May 2019

PICG ADVISORY UPDATE-23

Pakistan Institute of Corporate Governance

PICG
Pakistan Institute of Corporate Governance

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 #	By	Reference	Date	Topic / Update link
1.	**Regulations/ Rules issued**			
i	SECP	SRO 591 (I)/2019	May 24, 2019	Draft amendments to the Securities Exchanges (Licensing and Operations) Regulations, 2016
ii	SECP	SRO 574 (I)/2019	May 23, 2019	Listed Companies (Buy-Back of Shares) Regulations, 2019
2.	**Circular**			
i	SBP	BPRD Cir Letter No. 15 of 2019	May 31, 2019	Updated Guidelines on Compliance under UNSC Resolutions-Banks/ DFIs/ MFBs
3.	**Others**			
i	SECP	Press release	May 29, 2019	SECP launches LEAP to embark on Digital Transformation
ii	SECP	Press release	May 13, 2019	Secured Transactions Registry - SECP

International

Topic	Links
OECD report on corporate governance practices in a number of jurisdictions.	OECD Corporate Governance Factbook 2019
The OECD Survey of Corporate Governance Frameworks in the Middle East and North Africa	Survey of Corporate Governance Frameworks in the MENA region
OECD report on "Building a Framework for Competitiveness and Growth" in the MENA region	Corporate Governance in MENA
Recommendation of the Council on Guidelines on Anticorruption and Integrity in State-Owned Enterprises	Guidelines on Anti-Corruption and Integrity in State-owned Enterprises

B. Synopsis of changes

Pakistan

1. Regulations/ Rules – revision amendments

a. Draft amendments to the Securities Exchanges (Licensing and Operations) Regulations, 2016

The SECP has proposed draft amendments to 'Annexure I, Fit and Proper Criteria' of the Securities Exchanges (Licensing and Operations) Regulations, 2016, that pertains to 'Educational Qualification and Experience'. The regulations provide for all matters relating to the license and operation as a securities exchange including minimum financial resources, duties and obligations, audit and accounts, appointment and conduct of directors and management including fit and proper criteria, etc.

Annex I, sub-clause (b) of the regulation lays out the requirements of qualification and experience of the following individuals:

i. Director
ii. Chief Executive Officer
iii. Chief Regulatory Officer
iv. Chief Operating Officer
v. Chief Financial Officer
vi. Head of Internal Audit
vii. Company Secretary
viii. Head of Information Technology (IT) / Head of IT Security,
ix. Promoters, Strategic Investor/ Anchor Investor

The proposed amendments mainly focus on the required experience levels of the above, whereby the minimum experience in a senior management position in any other organization in the financial services sector or a listed entity has been specified (generally at 5 years except in the case of the CEO, who should have experience at a senior management level of at least 7 years).

Further, where a person possesses more than 10 years of experience at senior managerial level in any organization in the financial services sector or a listed entity in the related function, the minimum educational requirement may be relaxed to graduate level on a case to case basis by the securities exchange. Furthermore, in case the securities exchange appoints a person as senior management officer who was in service of a TRE certificate holder or an associated company of such TRE certificate holder, his appointment shall be approved by the Board of Directors of the securities exchange.

b. **Listed Companies (Buy-back of Shares) Regulations, 2019**

The SECP has issued revised regulations repealing the Listed Companies (Buy-Back of Shares) Regulations, 2016 with immediate effect. The regulations are applicable on the buy-back of shares of companies listed on the securities exchange - in pursuance of section 88 of the Companies Act, 2017.

The regulations provide the criteria and conditions for eligibility to purchase, such as the requirement that the company is listed on the securities exchange for a period of not less than 3 years; the general meeting in which the special resolution is to be passed shall be held not later than 30 days of the date of the meeting of the board of directors in which the purchase is recommended; the purchasing company shall make a public announcement within 2 working days of passing of the special resolution; and in the case of purchase through tender offer, the purchase price shall be the price as recommended by the board of directors and approved by the members through special resolution (which shall not be less than the preceding 5 trading days weighted average price of the shares), whereas purchase through securities exchange shall be made at the spot/current share price, etc.

The regulations also lay out the obligations and restrictions of the purchase process such as: the requirement to communicate the decision of the board of directors regarding recommendation of the purchase to both the Commission and the Securities Exchange, simultaneously, on the day the decision is made; and the purchasing company shall not apply for voluntary delisting or voluntary winding up within a period of 12 months of the close of the purchase period, etc.

Some of the major changes made by the Commission include: removal of the condition of being a margin eligible security for past 1 year; no longer a need for a certificate from the auditor asserting the availability of funds; requirement of NOC from the creditors have been abolished; and obligation to buy shares with cash and distributable profits have been removed. Further, with respect to the disposal of treasury shares: the volume and price restrictions have been removed, and the company does not require a special resolution from its members for disposal of such treasury shares.

