

## PICG Advisory Update-5

April & May 2017

### A. Summary Table

#### Pakistan

Sr #	Issued by	Reference	Date	Topic / Update link
1	SBP	BPRD Circular Letter No. 09 of 2017	Apr 14, 2017	<a href="#">Foreign Travel Policy</a>
2	SBP	BPRD Circular Letter No.10 of 2017	Apr 19, 2017	<a href="#">Common Reporting Standard Rules</a>
3	SECP	SRO 275/1/2017	Apr 21, 2017	<a href="#">Public Sector Companies Corporate Governance Rules amended</a>
4	SECP	Circular 11 of 2017	Apr 27, 2017	<a href="#">Certification for Research Analysts</a>
5	SECP	Circular 14 of 2017	May 15, 2017	<a href="#">Certification for Capital Market Advisers</a>
6	SECP	SRO 349/1/2017	May 15, 2017	<a href="#">Draft Whistleblowing Regulations 2017</a>
7	SECP	Press Release	May 30, 2017	<a href="#">Companies Act, 2017</a>
9	SBP	BPRD Circular No. 05 of 2017	May 30, 2017	<a href="#">Enterprise Technology Governance &amp; Risk Management Framework for Financial Institutions</a>
8	SECP	Press Release	May 31, 2017	<a href="#">Draft Modaraba Bill 2017</a>

#### International

Topic	Links
New Corporate Governance Regulations for Saudi Arabia	<a href="#">Corporate Governance Regulations- Saudi Arabia</a>
Corporate Governance Council to review Code of Corporate Governance - Singapore	<a href="#">Establishment of Corporate Governance Council</a>

## **B. Synopsis of changes**

### **Pakistan**

#### **1. Foreign Travel Policy**

SBP has issued circular letters to banks advising them to formulate comprehensive foreign travel policies and submit the same to the Banking Policy & Regulations Department latest by June 13, 2017.

The circular letters have been issued as a result of the SBP noting that a few banks, in collaboration with third parties, have been sending large groups of their staff abroad on various pretexts including management meetings and as a reward for achieving sales/business targets. The same has resulted in unnecessary outlays of foreign exchange. The SBP has therefore decided that henceforth banks shall not send staff abroad on the above mentioned pretexts whether such tours are sponsored by banks themselves or by third parties/their overseas alliances directly or indirectly. However, banks may send their individual staff abroad for advanced trainings, technology acquisition and occasional board of directors meetings or to manage their overseas networks in line with their approved policies.

#### **2. Common Reporting Standard (CRS) Rules**

The Federal Board of Revenue (FBR) has added a new chapter on 'Common Reporting Standard' to the Income Tax Rules, 2002, via S.R.O. 166 (I)/2017 dated March 15, 2017. The chapter contains rules for reporting financial institutions to provide information to the FBR for the purposes of section 107 of the Income Tax Ordinance, 2001, pertaining to agreements for the avoidance of double taxation and prevention of fiscal evasion.

As a result of this notification, Pakistan has adopted the global Standard for Automatic Exchange of Financial Account Information in Tax Matters<sup>1</sup> commonly known as the Common Reporting Standard (CRS) as developed by the Organization for Economic Cooperation and Development (OECD). The CRS (developed in response to a G20 request and approved by the OECD Council on 15 July 2014), calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

The CRS Rules, among other things, require financial institutions to start due diligence of customers from July 1, 2017. SBP has therefore issued a circular advising Banks/DFIs/MFBs, to ensure compliance with the Rules for reporting under the CRS in accordance with relevant laws and take all necessary steps to put in place requisite systems/ mechanism in a timely manner.

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<sup>1</sup> Refer OECD(2017), *Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264267992-en>

### 3. Public Sector (Corporate Governance) Rules updated

SECP has issued notification for amendments to the Public Sector Companies (Corporate Governance) Rules, 2013 (the Rules), after approval of the same by the federal government. The Rules originally issued in 2013 contained provisions for improving the governance of Public Sector Companies (PSCs) through a range of measures aimed at enhancing the role of directors, facilitating the government to exercise its ownership function, strengthening internal control mechanisms etc. Proposed amendments were issued in August 2016 vide SRO 790(1)/2016 taking into consideration the extent of implementation of the Rules as well as feedback received from the line ministries of PSCs and other stakeholders.

The amendments are aimed at facilitating compliance and ensuring conformance to good corporate governance principles in PSCs, which are significant economic players delivering critical services in important economic sectors.

