

2020

# PICG ADVISORY UPDATE- 31

January 2020



## 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. Further, a "special feature" pertaining to updates on matters dealing with curbing terror financing is included and will be included in future updates as and when we receive significant news.

### A. Summary Table

#### Pakistan

Sr #	By	Reference	Date	Topic / Update link
<b>1. Regulations</b>				
i	SECP	S.R.O. 41(I)/2020	Jan 24, 2020	<a href="#">Financial Institutions (Secured Transactions Registry) Rules, 2019</a>
ii	SECP	S.R.O. 33(I)/2020	Jan 15, 2020	<a href="#">Draft Companies (Further Issue of Shares) Regulations, 2020</a>
<b>2. Amendments &amp; Directive</b>				
i	SECP	S. R. O. 56(I)/2020 S. R. O. 55(I)/2020	Jan 28, 2020	<a href="#">Proposed Amendments to Anti Money Laundering &amp; Countering Financing of Terrorism Regulations, 2018 Directive- AML/CFT Reporting</a>
<b>3. Others</b>				
i	SECP	Press release	Jan 28, 2020	<a href="#">Regulatory Sandbox - SECP opens first cohort</a>
ii	SECP	Press release	Jan 14, 2020	<a href="#">Diversity - category introduced in eServices</a>
iii	SECP	Press release	Jan 10, 2020	<a href="#">SECP's One Stop Shop (OSS) to extend to Balochistan</a>
iv	SBP	BPRD Circular No. 01 of 2020	Jan 7, 2020	<a href="#">Minutes of Board of Directors/ General Meetings - SBP instructions</a>
v	SBP	IBD Circular No. 01 of 2020	Jan 3, 2020	<a href="#">Adoption of AAOIFI Shariah Standards</a>

## International

Topic	Links
FRC's report on companies reporting against the 2016 & 2018 UK Corporate Governance Codes	<a href="#">Annual Review of the UK Corporate Governance Code</a>
FRC's Financial Reporting Lab reporting on workforce related issues - UK	<a href="#">Workforce Related Reporting</a>
Report Global attitudes toward gender in 2020	<a href="#">Ipsos Survey Report on Gender Roles</a>

## 2020 Global & Regional Corporate Governance Trends



*Source: Russell Reynolds Associates*

## **B. Synopsis of changes**

### **Pakistan**

#### **1. Regulations/ Rules issued**

##### **a. Financial Institutions (Secured Transactions Registry) Rules, 2019**

The federal government has notified the Rules to enable the establishment of a secured transactions registry for entities 'other than companies'. The Rules issued under section 70 of the Financial Institutions (Secured Transactions) Act, 2016 primarily cover: functions and powers of the registry, administrative role of the registrar, registration and search of security interests and modes for enforcement of security interests.

The Rules are expected to facilitate small-scale borrowers in obtaining secured credit by pledging their movable assets. Small companies often do not have immovable assets like real estate but own movable assets (e.g. receivables, intellectual property, inventory, agricultural produce, petroleum or minerals, motor vehicles etc) which may be used to provide guarantee against their loans. However, banks are reluctant to lend against movables without a modern secured transactions regime and, therefore, secured transaction laws, enabling use of movables as collateral, are being introduced worldwide.

In March 2019, the federal government extended the responsibility of operating the Registry to SECP, and SECP is expected to launch the Registry before the close of the current financial year. Establishment of STR, besides facilitating affordable credit for businesses (particularly SMEs), will also improve Pakistan's ranking on the Doing Business Index.

##### **b. Draft Companies (Further Issue of Shares) Regulations, 2020**

The SECP has proposed new conditions for listed companies for issuance of right shares, bonus issue and further shares via draft regulations that shall apply to the companies issuing further capital by way of:

- (i) right shares;
- (ii) other than right shares;
- (iii) bonus shares;
- (iv) employee stock option schemes; and
- (v) shares with different rights including preference shares.

The Board of such companies shall approve the decision to increase share capital and the said decision shall be communicated on the same day to the Commission and to the securities exchange for public dissemination. The decision of the board to issue bonus shares, once announced, shall not be varied, postponed, withdrawn or cancelled. The Regulations also include clauses on treatment of fractional shares, book closure etc.

If approved the regulations shall come into force at once, except in the case of issues announced on or before the date of these regulation.

## 2. Amendments & Directive

### a. Amendments to AML/CFT Regulations, 2018

SECP has proposed amendments to the Anti Money Laundering and Countering Financing of Terrorism (AML/CFT) Regulations, 2018, to further strengthen SECP's AML/CFT regime and reduce any existing gaps in the implementation of the AML/CFT Framework.

