

June 2019

PICG ADVISORY UPDATE-24



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 713 (I)/2019	Jul 1, 2019	Securities and Exchange Commission of Pakistan (Search and Seizure) Rules, 2019
ii	SECP	SRO 610 (I)/2019	30 May, 2019	Draft Panel of Provisional Managers and Official Liquidators Regulations, 2019
2. Amendments				
i	SECP	SRO 639 (I)/2019	Jun 20, 2019	Amendments in the Non-Banking Finance Companies and Notified Entities Regulations, 2008
3. Circular				
i	SECP	Circular No.10/2019	Jul 3, 2019	Annual Financial Statements and Notices of General meetings- Listed Companies
4. Others				
i	SECP	Press release	Jun 15, 2019	Health Insurance for Private Sector Employees

International

Topic	Links
Recommendation of OECD's Council on Artificial Intelligence & its adoption	OECD Principles on Artificial Intelligence
IFC report on executive gender gap	Board Gender Diversity in ASEAN
UK's Department for Business, Energy and Industrial Strategy (BEIS) - report assisting interested stakeholders understand new reporting requirements	Companies (Directors' Remuneration Policy & Directors' Remuneration Report) Regulations 2019-FAQs
Financial Conduct Authority (FCA), UK - report on areas of the financial services sector under its ambit.	FCA Perimeter report 2018/19

**The real mechanism for
corporate governance is the active
involvement of the owners.**

- Louis V. Gerstner, Jr.

B. Synopsis of changes

Pakistan

1. Regulations/ Rules issued

Various rules and regulations have been notified by the Securities and Exchange Commission of Pakistan (SECP) to streamline procedures and improve governance structures of companies in Pakistan. Following is a summary of significant draft and final Rules/ Regulations 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:

Sr. no	Name	Effective date	Description
1	Securities and Exchange Commission of Pakistan (Search and Seizure) Rules, 2019	July 1, 2019 (Immediate effect)	<p>These rules have been issued to investigate registered corporate entities in suspicious transactions and illegal activities. The rules cover everything from the procedure of search and seizure to guidelines on search of places and buildings by force, to search of persons and electronic devices.</p> <p>The SECP has enhanced the powers of its Investigation Officers (IOs) for raiding/forcible entry at business places for seizing documents, digital evidence, electronic devices, objects, articles, material or things during search operations to prepare an inventory of all documents, etc, required by the investigation.</p> <p>Under section 30 of the SECP Act, 1997, powers of IOs to enter any place or building have been specified (ie. an IO, only after the written order of the Commission signed by a Commissioner or an Officer authorized in this behalf, may enter any place or building to inspect and make copies of or take extracts from any book, minute book, register or document and where he has reason to believe that an offence has been committed and any administered legislation or other law in respect of which the Commission has power to make investigation or inspection, to search for, seize, take possession of and detain any object, article, material, thing, accounts book or other document, including any travel or other personal document which may be used as evidence).</p> <p>Under section 31 of the said Act, the SECP has also given powers to its officials for forcible entry. An IO may enter any place or building by force, if necessary, in such a form and manner as may be prescribed by the federal government.</p> <p>The IO shall prepare a seizure memo (on the required format) and must carry with him all necessary tools or things required for preparing a seizure memo at the spot. Further, the IO officer shall meet all of the requirements of the Act and any administered legislation under which the investigation is authorized.</p>

