



The Appointment of Government Company Directors in Israel

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This policy paper takes a deep dive into the issue of appointing directors to government companies in Israel on behalf of the State, highlighting various issues and recommending changes for improvement. The appointment of Government company directors should reflect a balance between representational considerations — the reflection of public preferences and choices — and professional considerations- the selection of directors who will best advance the company's interests. The procedure should be professional, thorough, fair, reasoned and transparent.

The **first chapter** describes the board of directors in government companies: explaining its role, the differences between the board of a government company versus a non-government company, and describing the directors' duties in a government company.

The **second chapter** breaks down and discusses the issues surrounding the appointment of directors to government companies, addressing problems and making recommendations to resolve them.

Summary:

In Israel and other democracies, the board of directors in a government company is the link between the state, which holds the company's shares in the name of the people, and the practical management of the company, who are engaged in the day-to-day operations. The boards' function is governed by two laws, the Companies Law 5759-1999 and the Government Companies Law, 5735 - 1975. They are charged with setting policy, oversight, and general decision making in the company, such as hiring the CEO, making financial decisions, reporting to the General Assembly and determining the organizational structure. The ministers responsible for the company's output are those who select the state directors and sign their letters of appointment. The appointment is subject to consultation with the Appointment Review Committee and is based on the various candidates meeting threshold criteria. The companies are overseen by the State Companies Authority.

The ability of government members to determine the composition of the board of a government company has a great impact on the company's activities. All too often, pressure is exerted to appoint political people who are not skilled at management or business. Moreover, when there is more than one minister responsible for a government company, disagreements may arise regarding the identity of the directors to be appointed in the company - resulting in delay and thus impairment of the company's proper function.

In light of the many ways government companies have an impact on citizens' lives and on the Israeli economy, and the subsequent importance of their boards' proper function, the issue of directors' appointments to government companies has recently attracted public attention, with the central question being what the right balance is between the executive prerogative to influence public policy, and the risk of political corruption, impairing professionalism and proper function.

With the desire to minimize that tension between promoting professional management of government companies on the one hand, and allowing the public, who hold the company's shares through the government, to have their policy preferences represented on the other, the following aspects of the issue were reviewed, and recommendations discussed:

1. What is the legal basis for the appointment process and what are the appropriate guiding principles for such?
2. How suitable are the requisite qualifications for candidacy?
Qualifications include: age and experience; education; residence; personal attributes; the absence of a problematic legal history or conflicts of interest; and the candidate not serving in the following positions: public representative, government company employee or CEO, Government Companies Authority employee, and the security forces.
3. Who is the appointing body, what is the procedure and who are the parties involved? How does Israel compare with other countries?
4. The appointment of people with ties to members of the government.
5. The appointment of public sector employees.
6. Representation of various Israeli sectors.
7. The duration of directors' term in office and the conditions for early termination of their tenure.
8. Can or should someone serve as director in multiple government companies at the same time?
9. The appointment of the Chairman of the Board.
10. The number of directors on the Board.

Recommendations:

1. Heighten the qualification requirements to be appointed as a director to a government company, particularly to the position of chairman of the board of directors, by imposing a cumulative requirement for experience and post-secondary education.
2. Amend the law to: prohibit the appointment of a government company CEO to the position of director in the same company; allow government company employees to choose only one representative as director without voting rights, in those companies where employees are granted representation; and prohibit the appointment of any person serving in the security forces to director in any government company.
3. Establish a database of candidates for the position of director who meet the criteria stipulated in the law, from which the Government Companies Authority will compile a secondary database according to the requirements set by the elected officials for particular positions. All state appointed directors will be selected from the secondary databases.
4. The Government Companies Authority representative on the Appointment Review Committee will be replaced by a representative of the Governor of the Bank of Israel. This representative must be familiar with the Israeli corporate world and be legally eligible to serve as a state director.
5. The time period for the presiding ministers to choose new directors or approve an additional term for acting directors will be shortened, as well as the length of time the committee has to review appointments and ratify a new director or additional term. Should the time expire, the minister's decision will be transferred to the Knesset Finance Committee, and the committee's to the government plenum.
6. The Appointment Review Committee will be dedicated solely to reviewing the candidacy of potential directors, Chairmen of the Board, and CEOs of government companies and mixed companies, with a separate committee established for reviewing appointments to senior positions in statutory corporations.
7. Adopt the practice that ministers responsible for a company are advised by acting Board members and other shareholders (if there are) before appointing a new director.
8. Add a law or a provision limiting the number of directors with ties to cabinet ministers the government may appoint to the same government company to less than half of all Board members.

9. Add a law or a provision limiting the number of public sector employees the government may appoint to serve as state directors in the same government company to no more than a third of all Board members.
10. The legal duty to give proper representation to both sexes and to the Arab population in government company Boards should remain as is; however, an amendment to the law should be passed stipulating that representation of other sectors shall be anchored in government resolutions and not in primary legislation. It is also proposed that government resolutions should not guarantee representation in government company Boards to many sectors.
11. The term in office for directors should be limited to two consecutive terms, with an exception of three terms for particularly skilled directors, subject to the approval of the Appointment Review Committee.
12. A law should be drafted prohibiting a person from serving as a state director of more than two companies at the same time.
13. An amendment to the law should be passed determining that a company's Board will number six at the least and twelve at the most, and defining a scale to determine the number of directors for every government company according to its size and the complexity of its tasks.

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