The proposed amendments elaborate the 'Risk Based Approach' requiring Regulated Persons (RPs) including: securities brokers, futures brokers, insurers, Takaful operators, non-banking finance companies (NBFCs) and Modarabas to conduct risk assessments that are aligned with Pakistan's latest National Risk Assessment and ensure implementation of Targeted Financial Sanctions.

The minimum information required for the purpose of 'Know Your Customer/ Customer Due Diligence (KYC/CDD) has been listed to make documentation requirements simple and clearer. Further, the draft amendments provide more clarity on verification for beneficial ownership, close associates and family members of Politically Exposed Person (PEPs)<sup>1</sup>. Also, RPs are encouraged to use technological solutions for screening and monitoring of transactions as per best practices.

The amendments propose to bring the regulations in line with the Financial Action Task Force (FATF)<sup>2</sup> recommendations and international best practices. The last date for comments was Feb 28, 2020.

### b. Directive- AML/CFT Reporting

Further, in order to ensure adherence and bring about more clarity with respect to the requirements of the AML/ CFT framework, the SECP has directed all Regulated Persons to comply with certain reporting requirements and submit information in a specified manner to the respective supervisory departments of the Commission, in line with the related Regulations and Guidelines.

As mentioned above the AML/ CFT Regulations, 2018 issued vide SRO 770(I)/2018 dated June 13, 2018 upon recommendation of the Financial Monitoring Unit require all RPs to:

- i. conduct self-risk assessment,
- ii. have appropriate mechanisms to provide the risk assessment information to the SECP,
- iii. ensure implementation of targeted financial sanctions under the United Nations Security Council Resolutions, adopted by the Government of Pakistan, and
- iv. refrain from forming business relationship with proscribed persons and entities under the Anti-Terrorism Act, 1997 and related matters.

Further, Guidelines were issued to supplement the Regulations and the AML/CFT regime explaining the general requirements of the AML Law and contain 4 Annexures, which provide:

- i. Guidance for preparing AML/CFT Risk Assessment;
- ii. AML/CFT Compliance Assessment Checklist;
- iii. ML/TF warning signs/ red flags;
- iv. Proliferation financing warning signs/red alerts.

<sup>1</sup> A Politically Exposed Person is one who has been entrusted with a prominent public function. A PEP generally presents a higher risk for potential involvement in bribery and corruption by virtue of their position and influence.

<sup>2</sup> The Financial Action Task Force, is an intergovernmental organization founded in 1989 on the initiative of the G7 to develop policies to combat money laundering. In 2001, its mandate was expanded to include terrorism financing.

The reporting required to be submitted to the SECP includes:

- Annual risk assessment and control/compliance assessment framework based on data and information as on 30 June:
  - Risk Assessment Framework
  - Compliance Assessment Checklist
- Quarterly information/ data on 30th of the subsequent month of every quarter, containing the following information:
  - Extracts of the discussion / deliberations on ML/TF risks and issues, by board of directors and/or management committees;
  - Number of new customer accounts opened during the period according to risk categorizations i.e. high, medium and low and their respective investment amount;
  - Total number of foreign and domestic politically exposed persons(PEP) and their total value of investments/deposits/financing etc. during the period;
  - Number of accounts/transactions closed and rejected for non-compliance of Customer Due Diligence (“CDD”) process and due to identification in proscribed person/Targeted Financial Sanction (“TFS”); etc etc
- Each RP is required to immediately scan its customer data bases and their Beneficial Owners/associates for any matches with the stated designated/proscribed person(s)/entity(ies) on the receipt of notifications issued by the Ministry of Foreign Affairs on UNSC Resolutions or intimation from National Counter Terrorism Authority (“NACTA”) /Law Enforcement Agencies/ Home Departments of Provinces/Ministry of Interior regarding updates in list of proscribed persons under the Anti- Terrorism Act, 1997. In case of a true match or suspicion of a proscribed/designated person following actions shall be taken by the RP immediately:
  - Freeze without delay the customer’s fund/ policy or block the transaction, without prior notice if it is an existing customer;
  - Reject the customer, if the relationship has not commenced;
  - Lodge a STR with the FMU, and simultaneously
  - Notify SECP and the Ministry of Foreign Affairs in case that person is designated under UNSC Resolutions, or the NACTA in case that person is designated under the Anti-Terrorism Act, 1997.
- Compliance report on statutory regulatory orders shall be submitted to the Commission within 3 days of receiving the same in the manner as may be instructed from time to time by the Commission.