2	Draft Panel of Provisional Managers and Official Liquidators Regulations, 2019	Comment by June 13, 2019 (ie. within 14 days)	<p>As per Section 315 of the Companies Act, 2017:</p> <p><i>‘..For the purpose of the winding up of companies by the Court, the Commission shall maintain a panel of persons from whom the Court shall appoint a provisional manager or official liquidator of a company ordered to be wound up. A person shall not be appointed as provisional manager or official liquidator of more than 3 companies at one point of time..’</i></p> <p>Consequently, the Commission shall maintain a register with the details of persons whose names have been included in the Panel and this register shall be available on SECP’s website for public view in such form and having such content as the Commission may deem fit.</p> <p>The proposed regulation in this regard, therefore, sets out:</p> <ol style="list-style-type: none"> a) The eligibility criteria for the Panel which includes: <ul style="list-style-type: none"> • Educational and Professional Qualification • Experience and affiliation b) Factors resulting in ineligibility c) Application procedure to obtain a spot on the Panel <p>Note: Those persons who have already been appointed by the Court as Provisional Managers and Official Liquidators prior to these regulations shall be exempt from the requirements mentioned therein.</p>
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2. Amendments

a. Amendments in the and Notified Entities Regulations, 2008

The SECP has made amendments to the Non-Banking Finance Companies and Notified Entities Regulations, 2008. Some of the salient changes are as follows:

- (i) The NBFC shall provide the Commission with relevant details and the product disclosure statement, deposit taking instrument and approval of its Board of directors 7 days prior to the launch of any new deposit taking product and any subsequent amendment. Further, the NBFC shall place details of all the deposit taking products etc on its website and will be responsible for its regular updation
- (ii) All advertisements for any invitation to attract deposits either through advertisement by print, electronic or social media outlets or any other form or channel to the public or through private placement shall at the minimum contain the following information:
 - credit rating of the NBFC, name of the rating agency, date on which the credit rating was issued
 - minimum and maximum tenor of the Deposit;
 - expected profit rate to be paid on the deposits; and
 - all advertisements for inviting a person to invest in a Deposit taking scheme of an NBFC must contain the following disclaimer – “The Certificate of Deposits of NBFCs are subject to various risks including credit risk and liquidity risk. The prospective customers are advised to conduct their own due diligence prior to investing in Certificate of Deposits of a NBFC”
 - In case of micro financing, certain exposure limits have been revised.

- Auditor of Open End Scheme or Closed End Scheme no longer has to be independent of the auditor of the Asset Management Company (AMC) and the trustee
- The AMC shall appoint a trustee registered with the Commission before it applies for the registration of an Open End Scheme or Closed End Scheme
- The requirement for directors to be individuals having management or business experience of at least 5 years at a senior level shall not apply in case of directors of Non-Banking Microfinance Companies and such companies shall comply with conditions applicable as per Schedule I of the NBFC Rules, 2003.

3. Circulars

a. Annual Financial Statements and Notices of General meetings- Listed Companies

The SECP has issued a circular to reiterate and consolidate various requirements for filing of annual financial statements and notices of general meetings with SECP and dissemination of notices to the general public as per the provisions of the Companies Act, 2017.

The circular directs listed companies to ensure that:

- All notices of general meetings are sent to members and every person who is entitled to receive notice of general meetings, at least 21 days prior to the date fixed for the meeting; and that such notices shall be published in morning newspapers, having nationwide circulation, which 'are generally known and read, in English and Urdu languages respectively.
- A copy of newspaper in each language, in which notice of general meeting was published, along with statement under Section 134 of the Act (ie.statement of the business/special business to be transacted), where applicable, shall be filed with the SECP within 3 days of publication.
- Notice of general meeting, along with statement under section 134 of the Act, where applicable, shall also be transmitted to the SBCP through fax or email.
- One of the copies of the financial statements and reports attached therewith, filed with the SECP as per Section 223(7) of the Act, shall be duly signed by the auditor, the Chief Executive, a director and the Chief Financial Officer as the case may be.