2. Circulars

a. **Updated Guidelines on Compliance under UNSC Resolutions - Banks/ DFIs/ MFBs**

The State Bank of Pakistan has recently updated its 'Guidelines on Compliance of Government of Pakistan's Notifications issued under United Nations Security Council (UNSC) Resolutions' which were previously issued vide BPRD Circular No. 03 of 2015. This has been done in accordance with Guidelines issued by the Ministry of Foreign Affairs and National Counter Terrorism Authority (NACTA) under relevant UNSC resolutions.

The Ministry of Foreign Affairs, after approval from the Federal Cabinet, issued the United Nations Security Council (Freezing & Seizure) Order, 2019 vide its SRO No. 261 (I)/2019 in order to streamline the procedure for implementation of UNSC Sanctions against designated individuals/entities. Consequently, banks/ DFIs/ MFBs are required to issue a notice of freezing or seizure of property to the concerned designated entity/individual and any other person affected by the same, as set out in Form – B of the said Order.

All banks/ DFIs/ MFBs are to ensure compliance with the updated Guidelines.

3. Others

a. SECP launches LEAP to embark on Digital Transformation

The SECP is embarking on end-to-end digital transformation and automation under its project called "Leading Efficiency through Automation Prowess (LEAP), which aims to:

- improve service quality,
- promote transparency, and
- enable efficient interaction for its customers.

As per the press release, the Chairman of SECP, Mr Farrukh Sabzwari, stated that SECP encourages greater collaboration with regulatees by involving them in decision-making, policy setting, budget prioritization, problem solving and the co-design of services. He also stated that the SECP is collaborating with key stakeholders in order to deliver beneficial digital services which has played a significant role in improving Pakistan's 'Ease of Doing Business ranking'[1] by initiatives such as:

- providing system generated Memorandum and Articles of Association,
- digital payments through 1 Link, and
- one window facility for company registration.

Moreover, SECP's eService has been integrated with FBR, DOBI, PESSI/SESSI, Labor department and the Excise and Taxation Departments of Punjab and Sindh.

b. Secured Transactions Registry - SECP

The federal government has entrusted SECP with the function of 'Secured Transaction Registry' (STR) for ***unincorporated entities*** to record charges/security interests created by entities on their movable assets. The SECP is already maintaining a registry of charges/security interests created by **companies** for moveable and immovable assets under the Companies Act, 2017.

The Financial Institutions (Secured Transactions) Act, 2016 was enacted to provide an integrated legal framework for creation of security interest over movable assets besides providing for establishment of a STR for unincorporated entities. The creation of the said registry is intended to facilitate small borrowers from SME and agriculture sector to secure credit from financial institutions against their movable assets e.g. receivables, intellectual property, inventory, agricultural produce, petroleum or minerals, motor vehicles etc.

It is also expected that the establishment of STR will improve Pakistan's ranking in the "getting credit" indicator of the World Bank's Ease of Doing Business index[2] that requires establishment of an integrated or unified collateral registry to register security interests in movable assets by incorporated and unincorporated entities.

---

[1] This year, Pakistan advanced 11 places to 136th place on the ease of doing business global ranking. On the measure of absolute progress towards best practice, Pakistan improved score to 55.31, from 52.78 last year. Refer report 'Doing Business 2019' http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf

[2] For 'Ease of Doing Business Score and Ease of Doing Business Ranking' refer: http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB19-Chapters/DB19-Score-and-DBRankings.pdf

International

a. The OECD Corporate Governance Factbook[3]

The Organisation for Economic Co-operation and Development (OECD) published the 2019 edition of the "OECD Corporate Governance Factbook" to highlight how the 'G20/OECD Principles of Corporate Governance (the G20/OECD Principles)' are implemented around the world.

The Factbook provides accessible and up-to-date information about the institutional, legal and regulatory frameworks for corporate governance across 49 jurisdictions worldwide and can be used by governments, regulators and the private sector to compare their own frameworks with those of other countries and also to get information on practices in specific jurisdictions. First published in 2014, the Factbook is updated every 2 years.

The Factbook is divided into 5 main areas that are crucial for understanding how corporate governance functions in different jurisdictions:

1. The corporate and market landscape
2. The corporate governance and institutional framework
3. The rights and equitable treatment of shareholders and key ownership functions
4. The corporate board of directors
5. Mechanisms for flexibility and proportionality in corporate governance.

The core information in the Factbook is taken from OECD thematic reviews on how OECD, G20 and Financial Stability Board member jurisdictions address major corporate governance issues such as:

- board practices (including remuneration);
- the role of institutional investors;
- related party transactions and minority shareholder rights;
- board member nomination and election;
- supervision and enforcement;
- risk management; and
- mechanisms for flexibility and proportionality in corporate governance.

