



PICG ADVISORY UPDATE-16
October 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	Topic / Update link
1. Regulations/ Rules issued				
i	SBP	BPRD Circular Letter No. 16 of 2018	Oct 18, 2018	Amendments to Anti-Money Laundering & Combating the Financing of Terrorism (AML/CFT) Regulations
ii	SECP	SRO 1225(I)/2018	Oct 8, 2018	Companies (General Provisions and Forms) Regulations, 2018
iii	SECP	SRO 1224(I)/2018	Oct 5, 2018	Foreign Companies Regulations, 2018
iv	SBP	AC&MFD Circular No. 02 Of 2018	Oct 5, 2018	AML/CFT Regulations for Microfinance Banks
v	SBP	BPRD Circular Letter No. 15 of 2018	Oct 4, 2018	The Financial Institutions (Recovery of Finances) Rules, 2018
vi	SECP	SRO 1196(I)/2018	Oct 3, 2018	Proposed amendments to the Non-Banking Finance Companies and Notified Entities Regulations, 2008
vii	SECP	SRO 1194(I)/2018	Oct 2, 2018	Companies (Related Party Transactions and Maintenance of Related Records) Regulations, 2018
viii	SECP	SRO 1170(I)/2018	Oct 1, 2018	Amendments to SECP's (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018

Sr #	Issued by	Reference	Date	Topic / Update link
2. Guidelines				
i	SBP	BPRD Circular Letter No. 17 of 2018	Oct 18, 2018	Updated Guidelines on Compliance of UNSC Resolutions
3. Directives				
i	SECP	SRO 1201(I)/2018	Oct 3, 2018	Proposed expansion of Fit and Proper Criteria for Insurance Sector
4. Circulars				
i	SECP	Circular no.19 of 2018	Oct 16, 2018	Amendments to Prudential Regulations for Modarabas
5. Others				
i	SBP	BPRD Circular Letter No. 18 of 2018	Oct 19, 2018	Compliance of AML/CFT Regime by Banks/DFIs
ii	SBP	BPRD Circular No. 09 of 2018	Oct 18, 2018	Revised Fit & Proper Test: Re-submission by Banks/DFI's
iii	SBP	BPRD Circular No. 08 of 2018	Oct 8, 2018	Maintaining Fidelity and Secrecy of Customers' Information

International

Topic	Links
OECD Report on Preparing for the Future of Work	Job Creation and Local Economic Development 2018
OECD Report on Enhancing Policy Maturity for Sustainable Impact	Open Government Data Report

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 issued during the month which have been placed on their respective websites:

a. Final

Sr. no	Name of Regulations / Rules	Effective date	Description
1	Companies (General Provisions and Forms) Regulations, 2018	Oct 8, 2018	<p>The SECP has issued 54 different forms and returns to be filed by the corporate sector covering areas such as submission of requisite documents, annual returns, altered memorandum and articles of association, application for obtaining status of inactive company, return of allotments of shares and particulars of beneficial ownership of companies, etc by way of these regulations.</p> <p>Regulation 4 provides a table stating the Form name, description and section/ regulation reference for each form.</p> <p>Under the new filing procedure, the SECP said that any form, return, application, document or report required to be filed by a company under any provision of the Companies Act/these regulations, shall be filed online either through E-service or in physical form to the Commission/ Registrar; signed and verified by the authorized officer; and submitted along with relevant fee as stated in the Act.</p>
2	Foreign Companies Regulations, 2018	Oct 5, 2018	<p>These regulations shall apply to foreign companies operating in Pakistan except Not for Profit Organizations (NPOs).</p> <p>The regulations provide a regulatory framework for foreign companies operating in Pakistan to effectively monitor their registration and operations, and to provide information on processes of establishment, conduct of business, maintenance of registers and filing of documents, etc. Further, any foreign company desirous of establishing a place of business in Pakistan shall obtain prior approval from the Board of Investment.</p>
	Financial Institutions (Recovery of Finances) Rules, 2018	Oct 4, 2018	<p>The rules describe the procedure for the sale of mortgaged property, valuation of mortgaged property, bidding process, etc., and is applicable to financial institutions such as banks, DFI's and Microfinance Banks as defined in the Financial Institutions (Recovery of Finances) Ordinance, 2001.</p> <p>The rules shall come into force at once.</p>