Any person who fails to comply with the requirements of the directive or submits a return which is false shall be liable to imposition of penalty, which may extend to Rs 10 million, and where such contravention is a continuing one, with a further penalty which may extend to Rs 1 lakh for every day after the first during which such contravention continues.

### 3. Others

#### a. Regulatory Sandbox – SECP opens first cohort

SECP opens first cohort under Pakistan’s first ever Regulatory Sandbox to promote innovation in the financial sector and encourage startups. The Regulatory Sandbox is a tailored regulatory environment that allows entities/firms to conduct limited scale live tests of innovative products, services, processes, and business models in a controlled environment. SECP’s Regulatory Sandbox is available for the Insurance sector, Non-Banking Finance Sector, Capital Markets, and overall corporate sector. SECP has already issued Regulatory Sandbox Guidelines 2019.

The Regulatory Sandbox is primarily applicable for:

- i. new products, services or business models which have not been addressed under existing laws and regulations; or
- ii. these new ideas bring an innovative approach to the market and there exists considerable uncertainty in terms of unexpected adverse outcomes, or
- iii. existing regulatory framework does not fully address the solutions proposed to be experimented through the regulatory sandbox.

Under the first unit, the application window is open from February 1, 2020 till March 15, 2020 for all eligible persons including registered companies, unregistered startups. (The unregistered entities would have to get registered upon successful experiment). All the applications will undergo preliminary screening and detailed evaluation and successful applicants will be allowed to test and experiment their innovative ideas and solutions for a period of six months. Upon completion of the experimentation period, entities registered with the Sandbox will submit a detailed completion report to SECP, following which future course of action for the tested solutions will be determined.

#### b. Diversity – Transgender category introduced in eServices

The SECP has introduced a separate category for members of the transgender community in its online portal for company registration and compliance i.e. eServices. This initiative is in line with Government of Pakistan’s efforts to grant fundamental rights to the transgender community, under the “the Transgender Persons (Protection of Rights) Act, 2018”.

This Act allows individuals to mention their identity on all official documents including IDs, passport, educational certificates and driving licenses. With this initiative, the transgender community is able to register a company or become shareholder or director in a company with personal identity of their choice.

#### c. SECP’s One Stop Shop (OSS) to extend to Balochistan

SECP will extend its One Stop Shop (OSS) facility for company registration to Baluchistan and KPK.

SECP eServices shall become a OSS for registration of a company with SECP, Federal Board of Revenue (FBR), the Employees Old Age Benefits Institution (EOBI), Employees Social Security Institution, Excise & Taxation Department and Labor Department. SECP’s eServices have already been integrated with the FBR and EOBI; and with business registration portals of Punjab and Sindh at the Provincial level.

SECP's initiatives intend to facilitate entrepreneurs and reduce time and cost of starting a new business including simplified incorporation processes, significant reduction in fees, reduction in time for incorporation to 4 working hours and facilitation in payment of fees through mobile and internet banking.

**d. Minutes of Board of Directors/ General Meetings - SBP Instructions**

SBP has consolidated all instructions pertaining to the proper recording of minutes of the Board of Directors and General meetings, issued from time to time and has advised all banks/MFBs/DFIs to strictly adhere to the same, as it has been observed that instructions in this regard were not being followed in letter and spirit by some of the banks/MFBs/DFIs.

The consolidated instructions state:

- i. The board must ensure accurate recording of minutes of Board of Directors and General meetings reflecting the key deliberations, rationale for each decision made, and any significant concerns or dissenting views. Further, minutes of the Board meetings should include details of matters decided/resolved through circulation.
- ii. Ensure that the deliberations made by the participating Board member(s) are duly reflected in the minutes of the meeting(s) using name-tags.
- iii. Note of dissent on any matter by Board member(s), rejection or deferral of any proposal of the management must be fully elaborated and recorded accordingly in the minutes.
- iv. Ensure that recording of Minutes of the Board Committees' meetings must also be given as much care and attention as those of the full Board meetings.
- v. In the event of conflict of interest, the Board should detail in minutes as to how they have complied with the organization's conflict of interest policy.
- vi. The Company Secretary shall submit duly certified copies of the draft minutes of the Board of Directors and General meetings within 21 days of the date of such meetings through Data Acquisition Portal (DAP) of State Bank of Pakistan.
- vii. In case there is any change in the approved/final minutes, from the draft minutes submitted earlier, the Company Secretary shall also submit certified copies of such approved/final minutes within 10 days of the approval through DAP. Further, any change from the draft minutes must be underlined and mentioned in bold.
- viii. The Company Secretary shall also ensure to scan the certified copies of minutes in PDF format using OCR (Optical Character Recognition) option, upload it on DAP after necessary encryption/password protection and communicate the password to the relevant unit head at Offsite Supervision & Enforcement Department, SBP via email and cc to [fi.minutes@sbp.org.pk](mailto:fi.minutes@sbp.org.pk).

