



PICG ADVISORY UPDATE-11

April & May 2018

**GOVERNANCE, COMPLIANCE
& CORPORATE REPORTING**

The Update

Corporate governance refers to the way in which corporations are directed, administered, and controlled. It is concerned with both the relationship between internal and external stakeholders as well as the governance processes designed to help a corporation achieve its goals. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies as well as striking a balance between both economic and social goals and between individual and communal goals.

Compliance with applicable laws and regulations is fundamental to good governance. PICG's Advisory Update, therefore, aims at keeping our members updated with regards to the latest local and international governance-related changes to regulations, practices and corporate reporting.

The Update consists of a Summary Table (with links to relevant information) followed by a Synopsis of the changes.

A. Summary Table

Pakistan

Sr #	Issued by	Reference	Date (2018)	Topic / Update link
1. Regulations/ Rules issued				
i	SECP	SRO 601(I)/2018	May 10 th	Limited Liability Partnership Regulations, 2018
ii	SECP	SRO 600(I)/2018	May 9 th	Draft Futures Brokers (Licensing and Operations) Regulations, 2018
iii	SECP	SRO 558 (I) 2018	April 26 th	Auditors (Reporting Obligations) Regulations, 2018
iv	SECP	SRO 557 (I) 2018	April 26, 2018	Draft Securities & Exchange Commission Anti Money Laundering & Countering Financing of Terrorism (AML/CFT) Regulations, 2018
v	SECP	SRO 556 (I) 2018	April 26, 2018	Companies (Manner and Selection of Independent Directors) Regulations, 2018
2. Amendments				
i	SECP	SRO 658 (I)/2018	May 28, 2018	Amendments in Insurance Rules 2017
ii	SECP	SRO 519 (I) 2018	April 24, 2018	Amendments to the Clearing Houses (Licensing and Operations) Regulations, 2016
iii	SECP	SRO 483 (I)/2018	April 17, 2018	Amendments to the Companies (Incorporation) Regulations, 2017

Sr #	Issued by	Reference	Date (2018)	Topic / Update link
3. Others				
i	SECP	Press release	May 3, 2018	SECP Elected to IOSCO Board

International

Topic	Links
The Changing Wealth Of Nations 2018 - Building A Sustainable Future	https://openknowledge.worldbank.org/bitstream/handle/10986/29001/9781464810466.pdf?sequence=4&isAllowed=y
ASEAN Corporate Governance Scorecard - Singapore 2018	https://bschool.nus.edu.sg/images/CGIO/Docs/2018/CGIO_ACGS_2018_PowerPoint_Presentation_3Apr_2018.pdf

B. Synopsis of changes

Pakistan

1. Regulations/ Rules issued

Various Regulations/ Rules have been notified by the Securities and Exchange Commission of Pakistan and State Bank of Pakistan to streamline procedures and improve governance structures of companies in Pakistan.

Following is a summary of such Regulations / Rules (both drafts issued for public comments and final versions) issued during the past couple of months as notifications, circulars, drafts, etc., which have been placed on their respective websites:

a. Final

Sr. no	Name of Regulations / Rules	Effective date	Description
1	Limited Liability Partnership Regulations, 2018	May 10, 2018	<p>These regulations have been notified under the Limited Liability Partnership Act, 2017. Limited Liability Partnership (LLP) is an alternative form of business establishment, which has the flexibility of a general partnership and the advantages of a limited liability company. The regulations aim to enable professionals, entrepreneurs and SMEs to jointly organize and operate their businesses in a flexible, innovative and efficient manner.</p> <p>The regulations specify the form and manner of registration of LLP, fitness and propriety of designated partners, accounts and audit requirement and conversion of existing firms and private limited companies to LLP.</p> <p>New LLP's intending to get registered with the SECP would not be allowed to use names suggesting association with any political personality, international bodies, foreign government and donor agencies, etc. (Provided that the Commission may allow any of the above names under special circumstances on the request of any government or authority as the case may be).</p> <p>Further, the SECP has designated the Registrar of Companies to be the Registrar of the LLPs and appointed 'Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars' performing duties and functions under the Companies Act, 2017 as Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars of LLPs for proper administration of the Act.</p>
2	Auditors (Reporting Obligations) Regulations, 2018	For reporting periods ending on or after June 30, 2018	Reporting requirements/forms for auditors of the corporate sector have been revised. The 2018 Regulations have not only replaced the Auditor's report formats prescribed through Rules 17A, 17B & 17C of the Companies (General Provisions and Forms) Rules, 1985 but also include the Auditor's report formats applicable to audit of financial statements of insurance companies, review of half yearly financial statements of listed companies and reporting on Code of Corporate Governance compliance by listed companies. Previously such formats