			<p>As per the Financial Institutions (Recovery of Finances) Ordinance, 2001, a financial institution" means and includes:</p> <p>(i) any company whether incorporated within or outside Pakistan which transacts the business of banking or any associated or ancillary business in Pakistan through its branches within or outside Pakistan and includes a government savings bank, but excludes the State Bank of Pakistan;</p> <p>(ii) a modaraba or modaraba management company, leasing company, investment bank, venture capital company, financing company, unit trust or mutual fund of any kind and credit or investment institution, corporation or company; and</p> <p>(iii) any company authorised by law to carry on any similar business, as the Federal Government may by notification in the official Gazette, specify.</p>
3	Companies (Related Party Transactions and Maintenance of Related Records) Regulations, 2018.	<p>Oct 2, 2018 Except for Regulation 7, which shall come into force on 1st January, 2019.</p> <p>(Reg 7: Record to be maintained of RPTs & contracts or arrangements in which directors are interested)</p>	<p>The regulations specify:</p> <ul style="list-style-type: none"> • Minimum parameters required for the policy of related party transactions(RPTs) including: information on nature of the related party relationship; limitations or conditions that may be applicable; potential risks of RPTs and mitigating measures; procedure to be followed in case of failure to present RPTs for approval; and pricing policy. • Minimum information required to be circulated and disclosed for approval of RPTs by the Board/ Members. • Conditions of transactions to be classified as “arms length” • Responsibility of the Board including to ensure that they educate and train their directors and relevant employees so that they can identify and report RPTs to the board or other authorized persons. • Records to be maintained of: RPTs and contracts or arrangements in which directors are interested as well as other information to be disclosed by directors.

2. Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)

The Financial Action Task Force (FATF)¹, an independent inter-governmental body, issued international standards containing recommendations to combat money laundering and the financing of terrorism and proliferation.' The FATF recommendations require countries to take measures to prevent the misuse of legal persons for money laundering and terrorist financing, and ensure that there is adequate, accurate and up-to-date information available with companies on the ultimate (actual) beneficial ownership and control of legal persons that can be accessed in a timely manner by competent authorities. Pakistan is a

¹ The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions, with headquarters in Paris, France. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

member of the Asia/Pacific Group on Money Laundering (APG) - a FATF Styled Regional Body (FSRB), and is required to adopt FATF standards as per membership obligations, and also to comply with the UN resolutions.

In order to ensure compliance with FAFT recommendations, SECP has been directing all companies to ensure that they obtain 'ultimate beneficial ownership' information from their members, and maintain and update this information in a register of beneficial ownership as required under Section 453 of the Companies Act, 2017. (Section 453 requires every officer of a company to endeavor to prevent commission of any fraud, offences of money laundering including predicated offences as provided in the Anti-Money Laundering Act, 2010 with respect to affairs of the company).

All companies having legal persons as their members/shareholders must obtain and maintain information relating to their ultimate beneficial owners, (i.e. natural persons who ultimately own or control the company) irrespective of the number of levels of ownership pattern, until the natural person exercising ultimate ownership or control and lying at the end of the ownership chain, is revealed. In case no natural persons are identified after having exhausted all possible means, or there is any doubt that the persons identified are the beneficial owners, the names of the natural person(s) who hold the position of senior managing official(s) of the company shall be entered in the register of beneficial ownership. Companies shall also provide this information to any other authority or agency of the Government pursuant to the powers to call for information entrusted by law to such authority or agency.