The instructions supersede various circulars/circular letters relevant to the topic, previously issued by SBP in this regard.

**e. Adoption of AAOIFI Shariah Standards**

In order to further strengthen the Shariah compliance framework in Pakistan and harmonize the Shariah practices in the Islamic banking industry, the following 'Accounting and Auditing Organization for Islamic Financial Institutions' (AAOIFI) Shariah Standards have been adopted with immediate effect:

- i. No. 19 (Loan (Qard)),
- ii. No. 23 (Agency and the Act of an Uncommissioned Agent (Fodooli)), and
- iii. No. 28 (Banking Services in Islamic Banks)

The adoption of the Standards is in addition to current regulations, other instructions and directives issued by SBP from time to time and the failure to comply with these instructions may invoke penal action under the provisions of the Banking Companies Ordinance 1962.

**Being good is good  
business**

- Anita Roddick, Businesswoman

## International

### **1. FRC's Report: Reporting of Companies on the 2016 & 2018 UK Corporate Governance Codes**

The Financial Reporting Council has issued their 'Annual Review of the UK Corporate Governance Code' in which they have reviewed the reporting of companies against the 2016 UK Corporate Governance Code and also assessed the "FTSE 100<sup>3</sup> 'early adopters'" of the revised 2018 Code. The 2018 Code came into force in 2019 and all premium listed companies will report based on the new Code this year.

The report states that companies need to improve their governance practices and reporting if they are to demonstrate their positive impact on the economy and wider society, to promote sustainability and trust in business.

The FRC's analysis found:

- i. Some good examples of reporting by companies who are increasingly using incentives relating to non-financial matters and are grounded in long-term strategy.
- ii. Many companies are grappling with defining purpose and what an effective culture means with too many substituting slogans or marketing lines for a clear purpose.
- iii. There is insufficient consideration of the importance of culture and strategy, or the views of stakeholders and companies should be commenting on culture and now explain how they are monitoring and assessing it.
- iv. Limited reporting on diversity. Those companies that did report well had clear plans to meet targets – beyond just gender – and understood the long-term value of diversity.
- v. The use of engagement surveys was portrayed by many as an effective tool to achieve insight on employee engagement and culture. The report states that while these can help, they should not be used in isolation. Companies must be able to demonstrate that the engagement methods used are effective in identifying issues that can be elevated to the board and how this affects company decisions.

### **2. FRC's Report : Workforce Related Reporting**

The FRC's Financial Reporting Lab has released a report calling for improvements to reporting on workforce related issues. These include matters such as : working conditions, changing contractual arrangements and automation. The report states that a gap remains between the reporting investors are looking for and what is being disclosed. According to the report, investors are seeking a 'basic understanding of the composition of the workforce, but also an indication of whether the workforce is a strategic asset and how this relates to longer-term value creation.

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<sup>3</sup> The Financial Times Stock Exchange 100 Index, also called the FTSE 100 Index, FTSE 100, FTSE, or, informally, the "Footsie", is a share index of the 100 companies listed on the London Stock Exchange with the highest market capitalisation

The report identifies that investors seek greater insight into 4 key areas:

**i. Governance and management:**

How boards consider and assess 'the topic of the workforce', including what information the board sees and clarity on who they consider 'the workforce' to be (including total headcount, demographics and employment composition such as direct employees, contractors and/or others in the supply chain).

**ii. Business model and strategy:**

How the workforce contributes to the success of the business model (whether it is considered a strategic asset, how it is invested in, and what changes might need to be made to strategy in order to maximise workforce related opportunities). Investors are also looking for information about how the board engages with the workforce and the impact this has on the board's consideration of strategy decisions.

**iii. Risk management:**

The risks and opportunities related to the workforce and how the company is responding to these including the prioritisation of risks and their likelihood and impact (eg health and safety metrics), as well as opportunities to increase value- including: employee engagement retention and turnover; values being applied in the working environment; and other measures of culture that the company monitors - how the company is incentivising its workforce to deliver value including details of remuneration/other benefits, training and development, progression.

