrets without authorization,
- Commit other acts that breach the duty of loyalty of directors to the company.
- prejudice the company's interest by taking advantage of his/her connected status,

<sup>11</sup> Limited Liability Company

<sup>12</sup> Joint-Stock Limited Company

<sup>13</sup> People's republic of China

- misappropriate company funds,
- Use their position, functions, and powers in the company to seek personal gain, take commercial opportunities rightly belonging to the company, or engage in the same type of business as their company, whether for their own account or that of others<sup>14</sup>.

The directors, supervisors and senior managers shall comply with laws, administrative regulations and the article of association. They shall bear the duties of loyalty and duties of the company<sup>15</sup>. So, no director, supervisors and senior manager may take any bribe or other illegal gains by taking the advantage of his authorities, or encroach on the property of the company.

### **Powers, Rights & Duties of Directors in UK**

The directors are responsible for the management of the company's business for which purpose they may exercise power of company, the management board and a supervisory board. In UK law, the power are restricted by the articles, previous shareholder resolutions and statute and some power can only be exercised by the shareholder in a general meeting. The duties of directors are great effort that one a body to whom is delegated the duty of managing the general affairs of the company.

The directors Powers and rights according to the UK law that the modal articles for a private company, states as follows: Subject to the articles, the directors are responsible for the management of the company's business for which purpose they may exercise all the powers of the company. This wide authority is quickly constrained by regulation.4, which states:

1. The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
2. No such special regulation invalidates anything which the directors have done before the passing of the resolution. Within these parameters, directors have a free hand as regards their power<sup>16</sup>

This is convenient for the members, who are not interested in managing the company and merely and seek a return on their investment and convenient for the director, who will not wish to seek members approval for everything of a commercial or administrative nature that the directors wish to do. Directors may have rights under

<sup>14</sup> Rules for directors of foreign invested companies in China <http://www.out-law.com/topics/corporate/setting-up-a-business/rules-for-directors-of-foreign>

<sup>15</sup> See, section: 147, Chinese company law 2013

<sup>16</sup> There is one specific power stated in the CA 2006, the power to make provision for the employees on the cessation /transfer of business s. 247. This permissible even if doing so does not necessarily promote the success of the company. The members will need to vote to approve the exercise of this power unless the directors may exercise this power under their company's articles s.247(4) (6).

their service contracts if they have them<sup>17</sup>. So, the directors have to rights under their service contracts. They generally have the right to keep the minutes of the board meetings confidential. But their predominant rights is the rights to manage the company as they see fit.

### **Directors' decisions that need members' consent**

The decisions should be made by the directors, but usually also require a resolution of the shareholders. so such as the appointment of additional directors that can be done by the board. If the directors are actually or potentially in breach of their fiduciary duties, and a resolution in general meeting may be used to authorize a transaction or give the company's consent to a profit or interest of the director. So, the powers noted above are given to the directors collectively<sup>18</sup>. Here neither the Model Articles nor Table A power on any individual director. So, the board must delegate power to the director concerned. The Model Articles provide, Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles-

- (i) To such person or committee,
- (ii) by such means ,including by power of attorney,
- (iii) to such an extent,
- (iv) in relation to such matters or territories, and
- (v) on such terms and conditions<sup>19</sup>.

So, the directors may be delegate any of their powers to any committee consisting of one or more director and any managing director or any director holding any other executive office such of their powers as they consider desirable to be exercised by him according to law.

### **Duties of Directors**

The Directors appointed to the board form the central authority in UK companies and directors owe a series of duties to the company. Now, seven key duties codified under the Companies Act 2006 sections 171 to 177, which reflect the common law and equitable principles of UK Law. Traditionally there were three main types of duty that a director owed to his company like-

- the fiduciary duty,
- the duty of skill and care and
- statutory duties

<sup>17</sup>.See page-161 Company Law, By Nicholas J.M. Grier

<sup>18</sup>.Ibid

<sup>19</sup>.Directors Powers , <http://www.companylawclub.co.uk/>



Others duties that arose under certain certain circumstances –

- duties to creditors,
- duties to employees,
- duties to members, and
- Duties to auditors.

Certain other duties arise on insolvency:

- duty to co-operate with insolvency practitioners and
- Duty to contribute to the company's assets on insolvency under certain circumstance.

The company itself has certain duties regarding directors, such as making copies of directors, so the service contracts available to the members. These duties concern directors, but mainly for the benefit of the members<sup>20</sup>.