SECP further clarified vide Circular 20 2018 dated 1 November 2018 that the information relating to the ultimate beneficial owners i.e. natural persons is in respect of those who ultimately own or control the company through direct or indirect ownership of not less than 10% shares, voting rights, ownership or controlling interest of that company in a register. This information is required to be obtained and maintained irrespective of the levels of ownership pattern.

With regard to AML/CFT regulations and requirements various instructions in the form of notifications, guidelines, circulars, etc., have been issued over the past year. The following is a summary of those AML/CFT instructions issued over the month of October 2018 pertaining to varying corporate sectors:

Regulation	Description
A. Banks / DFIs	
AML/CFT Regulations	<p>SBP issued amendments to various provisions of the Anti-Money Laundering & Combating the Financing of Terrorism (AML/CFT) Regulations with a view to further align the same with the FATF Recommendations.</p> <p>The amendments provide further clarity on implementation of the AML/CFT requirements by banks/ DFIs, including:</p> <ul style="list-style-type: none"> • customer due diligence (CDD), • correspondent banking, • wire transfers/ funds transfers and • minimum documents required for opening accounts by customers.
Updated	In order to further enhance the understanding of Targeted Financial Sanctions

<p>Guidelines on Compliance of UNSC Resolutions</p>	<p>regimes for Terrorism Financing and Proliferation Financing, under the United Nations Security Council (UNSC) Resolutions, the SBP has updated the ‘Guidelines on Compliance of Government of Pakistan’s Notifications’ issued under the UNSC Resolutions, issued vide BPRD Circular No. 03 of 2015 as amended from time to time</p>
<p>Compliance of AML/CFT Regime by Banks/DFIs</p>	<p>Banks/DFIs have been reminded to ensure strict observance of instructions pertaining to the identification and verification of customers and their beneficial owner(s)² and obtain information on the purpose and intended nature of business relationship. The monitoring mechanism should be adequately resourced and strengthened to ensure that transactions conducted are consistent with the banks/DFIs’ knowledge of their customer, business, risk profile and the source of funds.</p> <p>In order to determine the ultimate beneficial ownership of accounts/ transactions, SBP has instructed banks/DFIs to enhance their efforts to obtain relevant information and examine background and purpose of all complex, unusual large transactions and unusual patterns of transactions, which do not commensurate with customer profile or have no apparent economic or visible lawful purpose.</p> <p>The banks/ DFIs may seek such ultimate beneficial ownership information from their relevant customers during the Customer Due Diligence (CDD) process as given under Regulation-1 of the AML/CFT Regulations.</p> <p>Further, to strengthen measures already in place and mitigate money laundering and terrorist financing risks, banks/DFIs are advised to immediately take following steps:</p> <ol style="list-style-type: none"> a) Ensure optimal utilization of biometric technology and carry out biometric verification of the existing customers (if already not done) as per timelines and thresholds given. b) Confirm compliance status of their internal risk review of remaining legacy portfolio of customers, as required vide BPRD Circular Letter No. 20 dated June 14, 2017 latest by October 31, 2018. <p>Non-compliance will attract appropriate enforcement action in accordance with relevant laws.</p>
<p>Submission of revised Fit & Proper Test (FPT) Questionnaire & Undertaking by Banks / DFIs</p>	<p>In view of the potential risk arising from money laundering, terrorism financing and proliferation financing, any person(s) linked to any criminal activities or affiliated to any terrorist organizations shall not become part of banks/DFIs. In this regard, SBP has been issuing instructions to strengthen the FPT criteria from time to time, whereby persons subject to FPT (ie. any sponsor shareholders/ beneficial owners, directors, presidents and key executives) shall become disqualified if they are designated/proscribed or associated directly or indirectly with designated/proscribed entities/persons under United Nations Security Council Resolution or Anti-Terrorism Act 1997.</p> <p>Henceforth, all banks/DFIs have been advised to submit revised FPT Questionnaire and Undertaking to SBP confirming that particulars regarding persons subject to the FPT have been verified through the National Database and Registration Authority (NADRA) and screened against the list(s) of designated/proscribed entities and persons as per the applicable laws, rules and regulations.</p>