**iv. Data/metrics:**

More data around how the company measures the contribution of the workforce and how it has taken into account the workforce's views (including financial relevant information and 'reliable, transparent metrics').

### **3. Survey Report on Global Attitudes towards Gender in 2020**

Ipsos, a global market research and a consulting firm, issued a report that delves into the global public opinion about the future of gender. The report represents the findings of a survey conducted via Ipsos's Global Advisor online survey platform about how 'gendered' respondents think certain characteristics, household tasks and occupations are. The report also asks whether people think their country will be more or less 'gendered' in the future.

The report is a part of Ipsos's 'What the Future' series, which also looks at masculinity, representations of women in the media, and the gendered marketing of products from toys to fashion. A total of 20,448 adults across 29 countries were interviewed (aged 18-74 in Canada, Singapore, South Africa, Turkey, and the United States and 16-74 in all other countries).

The report gives insights into the views of various countries with respect to how they view certain roles as gender-specific in some countries, whereas others are clearly heading away from viewing any job as "gender-specific".

## Special feature

### **S.R.Os under UNSC 1267 sanctions**

#### **Issuance of S.R.O under UNSC 2368 (2017) \_SRO 31(I) dated January 16, 2020**

The United Nations Security Council (UNSC) has directed to apply travel restrictions, arms embargo and to freeze the funds and other financial resources of certain individuals and entities, and through UNSC resolution 2368 (2017) has decided that all States shall take the following measures as previously imposed with respect to ISIL (also known as Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities:

**a) Asset Freeze**

Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities.

**b) Travel Ban**

Prevent the entry into or transit through their territories of these individuals.

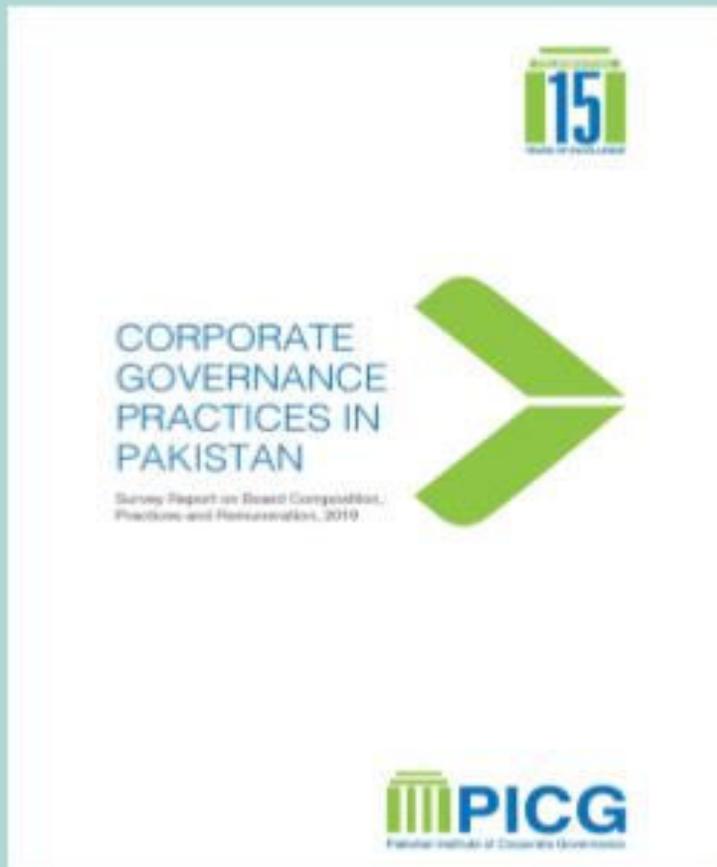
**c) Arms Embargo**

Prevent the direct or indirect supply, sale, or transfer to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories.

The United Nations Security Council reiterated that all States shall ensure that their nationals and persons in their territory not make available economic resources to ISIL, Al-Qaida, and associated individuals, groups, undertakings, and entities. This obligation applies to the direct and indirect trade in oil and refined oil products, modular refineries, and related material including chemicals and lubricants, and other natural resources, and to donations to individuals and entities designated by the Committee.

The Ministry of Foreign Affairs has so far issued 364 S.R.Os to date in this regard. The Federal Government has ordered that the UNSC resolution 2368 (2017) be fully implemented including in particular that individuals and entities ISIL (Da'esh) and Al-Qaida shall stand subjected to the asset freeze, travel ban and arms embargo in accordance with the aforesaid resolutions.

# SURVEY REPORT 2019



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