The above mentioned circular repeals the following circulars previously issued by SECP:

Circular Number	Date	Topic
2	Jan 13, 1999	Transmission of published annual reports and accounts by listed companies
4	Mar 12, 1999	Publication of notices of meetings in newspapers
Nil	Feb 22, 2001	Transmission of notices of meetings to the Securities and Exchange Commission of Pakistan
5	Mar 14, 2002	Copies of newspapers containing notices of annual general meetings/extra-ordinary general meetings.
1	Jan 7, 2008	Publication of notices, etc., in Urdu newspaper
10	Feb 15, 2012	Transmission of notice of annual general meetings and extra-ordinary general meetings through electronic medium

4. Others

a. Health Insurance for Private Sector Employees

The SECP has recommended the federal government to introduce mandatory health insurance for private sector employees as part of the reforms relating to the development of the insurance market. The SECP has proposed that a compulsory occupational health insurance scheme be introduced by amending the 1968 West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance (and its provincial counterparts).

According to SECP, the recommendation is aimed at covering full-time workers, including permanent, contract, and temporary workers and their dependents. The cost of the proposed scheme is nominal and will be borne by the employers. The hospitalization benefit to each employee and their dependents is proposed to be provided on a cashless basis for network hospitals and on a reimbursement basis in case of out of network hospitals. The mandatory health insurance is also expected to enhance financial inclusion in Pakistan by making insurance accessible to those workers who currently have no health insurance; and improve social wellbeing of private sector employees by providing them with basic healthcare facilities. SECP stated that such schemes are already working successfully in many countries such as India, China, Dubai, Oman, Germany, Belgium and the United States.

“Sustainable development is the pathway to the future we want for all. It offers a framework to generate economic growth, achieve social justice, exercise environmental stewardship and strengthen governance.”

- Ban Ki-moon

International

a. OECD Principles on Artificial Intelligence

Member and partner countries of the Organisation for Economic Co-operation and Development (OECD) formally adopted the 'OECD Principles on Artificial Intelligence' at the Organisation's annual Ministerial Council Meeting and have decided to focus this year on "Harnessing the Digital Transition for Sustainable Development". The Principles are the first set of intergovernmental policy guidelines on Artificial Intelligence (AI) aiming to ensure AI systems are designed to be robust, safe, fair and trustworthy.

The OECD set up a 50+ member expert group on AI, consisting of representatives of 20 governments, to scope a set of principles which have been developed into the current AI Principles that complement existing OECD standards in areas such as privacy, digital security risk management and responsible business conduct.

The Principles comprise 5 values-based standards for the responsible deployment of trustworthy AI and 5 recommendations for public policy and international co-operation.

The Principles state that:

1. AI should benefit people and the planet by driving inclusive growth, sustainable development and well-being.
2. AI systems should be designed in a way that respects the rule of law, human rights, democratic values and diversity, and they should include appropriate safeguards – for example, enabling human intervention where necessary – to ensure a fair and just society.
3. There should be transparency and responsible disclosure around AI systems to ensure that people understand when they are engaging with them and can challenge outcomes.
4. AI systems must function in a robust, secure and safe way throughout their lifetimes, and potential risks should be continually assessed and managed.
5. Organisations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the above principles.

The OECD recommends that governments:

- Facilitate public & private investment in research & development to spur innovation in trustworthy AI.
- Foster accessible AI ecosystems with digital infrastructure and technologies, and mechanisms to share data and knowledge.
- Create a policy environment that will open the way to deployment of trustworthy AI systems.
- Equip people with the skills for AI and support workers to ensure a fair transition.
- Co-operate across borders and sectors to share information, develop standards and work towards responsible stewardship of AI.

They above aims to guide governments, organisations and individuals in designing and running AI systems in a way that puts people's best interests first and ensuring that designers and operators are held accountable for their proper functioning. The G20 has also adopted human-centred AI Principles that draw from the OECD AI Principles.

b. Board Gender Diversity in ASEAN

A new report, 'Board Gender Diversity in ASEAN', from The Economist Intelligence Unit and the International Finance Corporation (IFC), has been jointly launched by IFC (a member of the World Bank Group), the Women's Empowerment Working Group (WEP WG), and the Indonesia Stock Exchange (IDX), highlighting the importance of paying more attention to the gender gap in Southeast Asia's executive cadre and boardroom.