### **General duties under the Companies Act 2006**

These are largely a statutory restatement of the common law and equitable rules, indeed sec170 says, the general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director. The general duties shall be interpreted and applied in the same way as common law rules and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties and here general duties apply to shadow directors where and to the extent that they are capable of so applying. The consequences of breach of sections 171 to 177 are the same as would apply if the corresponding common law rule or equitable principle applied<sup>21</sup>. Except as otherwise provided, more than one of the general duties may apply in any given case<sup>22</sup>.

The duty to act within power-section, 171 of company Act that explain a director is expected to act within the powers under the company's constitution. The duty to promote the success of the company, section: 172 of company act explain about a director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. This section has been carefully worded and it is a combination of the director's own subjective view together with his personal

<sup>20</sup> See, page: 213, Company Law By Nicholas Grier

<sup>21</sup> See : Sec178 (1) of company Law in UK

<sup>22</sup> See: Sec179 of company Law in UK:

sense of integrity and honesty and a potentially objective standard<sup>23</sup>.

The duty to exercise independent judgment, section: 173 explain about it a director is expected to exercise independent judgment, but here does not mean that he can ignore any agreement that his company may have entered into which would restrict the exercise of his discretion, ignore any directions contained within the company's constitution<sup>24</sup>. The duty to exercise reasonable skill care and diligence, section: 174 about it, the duty to exercise reasonable skill and care is not part of the fiduciary duties otherwise covered in section 171 to 177. it is its duty in its own right and breach of it entitles the company to claim from the director the loss that his incompetence has caused the company to suffer. The duty not to accept benefits from third parties, section: 176 explain about it that a director should not let benefits from third parties cloud his judgment as to whether some action would be good for the his company. The duty of directors to declare interest in proposed transaction or arrangement, section: 177 explain about it, here if a director is in any way, directly or indirectly<sup>25</sup>, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.<sup>26</sup>

The Remedies for breach of the general duties that section: 178 explain about it , if a director breaches any of the general duties outlined in section : 171 to 177, the company may call upon him to reimburse the company for any loss it has suffered, indemnify the company for any expenses, hand over any profit which he has obtained and which rightfully should be the company's and return to the company any assets which he has misappropriated<sup>27</sup>. Statutory duties, it is arguable that there is no need for any statutory at all. The wide terms of the fiduciary duty cover a multitude of obligations and the wide terms of duty of care cover most of the remaining ones. So, a number of statutory duties were introduced mainly as a result of various corporate scandals in the 1960s and 1970s. The duties were enacted, sometimes in haste and sometime not with the consideration that might have been expected. So it well recognized now that having statutory duties, trough not always without its benefits, has difficulties these being the difficulties of changing the statutes and more significantly having duties on a statutory basis encourages a mind set of directors which tries to find loopholes in the legislation<sup>28</sup>.

The Directors owe a duty to the company to creditors. Certain key duties of directors have been placed on a statutory footing under the Companies Act 2006<sup>29</sup>. These duties are owed to the company. Directors are also

<sup>23</sup> See, page: 224, Company Law By Nicholas Grier

<sup>24</sup> See, Company law-2006, section: 173(2) (a) (b) of UK

<sup>25</sup> The use of the word "indirectly" catches those connected with the director in terms of section: 252 to 257 of Company law in UK

<sup>26</sup> See, section 177(1) of company Law 2006 in UK

<sup>27</sup> See, page: 235, Company Law By Nicholas Grier

<sup>28</sup> See, page: 269, Company Law By Nicholas Grier

<sup>29</sup> Ibid

subject to a number of other statutory requirements and restrictions. These include a duty to keep proper books and records and restrictions on entering into certain transactions with the company.

## Conclusion

In this article, Bangladesh, China and UK Companies directors has different views of powers, rights and duties. It provides an overview of the Bangladesh, China and UK Companies' directors. Chinese company law that provides more term of director that included powers, Rights and Duties. So, a director may have numerous other responsibilities in relation to a company as noted in the Guidance that arise, for instance, in arrangements between the director and the company, share dealing financial reporting and accounting, share issues and winding up according to the company Act in a country. Additional requirements apply to listed companies or companies traded on a regulated market and readers are referred to the guidance on these matters and also advised to check the up-to-date position as appropriate as there have been changes to law and regulation. In this view of point the director's powers, Rights and duties are different in China from UK and Bangladesh.

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