² i.e. natural persons or individuals who ultimately own or control the company

	Further, SBP has reiterated that the FPT is continuous in nature and any subsequent change in particulars should immediately be disclosed to the Board of Directors and/or the concerned authority including SBP.
B. Microfinance Banks	
Prudential Regulations on AML/CFT for Microfinance Banks	<p>In order to mitigate risks arising from money laundering and financing of terrorism SBP has revised the existing Prudential Regulations on AML/CFT for Microfinance Banks (MFBs).</p> <p>These regulations are in addition to and not in derogation of requirements under the Anti Money Laundering Act 2010 and Rules/Regulations issued there-under; measures taken by MFBs pursuant to their internal/group policies; and recommendations of the FATF or any other AML/CFT standards prescribed by any global body.</p> <p>The revised regulations shall be enforceable with immediate effect and MFBs are also required to align their AML/CFT risk assessment procedures in accordance with the regulations within 3 months.</p> <p>Any non-compliance will attract penal actions, as per law.</p>
C. SECP – All Companies	
Securities and Exchange Commission of Pakistan (AML/CFT) Regulations, 2018	<p>Amendments have been made to direct regulated persons [ie.securities brokers, insurance companies, Non-Banking Finance Companies (NBFCs) and Modarabas] not to open accounts of new customers and terminate business relationship with existing customers where they are unable to satisfactorily complete required customers due diligence (CDD) measures.</p> <p>Under the regulations, a regulated person shall not form business relationship with entities and/or individuals that are:</p> <ul style="list-style-type: none"> • proscribed under the United Nations Security Council Resolutions and adopted by the Government of Pakistan; • proscribed under the Anti Terrorism Act, 1997 and • associates/facilitators of persons mentioned above. <p>Further, counter measures against high risk countries proportionate to the risk shall be adopted; and the SECP shall direct regulated persons to take appropriate measures with respect to customers of countries where there is weakness in the AML/CFT systems, as advised by the Federal Government.</p>
D. Non-Banking Finance Companies (NBFCs)	
Proposed amendments to NBFCs & Notified Entities Reg, 2008	Similar to the above additions that have been made to the Prudential Regulations for Modarabas, amendments have been proposed to be made to the NBFC & Notified Entities Regulations, 2018 to gather information on the ultimate beneficial ownership including: corporate behavior of the body corporate and integrity & track record of the sponsor and ultimate beneficial owners of such corporate body; as well as shareholding details of ultimate beneficial owners.
E. Modarabas	