The study is an analysis of more than 1,000 companies in six ASEAN¹ countries plus China, and explores the impact on business performance when women have a place in the boardroom. The report establishes a clear connection between firms with more women on their boards and better financial performance. According to the study, companies with more than 30 percent of women on the board report an average Return on Assets (ROA) of 3.8 percent, compared to an ROA of 2.4 percent for companies with no female board members.

The report discusses the challenges and opportunities of reducing the gender gap and also offers concrete recommendations on ways to accelerate the pace of change, such as:

- Putting in place policies that provide women with opportunities to rise to senior leadership roles.
- More formal selection mechanisms for board membership and offering aspiring female candidates greater visibility (through cross-company networks, or country-wide directories of existing female board members)
- Changing corporate governance codes to promote board gender diversity
- Leadership commitment and topdown change cannot be over-emphasized.
- Advocacy organizations and institutional investors that recognize the need for board gender diversity have an important role to play. However, local women's business organizations must also play a leading role, both by facilitating the placement of women on boards, and by working alongside governments to help design and implement the necessary strategies to promote gender diversity in their national contexts.

As long as policy-makers, business leaders and societies in general recognize the importance of gender diversity across the workforce, and commit to taking action to improve it, the region's progress to date can provide the necessary momentum to break the glass ceiling for women on boards in the future.

¹ Association of Southeast Asian Nations (ASEAN): Indonesia, Malaysia, the Philippines, Singapore, Thailand & Vietnam

c. Companies (Directors' Remuneration Policy & Directors' Remuneration Report) Regulations 2019 - FAQs

The Department for Business, Energy & Industrial Strategy (BEIS) has published a document outlining how and when companies will be affected by new requirements in the Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019. The Regulations apply to UK-registered quoted companies.

The document gives an overview of new company reporting regulations which have been implemented under Articles 9a and 9b of the revised Shareholder Rights Directive², as well as provides answers to some Frequently Asked Questions (FAQs). The revised Directive introduces a number of new provisions intended to strengthen shareholder rights which includes:

- The reporting of directors' remuneration at traded companies;
- New transparency requirements on asset managers and institutional investors;
- New transparency requirements on proxy advisors;
- Additional disclosure requirements on traded companies concerning related party transactions;
- New provisions to enhance further facilitation of shareholders' information and voting rights.

The Regulations, implemented on 22 May 2019, shall apply to company reporting on financial years starting on or after 10 June 2019.

d. FCA Perimeter report 2018/19

The Financial Conduct Authority (FCA) is a financial regulatory body in the United Kingdom, but operates independently of the UK Government, and is financed by charging fees to members of the financial services industry. The FCA regulates financial firms providing services to consumers and maintains the integrity of the financial markets in the UK, and is currently the 'conduct regulator' for 59,000 financial services firms and financial markets in the UK and the 'prudential regulator' for over 18,000 of those firms.