			<p>for reporting by the auditors were provided under the Insurance Rules, 2002 and by the Institute of Chartered Accountants of Pakistan (ICAP), respectively.</p> <p>Auditors reports for the following have been provided in the following Annexures to the regulations:</p> <table border="1" data-bbox="610 386 1412 1045"> <thead> <tr> <th>Annexure</th> <th>Auditor's Report Details</th> </tr> </thead> <tbody> <tr> <td>I</td> <td>Report on financial statements of a company other than a banking company</td> </tr> <tr> <td>II</td> <td>Report on financial statements of a banking company</td> </tr> <tr> <td>III</td> <td>Insurance companies: <ul style="list-style-type: none"> • Report on regulatory returns to Board of Directors • Report on financial statements to members </td> </tr> <tr> <td>IV</td> <td>Report on the consolidated financial statements</td> </tr> <tr> <td>V</td> <td>Limited scope review report on second quarterly (half yearly) financial statements of listed companies</td> </tr> <tr> <td>VI</td> <td>Review report on Statement of compliance with the Listed Companies (Code of Corporate Governance) Regulations, 2017</td> </tr> </tbody> </table> <p>Further, in case of a public sector company, the review report on statement of compliance with Public Sector Companies (Corporate Governance) Rules, 2013 shall continue to be on the format as issued under the Public Sector Companies (Corporate Governance Compliance) Guidelines, 2018.</p> <p>The previous forms 35A, 35B, 35C and 35D relating to the Audit / Review Reports prescribed under the Companies (General Provisions and Forms) Rules, 1985 issued under the repealed Companies Ordinance, 1984 shall continue to apply up to the effective date of the 2018 Regulations.</p>	Annexure	Auditor's Report Details	I	Report on financial statements of a company other than a banking company	II	Report on financial statements of a banking company	III	Insurance companies: <ul style="list-style-type: none"> • Report on regulatory returns to Board of Directors • Report on financial statements to members 	IV	Report on the consolidated financial statements	V	Limited scope review report on second quarterly (half yearly) financial statements of listed companies	VI	Review report on Statement of compliance with the Listed Companies (Code of Corporate Governance) Regulations, 2017
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3	Companies (Manner and Selection of Independent Directors) Regulations, 2018	For periods starting after June 30, 2018	<p>Section 166 of the Companies Act, 2017, defines the criteria to qualify as an independent director and requires that such directors be chosen from a databank maintained by an institute/body authorized by the SECP. In January 2018 the SECP authorized the Pakistan Institute of Corporate Governance (PICG) to maintain such databank of independent directors and PICG is currently in the process of setting up and compiling necessary information in this regard.</p> <p>Salient matters covered in the regulations include:</p> <p>Databank</p> <ul style="list-style-type: none"> • Minimum details required to be maintained with respect to persons included therein (eg. name, NIC & NTN number, educational and professional qualifications and experience, details of directors training program attended, etc). 														

			<ul style="list-style-type: none"> The Institute shall allow access to the databank to companies for appointment of independent directors, subject to the provisions of a reasonable fee. <p>Eligibility criteria</p> <ul style="list-style-type: none"> Specification of the educational and other requirements of persons desirous of including his/her name on the databank. This includes both professional qualification and experience criteria. Within 12 months of appointment as an independent director on a board, individuals are required to complete a Directors' Training Program (DTP) or avail exemption from the Commission as per the requirements of Regulation 20 of the Listed Companies (Code of Corporate Governance) Regulations, 2017. Due diligence of selection of independent directors, as envisaged in the new law, continues to rest with the company. <p>Procedure and manner for including names of persons</p> <ul style="list-style-type: none"> Any eligible person desirous of including his/ her name on the databank shall make an application to the institute along with all the relevant information. Factors that shall disqualify an individual from being included in the databank have also been stated. Every approved director training institute/organization shall provide specified details to PICG within 15days of an individual completing the DTP.
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b. Drafts issued