Significant amendments:

- i. The extent of voting power to be held by the Government or its agencies in order to qualify as a PSC has changed from “not less than 50% of the voting securities or voting power of which are held by the Government” to not less than 51% (ie. a majority). As a result, a number of joint venture companies etc., previously considered as PSC’s no longer fall under the ambit of these Rules.
- ii. Criteria for sound and prudent management has been introduced.
- iii. A minimum of one-third of the total number of board members shall be independent directors, as opposed to a majority of independent directors as required under the previous Rules.
- iv. Annual performance evaluation of all board members shall now be undertaken by the Government as opposed to under the supervision of the Chairman of the board. Evaluation will be based on performance contracts that the Government will now enter into with each member of the board at the time of his/her appointment.
- v. The board is no longer required to elect its Chairman from ‘only’ independent directors, and may choose any board member amongst themselves. However, the Government now has the power to elect the Chairman whenever it deems fit.
- vi. Similarly, the Government may now also exercise its power to nominate the CEO of PSCs as and when it deems appropriate.
- vii. Board Committees are no longer required to have a majority of its members as independent directors.
- viii. Listed PSC’s shall prepare half yearly accounts with limited scope review of auditors with monthly accounts no longer being required.
- ix. Nomination Committee to submit recommendations for vacant positions within 30 days of: vacancy or recommendation made by the Government.
- x. A new sub rule has been added asserting that the board shall ensure compliance with all policy directions and reporting requirements received from the Government from time to time. Consequently, the board is required to nominate the Company Secretary/other Official to act as a focal person to liaise with the Government with regard to the same.

The amendments are expected to facilitate PSCs in improving their performance, ensure sound and prudent management and proper and effective use of public assets and resources, as well as maintain a balance between public service delivery and profitability.

#### 4. Certification for Capital Market Advisers & Research Analysts

SECP has prescribed certification requirements for capital market advisers and analysts, namely:

- i. all those providing advisory services to capital market customers
- ii. persons who are involved in preparation and distribution of research reports to the public.

This new requirement emanates from SECP's objectives of inculcating good governance practices, promoting investor protection and having professional/ skilled investment advisers providing recommendations to investors of the capital market.

The requirement for certification is summarized below:

Required for	Certification	Timeframe
Employees of companies licensed as securities/futures advisers involved in providing advisory services	Financial Advisors Certification	Within 1yr of grant of license
Senior Management (CEO/ Head of Advisory Business/ Head of Sales) of companies involved in advisory business	Financial Advisors Certification + Pakistan Markets and Regulations Certification	Within 1yr of grant of license
Individual licensed as securities/futures adviser	Financial Advisors Certification + Pakistan Markets and Regulation Certification	Within 1yr of grant of license
Individuals or employees of companies engaged in distribution of mutual fund units only	Mutual Fund Distributor Certification	Within 1yr of grant of license
Staff of NBFC's licensed as investment advisers	Financial Advisors Certification + Pakistan Markets and Regulations Certification (where required)	Within one year of the issuance of the circular <sup>2</sup>
All existing research analysts <sup>3</sup>	Research Analysts Certification	Within six months of the issuance of the circular <sup>4</sup>
All new entrants (research analysts)	Research Analysts Certification	Within six months of intimation to the SECP as a research analyst/entity

The above mentioned certificates are to be obtained from the Institute of Financial Markets of Pakistan. The certification requirements are aimed at promoting investor protection by subjecting market intermediaries who provide research and investment advice to minimum standards and also to bring the Pakistani capital market at par with global jurisdictions.

<sup>2</sup> Circular no 14 of 2017 issued on May 15, 2017

<sup>3</sup> All individuals presently acting as independent research analysts or research analysts employed with research entities and independent research analysts (including CEO/ head of research function, by whatever name called)

<sup>4</sup> Circular no. 11 of 2017 issued on April 27, 2017

## 5. Draft Whistleblowing Regulations 2017

The SECP has issued draft Whistleblowing Regulations, 2017 on May 15, 2017 inviting public comments to be made within 30 days of the proposed regulations for consideration by the SECP. The proposed regulations shall apply to person or persons who alone or jointly, provide the SECP with information regarding a contravention or intended contravention of the laws administered by the SECP.

The proposed regulations provide guidance on the conduct of companies or regulated persons with regard to whistleblowing by directing the boards of listed and public sector companies or regulated persons to:

- i. formulate a whistleblowing policy;
- ii. communicate the policy to all employees and place the same on the website of the company;
- iii. ensure that all protected disclosure<sup>5</sup> shall be evaluated objectively;
- iv. ensure that whistleblowers are protected from retaliation or discrimination subsequent to a protected disclosure.