<p>Prudential Regulations for Modarabas</p>	<p>New provisions have been added to the Prudential Regulations for Modarabas (which are deemed to be part of the conditions of the certificate granted for authorization to float a Modaraba), in order to obtain information about the ultimate beneficial ownership of the same.</p> <p>If any promoters or major shareholders of the modaraba company is a body corporate, an affidavit, as per the given specifications, shall also be submitted from such ultimate beneficial owner (Ultimate beneficial owner for the purpose of this clause means a natural person or individual who ultimately owns 10% or more ownership or controls the body corporate)</p> <p>Further, in case a promoter or major shareholder is a body corporate, in addition to the relevant/applicable clauses, the corporate behavior of the body corporate as well as integrity & track record of the promoters and ultimate beneficial owner of such body corporate shall be assessed.</p> <p>A list stating the information to be provided by a body corporate as promoters and major shareholders of the Modaraba company has also been added which includes: financial statements for the last 3 years; details of business place; shareholding details including details of ultimate beneficial owners; CIB report of the company and its directors and sponsors; details of associated companies and subsidiaries; details of any existing or potential litigation in the name of the company, its sponsors and directors; etc</p>
<p>F. Insurance Sector</p>	
<p>Proposed directive- Fit and Proper Criteria for Insurance Sector</p>	<p>The SECP has issued a proposed directive to comply with additional fit and proper criteria, in addition to requirements notified either through rules, regulations or through other legislative instruments, for the insurance sector to obtain information about sponsors, promoters and major shareholding of insurers and insurance intermediaries, which would now also include shareholding details, including details of ultimate beneficial owners.</p> <p>The SECP has directed the insurers and insurance intermediaries to submit, at the time of their incorporation, undertaking duly signed by the sponsors, promoters and their ultimate beneficial owners that they have not been convicted in criminal breach of trust, fraud, offences of money laundering, including predicate offences as provided in the AML Act, 2010, or contravened any provision of SECP-AML/CFT Regulations, 2018, or any other AML/CFT requirements notified by the SECP.</p> <p>In addition, an insurer shall also submit an undertaking, duly signed by the proposed directors or chief executive or principal officer of the insurer and an affidavit on an annual basis that its key officers, have not been convicted in criminal breach of trust, fraud, offences of money laundering.</p> <p>Moreover, insurance brokers shall also, at the time of seeking for approval for issuance of license in terms of the Insurance Rules, 2017, submit to the SECP, an undertaking duly signed by the proposed directors or chief executive, principal officer and key officers of the insurance brokers regarding non-involvement in money laundering related offences as mentioned above.</p> <p>The insurer during the execution of various processes relating to insurance policies (including but not limited to the issuance, underwriting, endorsement, withdrawal, claim, or maturity) shall ensure that there is no conflict of interest of the insurance</p>

intermediaries with any terms of the AML/CFT requirements notified by the SECP.

It has also been specified that at the time of acquisition of a shareholding, or any part in case of nonlife insurer, of more than 10% in an insurance company, the acquirer(s) or the authorized person in case of the corporate entity shall submit an undertaking that the acquirer/beneficial owners have not been convicted in criminal breach of trust, fraud, offences of money laundering, etc

3. Others

a. Maintaining Fidelity and Secrecy of Customers' Information

SBP has advised all banks / DFIs to incorporate necessary controls, checks and balances in their policies and procedures to ensure meticulous compliance of Section 33A of the Banking Companies Ordinance, 1962 in letter and spirit, as instances of accessing customer related information by irrelevant bank officials and divulging of the same to unauthorized persons have been noted.

Section 33A of the Banking Companies Ordinance, 1962, requires that banks / financial institutions:

"shall not divulge any information relating to the affairs of its customers except in circumstances in which it is, in accordance with law, practice and usage customary among bankers, necessary or appropriate for a bank to divulge such information."

The SBP has noted that the centralization of core banking systems of banks has caused customers' data to become accessible across the bank and, therefore, banks must ensure that this access is suitably managed and that only authorized officials access confidential data for specified purposes.

Banks / DFIs have been advised to take following additional measures:

- i. The directives under Section 33A for safeguarding the customers' information should be reinforced, and proper training / instructions should be provided to all staff members for not disclosing confidential information of customers to unauthorized persons.
- ii. The right to access of information pertaining to the customers' account balance and other important information should only be available to the relevant bank official(s) on need basis, and in accordance with the approved authority, which should be properly documented.
- iii. In case of change in role or responsibilities of a staff member, all IT access rights no more required for the new role should immediately be deleted, and any additional rights should be assigned through approved process. In addition, regular reviews of staff IT access rights should also be carried out to ensure that there are no anomalies.
- iv. The complete log of all the activities relating to viewing of account balances and / or account statements should be maintained for a certain period, as decided by the bank. Such logs should be regularly monitored by the senior management and reviewed by the internal audit to point out any irrelevant access to the customers' information.

Any deviation from the above shall render the concerned bank / DFI and delinquent officials liable for penal action under the relevant provisions of the Banking Companies Ordinance, 1962.