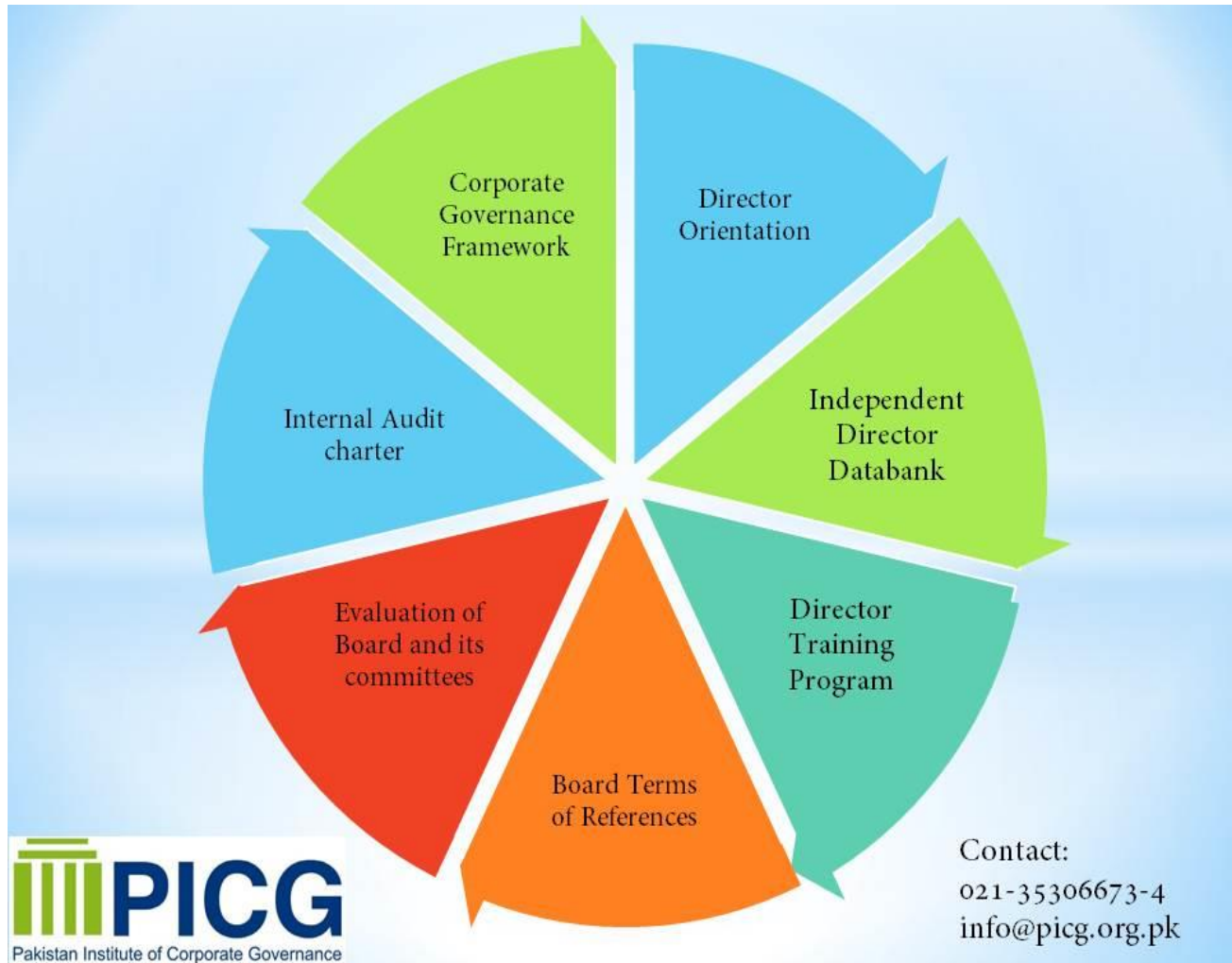
In June this year, the FCA published its first perimeter report aiming to provide clarity on what the FCA does and does not regulate, outlining the FCA's role and focussing on issues that are most likely to cause harm to UK consumers and markets and explains what actions the FCA has taken to mitigate this harm.

The "perimeter" basically refers to the legal boundary determining what the FCA regulates (and therefore also what it does not regulate)- which the FCA feels is tested by the actions of particular firms, for example by firms innovating and creating new product offerings and services and by firms deliberately trying to avoid FCA's perimeter. The FCA perimeter determines which firms require authorisation and what level of protection consumers can expect for the financial services and products they purchase.

The report, which will be published yearly, sets out:

- what the FCA does and doesn't regulate
- what challenges the perimeter presents and the actions the FCA is taking to overcome them
- what this means for consumers
- whether there are any issues with the perimeter which might require legislative or other changes.

² The Shareholder Rights Directive II (SRD II) is a European Union (EU) directive, which sets out to strengthen the position of shareholders and to ensure that decisions are made for the long-term stability of a company



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