Sr. no	Name of Regulations / Rules	Public comment deadline	Description
1	Draft Futures Brokers (Licensing and Operations) Regulations, 2018	May 23, 2018 (within 14 days)	<p>Applicable to Futures Brokers dealing in Futures contracts based on specified commodities and financial instruments offered by a futures exchange other than a securities exchange.</p> <p>The regulations have been divided into the following sections:</p> <ul style="list-style-type: none"> Licensing requirements for futures broker Conduct of a futures broker Accounting and audit <p>Further, in addition to the information and procedure required to obtain license and renewal as futures brokers, details on what constitutes fit and proper criteria for applicant, sponsors, directors and senior management officers of futures brokers has also been provided in the draft regulations.</p>

2	Draft Securities and Exchange Commission Anti Money Laundering and Countering Financing of Terrorism (AML/CFT) Regulations, 2018	May 25 th (within 30 days)	<p>The State Bank of Pakistan’s Financial Monitoring Unit (FMU), established under the Anti Money Laundering Act, 2010, advised SECP to frame regulations for financial entities to fight terrorism financing and money laundering which includes customer due diligence and ancillary recording keeping that fall within the regulatory ambit of the SECP.</p> <p>Consequently, through the draft regulations, SECP has instructed financial entities to execute significant internal risk management systems, policies, procedures and controls ascertaining whether their customers are politically exposed persons (PEPs) as per the anti-money laundering regime.</p> <p>PEPs are individuals who are or have been entrusted with prominent public functions, for example, heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials. (Both foreign and domestic PEPs have been defined).</p> <p>According to the draft regulations for foreign PEPs, financial entities have been directed to carry out enhanced due diligence in conformity with regulation and following other requirements of these regulations. Similarly, enhanced due diligence is also required for domestic PEPs, in which business relationship shows a major threat.</p> <p>Financial groups shall implement group-wise programs against money laundering/terrorist financing (ML/TF), which should be applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group.</p> <p>Financial Institutions shall develop and implement a comprehensive employee due diligence policy and procedure to be implemented/ carried out at the time of hiring all employees permanent, contractual, or through outsourcing.</p> <p>Financial Institutions shall maintain all necessary records on transactions, both domestic and international, including the results of any analysis undertaken (eg. inquiries to establish the background and purpose of complex, unusual large transactions) for a minimum period of ten years from completion of the transaction.</p>
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2. Amendments

a. Amendments to Insurance Rules 2017

SECP has made various revisions to the Insurance Rules 2017. Some of the salient changes are as follows:

- Revised procedure for existing licencees working as insurance surveyors having license for the miscellaneous class.
- From January 1, 2019 onwards, the directors and chief executive officer of all fresh applicants for miscellaneous business of survey will submit continuous professional development certificate as evidence of completion of 4 days training undertaken during the immediate preceding 3 years' from an insurance institute(s), approved by the Commission, in the relevant subclasses.
- Application for grant of a new license for any main class of insurance surveyors shall be accompanied by a fee of Rs7,500 per main class, which shall be refunded if the application is not granted. Further, application for renewal of a surveyor license for any main class of insurance surveyors shall be accompanied by a fee of Rs5,000 per main class, which shall be refunded if the application is not granted.
- Where an application for renewal of a license has been made to the Commission, but has not been decided by the Commission prior to the expiry date, the license of the insurance surveyor shall continue to be valid until the application for renewal has been decided by the Commission. However, the Commission shall decide the renewal of registration of the insurance surveyor within a period of not more than 30 days from the expiry date of its license.
- Similar provisions regarding new license and renewal of license have been included for grant of license to Authorized Surveying Officers'.

b. Amendments to the Clearing Houses (Licensing and Operations) Regulations, 2016

The SECP has introduced a new application form for grant of license as a clearing house for futures market under the Futures Market Act, 2016. Under the regulations, an application for grant of license as a clearing house shall be submitted to the Commission under the following formats:

- Under the Securities Act, 2015 - as provided in Form A
- Under the Futures Market Act, 2016- as provided in Form C.
(for futures market)

The regulation states that a clearing house licensed under the Futures Act, as the case may be, shall establish and maintain a fund under irrevocable trust by constituting a trust deed for guaranteeing to its clearing members the performance of market contracts.