Additional sections address the corporate governance landscape, including ownership patterns, data on stock exchanges and their market activities; and the institutional and regulatory landscape.

Findings in the Factbook reveal that global markets and national regulatory frameworks have been evolving substantially. For example, since 2015 when the G20/OECD Principles were issued, 84% of the 49 surveyed jurisdictions have amended either their company law or securities regulations, or both. Nearly half of all jurisdictions have revised their national corporate governance codes in the past 2 years. Regulatory frameworks for risk management and remuneration policy—2 issues where OECD identified weaknesses that contributed to the global financial crisis—have been particularly dynamic, with the number of jurisdictions that have established requirements and recommendations related to these key issues increasing considerably. An increasing number of jurisdictions are also establishing policies to promote balanced and diverse company boards, either through disclosure, voluntary gender targets or quotas.

[3] OECD (2019), OECD Corporate Governance Factbook 2019 www.oecd.org/corporate/corporate-governance-factbook.htm

b. The OECD Survey of Corporate Governance Frameworks in MENA[4]

The OECD Survey of Corporate Governance Frameworks in the Middle East and North Africa provides consolidated information on corporate governance in the MENA region, building on the above-mentioned OECD Corporate Governance Factbook, which contains similar information on OECD and G20 countries. The survey focuses on the corporate governance of listed companies and, like the Factbook, is structured around the key elements of the G20/OECD Principles of Corporate Governance.

The survey, produced within the framework of the MENA-OECD Competitiveness Programme and the MENA-OECD Working Group on Corporate Governance, compiles information provided by securities regulators, stock exchanges, institutes of directors and corporate governance centres in each economy. (The MENA-OECD Competitiveness Programme was launched in 2016 at the request of MENA governments. The programme's objective is to facilitate co-operation between the OECD and MENA region to promote policies for sustainable and inclusive growth. Since 2005, the Initiative has addressed regional needs and development priorities, and takes into account the region's diversity by providing targeted policy support to participating jurisdictions, building on the OECD's work methods of analysis, policy dialogue, exchange of good practices and capacity building for the implementation of reforms.)

The survey supports informed policymaking by providing information on the variety of ways in which different economies translate the Principles into their own legislative frameworks and markets. It also reiterates the importance of the quality of a country's corporate governance framework to the dynamics and competitiveness of its business sector and highlights the fact that- as capital markets and corporations continue to evolve and new challenges arise, it is important for policy makers and regulators to stay abreast of how policies and practices can be adapted to remain effective under new circumstances.

Good corporate governance is not an end in itself. Rather, it is a means to create an environment of market confidence and business integrity that supports capital market development and corporate access to equity capital for long-term productive investments

[4] OECD (2019), OECD Survey of Corporate Governance Frameworks in the Middle East and North Africa, http://www.oecd.org/corporate/OECD-Survey-of-CorporateGovernance-Frameworks-in-MENA.htm

c. **Corporate Governance in MENA- Building a Framework for Competitiveness and Growth**[5]

The MENA-OECD Working Group has issued a report on 'Corporate Governance in MENA: Building a Framework for Competitiveness and Growth'. The MENA-OECD Working Group on Corporate Governance was established to support the implementation of the G20/OECD Principles in the MENA region. The report assesses the corporate governance landscape in the MENA region by identifying challenges and proposing policy options for reform.

The findings of the report are based on an analysis of policies and practices in 4 thematic areas:

i. boosting access to finance and capital markets,
ii. improving transparency and disclosure,
iii. achieving gender balance in corporate leadership and
iv. enhancing the governance of state-owned enterprises in MENA.

Overall, the report finds that MENA economies have made progress in strengthening corporate governance frameworks in recent years, but that the region still faces challenges in adopting and implementing corporate governance measures that support economic efficiency, sustainable growth and financial stability.

The report emphasizes that strong corporate governance frameworks are essential for MENA economies as they strive to boost economic growth, strengthen competitiveness and build prosperous societies.

d. **Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in SOEs**

Ministers representing OECD governments have adopted the recommendations of the OECD's Council on 'Guidelines on Anti-Corruption and Integrity in State-owned Enterprises(SOEs)'. The Ministerial Council Meeting (MCM) is OECD's most important annual event, attended by the Ministers of Finance, Economics, Foreign Affairs, Trade and other ministries from the Organisation's 36 Member countries, as well as Key Partner and Accession countries and High Level representatives from various International Organisations. At the MCM, Ministers give the Organisation its main mandates for the upcoming year.

The Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises is the first international instrument to offer the state, in its role as an enterprise owner, support in fighting corruption and promoting integrity in SOEs. The Guidelines were developed by the OECD Working Party on State Ownership and Privatisation Practices in co-operation with other OECD bodies.

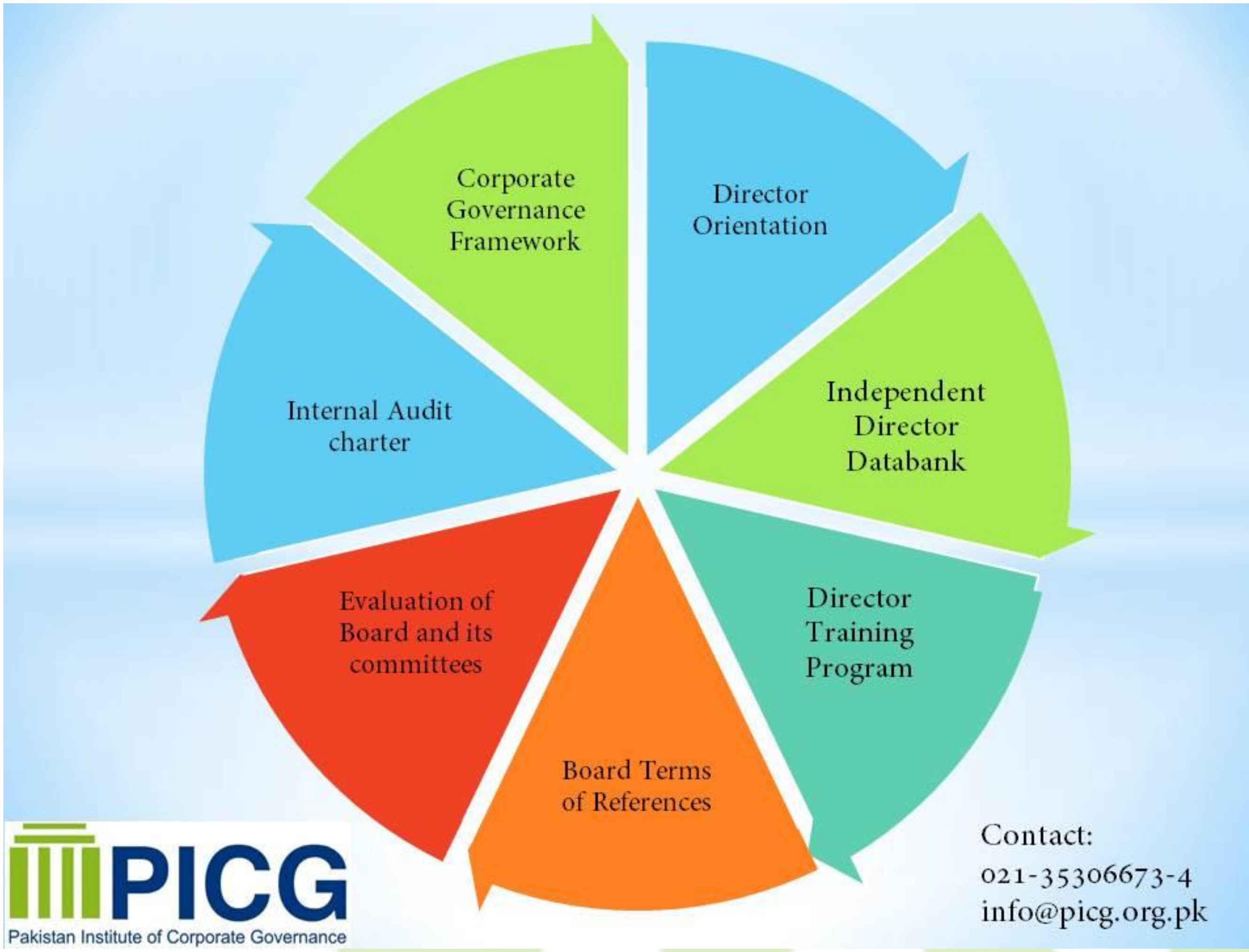
The Guidelines can help states to ensure that:

- owners exemplify integrity in their conduct,
- ownership arrangements are conducive to integrity,
- SOEs adhere to good practices at the SOE level and
- accountability mechanisms are integral to SOE sectors.

The Guidelines complement the goals of the OECD Guidelines on Corporate Governance of State-Owned Enterprises to make SOEs more competitive, efficient and transparent.

---

[5] OECD (2019), *Corporate Governance in MENA: Building a Framework for Competitiveness and Growth*, Corporate Governance, OECD Publishing, Paris, https://doi.org/10.1787/2a6992c2-en.



To view previous Advisory Updates, please click on the following link:

http://picg.org.pk/publications/