"Good corporate governance is about 'intellectual honesty' and not just sticking to rules and regulations. Capital flowed towards companies that practiced this type of good governance."

International

a. Job Creation and Local Economic Development 2018³

The Organisation for Economic Cooperation and Development (OECD) has published its third edition of “Job Creation and Local Economic Development”

Each edition of the report focused on different areas as follows:

- 1st edition- How policy makers can set the framework for local job creation
- 2nd edition- Policies to boost skills development and entrepreneurship at the local level
- 3rd edition- Examines the changing nature of work and the necessary steps to prepare worker for the future of work.

The current report examines the impact of technological progress on regional and local labour markets and sheds light on the widening regional gaps on job creation, workers education and skills, as well as inclusion in local economies.

Drawing on new data, it examines the geographical distribution of the risk of automation and whether jobs lost to automation are compensated by the creation of jobs at lower risk of automation. Building on data from labour force surveys, the report looks at the rise of non-standard work, highlighting the main regional determinants of temporary jobs and self-employment. Finally, it considers determinants of productivity and inclusion in regional and local labour markets, as well as policies to foster greater inclusion of vulnerable groups into the labour market. Individual country profiles provide an overview of regional labour markets and, among other things, an assessment of the performance in terms of “quality” jobs created among different regions.

b. Open Government Data (OGD) Report⁴

This report provides an overview of the state of open data policies across OECD member and partner countries, based on data collected through the OECD Open Government Data survey (2013, 2014, 2016/17), country reviews and comparative analysis. The report analyses open data policies using an analytical framework that is in line with the ‘OECD Open-Useful-Re-usable (OUR) data Index’ and the ‘International Open Data Charter’.


What is Open Government Data?

Open Government Data (OGD) is a philosophy- and increasingly a set of policies - that promotes transparency, accountability and value creation by making government data available to all. Public bodies produce and commission huge quantities of data and information. By making their datasets available, public institutions become more transparent and accountable to citizens. By encouraging the use, reuse and free distribution of datasets, governments promote business creation and innovative, citizen-centric services.

The OGD report assesses governments’ efforts to enhance the availability, accessibility and re-use of open government data. It makes the case that beyond countries’ commitment to open up good quality government data, the creation of public value requires engaging user communities from the entire ecosystem, such as journalists, civil society organisations, entrepreneurs, major tech private companies and academia.

³ OECD (2018), Job Creation and Local Economic Development 2018: Preparing for the Future of Work, OECD Publishing, Paris, <https://doi.org/10.1787/9789264305342-en>.

⁴ OECD (2018), Open Government Data Report: Enhancing Policy Maturity for Sustainable Impact, OECD Digital Government Studies, OECD Publishing, Paris, <https://doi.org/10.1787/9789264305847-en>.

 <p>PICG SERVICE OFFERINGS</p>	<ul style="list-style-type: none"> • Independent evaluations of Boards and Board Committees • SECP approved Director Databank for independent directors to the Board. <p>BOARD SOLUTIONS</p>	<ul style="list-style-type: none"> • Advisory update • Corporate Governance Assessments • Terms of Reference for Directors and Board Committees • Internal Audit Charter • Schedule of responsibilities of Chairman and CEO <p>ADVISORY AND CONSULTANCY</p>
<ul style="list-style-type: none"> • Over 120 corporate and individual members, apply now and avail discounts on our programs and more benefits! <p>MEMBERSHIPS</p>	<p>Some of our popular offerings include:</p> <ul style="list-style-type: none"> • SECP approved Director Training Program (Corporate Governance Leadership Skills) • Company Secretary Development Program • Director Orientation Workshops <p>TRAININGS AND WORKSHOPS</p>	<ul style="list-style-type: none"> • Quarterly newsletter: The Quorum • Bespoke research for companies <p>RESEARCH AND PUBLICATIONS</p>

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

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