Further Form D has been introduced as the format for grant of license of a clearing house under Section 24 of the Futures Market Act, 2016

In Annexure 1 pertaining to the ‘fit and proper criteria for applicant and its promoters, substantial shareholders, directors and senior management officers’, under the section on integrity, honesty and reputation, the following para’s have replaced existing ones:

- “The person should not have been convicted in any criminal offence or involved in any fraud/forgery, financial crime etc. in Pakistan or elsewhere, or is not being subject to any pending proceedings leading to such a conviction and / or it has not been Page 6 of 7 concluded by any regulatory authority that he has been associated with any unauthorized financial activity including illegal brokerage business.”
- “No investigation/ enquiry, conducted under Section 139 of the Act, Section 83 of the Futures Act, Section 29 of the Securities and Exchange Commission of Pakistan Act, 1997, Section 21 of the Securities and Exchange Ordinance, 1969, Section 256 or Section 257 of the Companies Act, has been concluded against him by the Commission with material adverse findings or any settlement in civil/criminal proceedings particularly with regard to investments, financial matters/business, misconduct, fraud, formation or management of a corporate body etc by any regulatory authorities (within or outside Pakistan), professional bodies or government bodies/agencies.”

c. Amendments to the Companies (Incorporation) Regulations, 2017

The SECP has placed additional requirements and documentations for foreign companies operating in Pakistan by seeking additional information from foreign subscribers and security clearance.

In case the subscriber is a foreign company or a foreign body corporate, the registrar shall require additional information including but not limited to, the profile of the foreign company/foreign body corporate, detail of its directors, their nationality and country of origin, copy of its charter, statute or memorandum and articles (duly certified by the public officer in the country of incorporation), etc.

In case the subscriber to the memorandum is an individual of foreign nationality, he may be required to file additional documents as deemed necessary by the registrar.

The Commission shall obtain security clearance from the Ministry of Interior (MoI) in the following cases and in the manner prescribed hereunder:

- i. Companies having foreign (other than Afghan and Indian national or origin) subscribers/officers will be incorporated on the basis of an undertaking and the case shall be forwarded for security clearance.

However, if the subscriber/officer is not security cleared by the MoI, the subscriber/officer and the company, shall take immediate steps for replacement and shall transfer shares if any, held by the subscriber.

- ii. Companies having foreign subscribers/officers who are Afghan or Indian national or of Afghan or Indian Origin will be incorporated after receipt of security clearance.

Security services provider companies will be incorporated after receipt of security clearance from MoI.

The SECP has further stated that the manner of security clearance shall be subject to any change in the security policy of government from time to time.

3. Others

a. SECP Elected to IOSCO Board

IOSCO, the international standard setter in the field of securities regulation, has members from 115 countries covering more than 95% of the world's capital markets. It is committed to establishing and maintaining consistently high regulatory standards for the securities industry.

The SECP has been an IOSCO member since 1998 and on the Board since 2012. In May 2018, the SECP was re-elected to the IOSCO Board for the fourth time for the 2018-2020 term, thus being part of the main decision-making body of IOSCO for global capital markets regulatory standard setting.

SECP has been working with the International Organization of Securities Commissions (IOSCO) to benchmark Pakistan's capital markets with international regulatory standards and focus on the challenges of strengthening securities' market resilience.

IOSCO's 'Objectives and Principles of Securities Regulation ("Principles") sets out 38 Principles of securities regulation that are based upon the following three objectives:

- protecting investors;
- ensuring that markets are fair, efficient and transparent;
- reducing systemic risk.

SECP was the first jurisdiction that was assessed by the IOSCO for its implementation of IOSCO Principles for securities regulations in 2015. The IOSCO undertook a follow-up review in 2018, which recognized Pakistan's efforts to adopt legislative and regulatory reforms aimed at aligning its regulations with international standards. The SECP's compliance rating with IOSCO Principles increased from 62% to 83%, which represents a 21% improvement since 2015.

It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently.

Warren Buffett

1. The Changing Wealth Of Nations 2018 - Building A Sustainable Future¹

The World Bank's recently published book on wealth accounting "The Changing Wealth of Nations 2018" tracks the wealth of 141 countries between 1995 and 2014. A decade ago, the World Bank launched the book 'Where Is the Wealth of Nations?', which introduced the concept of wealth as a complementary indicator to gross domestic product (GDP) for monitoring sustainable development in a country, followed by a second volume in 2011. The latest edition improves estimates for natural capital and for the first time provides estimates of human capital. The goal is to broaden the measures economists, policymakers, the private sector and civil society use to assess economic progress and sustainable development.

According to the book, a country's wealth includes:

- Produced capital - buildings, machinery, and infrastructure
- Natural capital - agricultural land, forests, protected areas, minerals, oil, coal and gas reserves
- Human capital - broken down by gender and types of employment
- Net foreign assets

This report shows how to estimate wealth to assess a country's prospects for long-term growth. Wealth accounting provides an estimate of the total wealth of nations by aggregating values of these different components of wealth. A change in wealth is an indicator to assess a country's potential to grow in the future. A fall in wealth indicates that a country is depleting its assets and may not be able to sustain its future GDP growth.

This form of accounting should be viewed as a complement to GDP and not a replacement. Wealth complements GDP as it reflects the state of assets that produce GDP and whether investments in human, produced and natural capital are sufficient to keep pace with population growth and a country's development aspirations. It helps country's see better the links between poverty, fragility, and governance.

The report does not have explicit policy recommendations but it provides the data for further analytics and cost-benefit analysis. Policymakers can use this information to design strategies to ensure that their economic growth is sustained in the long run and that they can make corrections when needed.

2. ASEAN Corporate Governance Scorecard- Country Report for Singapore 2018

The ASEAN Corporate Governance Scorecard created by the ASEAN Capital Markets Forum (ACMF) was launched in 2011 as one of the initiatives in preparation for the ASEAN economic integration in 2015. The ASEAN Corporate Governance Scorecard provides a methodology benchmarked against international best practices to assess the corporate governance performance of publicly listed companies in 6 participating ASEAN member countries (ie. Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam). The methodology provides foreign investors and external fund managers comparable information to form part of their investment decision-making process.

The scorecard is a useful tool to demonstrate ASEAN members' commitment to sound corporate governance which will be important to increase foreign direct investment into the region.

The Scorecard is based on the corporate governance principles of the Organisation for Economic Co-operation and Development (OECD), and is composed of two levels: level 1 contains the main Scorecard items, and level 2 contains the bonus and penalty items.

¹ "Lange, Glenn-Marie; Wodon, Quentin; Carey, Kevin. 2018. The Changing Wealth of Nations 2018 : Building a Sustainable Future. Washington, DC: World Bank. © World Bank.
<https://openknowledge.worldbank.org/handle/10986/29001> License: CC BY 3.0 IGO."

The objectives of the Scorecard and the ranking exercise are to:

- Raise corporate governance standards and practices of ASEAN PLCs
- Showcase and enhance the visibility as well as investability of well-governed ASEAN PLCs internationally
- Complement the other ACMF initiatives and promote ASEAN as an asset class

The assessment of the Scorecard is based on publicly available information and benchmarked against international best practices that encourage publicly listed companies to go beyond national legislative requirements. This report can be used by capital market regulators and other stakeholders as a reference to understand the current corporate governance standards across the region. It is also a useful diagnostic tool to guide improvement of corporate governance standards.

The proposition that boards should understand and manage their own performance has become a global trend now. Boards continually need to monitor and improve their performance. This can be achieved through board evaluation, which provides a powerful and valuable feedback mechanism for improving board effectiveness, maximizing strengths and highlighting areas for further development. The evaluation process should aim to be objective and rigorous.

Performance management and measurement are integral to a board's success. The board should be prepared to act on its findings whenever performance is not considered to be as good as it should be. It is the responsibility of the Chairman to deal with poor board performance.

External facilitation can add value by introducing a fresh perspective and new ways of thinking. Pakistan Institute of Corporate Governance has been engaged in the Board evaluations of company boards since the past 6 years. We ensure our approach is outcome-focused- so that board members not only focuses on the problems/hindrances etc. but what the board needs to do in order to enhance its performance and effectiveness.

Spend less time gathering data and more time paying attention to high impact, low performance areas via online questionnaire, the results would then help develop solutions that support management to achieve the desired strategic objectives.

**Get your board
evaluated by
PICG**

in collaboration with The
Corporate L.I.F.E Centre
International Inc. (CLCI –
a consulting firm based in
North America),

Areas of board performance covered:

- Board Composition
- Strategic Planning
- Board & CEO Effectiveness
- Board Information
- Board Committees
- Board Procedures
- Board Interaction
- Board & CEO Compensation

**Take action before
there is a crisis**

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