The regulations aim to ensure that all factors that must be considered within the whistleblowing process are properly managed and, hence, the regulations have covered matters from the conduct of the whistleblower to the conduct of the company; internal whistleblowing and protection from retaliation to direct reporting to the SECP; investigation and calling of information by the SECP to proceedings against the whistleblower. The proposed regulations create a balance in the sense that these provide an almost equal opportunity to the whistleblower, and the accused company to make their case and face action if the accusation is false or ill intentioned. (For instance, a whistle-blower has been given adequate freedom and protected from punitive or retaliatory action if his or her accusation is true and he had acted in good faith. At the same time, a whistle-blower will not be unduly protected as the proposed regulations do not provide protection/amnesty to whistle-blowers nor do they preclude the Commission from taking action against whistleblowers for his or her conduct in connection with violation of the applicable laws).

Any information of alleged violations shall not come under the scope of these Regulations if it is more than six years old starting from the date on which the alleged violation occurred; or more than 3 years old starting from the date when the facts material to the right of action are known or reasonably should have been known to the whistleblower regarding alleged violation.

## 6. Companies Act, 2017

The Companies Act, 2017 (the Act) was assented to by the President on May 30, 2017, thus becoming the new source of primary regulation for the corporate sector of Pakistan. Aimed at bringing local company law at par with global standards, it consists of 515 sections and eight schedules and took almost 12 years in the making. The Act was approved after thorough stakeholder consultation followed by scrutiny and acceptance by the National Assembly and Senate.

The new law is more facilitative, recommending various business measures to aid the ease of doing business and investor facilitation on the one hand, and providing for stringent enforcement powers, anti-fraud measures, etc., on the other. It also aims to provide a simpler and softer regime for small companies, enable e-governance, augment standards of transparency and quality of information, and ensure better corporate governance in the country.

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<sup>5</sup> "Protected disclosure or whistleblowing" means the original, voluntary disclosure in public interest by whistleblower, on an ongoing, suspected, or anticipated malpractice resulting in contravention of administered legislation by a company or a regulated person.

Some of the salient governance-related features are as follows:

- i. to ensure good corporate governance practices are adhered to, a section has been added on required compliance with the Code of Corporate Governance (the Code), for companies or class of companies, under a framework as provided by the SECP.
- ii. Independent directors that are required to be appointed under any law, rules, regulations or code, shall now be selected from a data bank (containing names, addresses and qualifications of eligible and willing persons) as maintained by any institute, body or association with the required expertise to maintain such a data bank - as may be notified by the Commission. Such entities shall post the required information on their website for use by the company making the appointment. (Note: Responsibility for exercising necessary due diligence with respect to the appointment shall still remain with the entity)

This requirement of selecting from an approved data bank will come into effect once a notification is issued by SECP in this regard, and may be relaxed on an application made by the company supported with sufficient justification.

With regard to the above, the term “independent director” has been defined in the Act in line with the definition given in the Code of Corporate Governance and further elaboration of what circumstances would qualify a director as “independent” has also provided along with the fact that independent directors of a listed company shall be elected in the same manner as other directors.

- iii. further, protection has been provided to independent and non-executives in a new section that states that such director shall only be held liable in respect of such acts of omission or commission (by a listed company or a public sector company) which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently. The section also then defines what is meant by ‘non-executive director’ (eg. not from executive management team, may or may not be independent, does not undertake to devote his whole working time to the company, is not a beneficial owner of the company or any of its associates, does not receive remuneration except meeting fees, etc).
- iv. diversity is being promoted with the addition of a clause requiring public interest companies to have female representation on their boards- as may be specified by the SECP.
- v. loan to, or guarantee or security in respect of, a director of a company or of its holding company or any of his relatives - can now be provided by unlisted public companies if approved by a resolution of members of the company; and, in the case of listed companies, with the approval of SECP along with a resolution of members.
- vi. members of a private or a public unlisted company (with not more than fifty members), may pass a resolution (ordinary or special) by circulation signed by all the members. The resolution shall be deemed to be passed on the date of signing by the last entitled member. (Note: Resolution by circulation shall not be applicable to specific business to be conducted in the annual general meeting such as approval of financial statements and related reports, declaration of dividend, election of directors and appointment of the auditors).
- vii. additional clauses have been added to duties of directors in line with the Code, with respect to performance of their functions, requiring directors:
  - a. to act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees the shareholders the community and for the protection of environment.
  - b. to discharge his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
  - c. not to get involved in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

- viii. a section on related party transactions has been added stating that the following transactions shall only be carried out in accordance with a policy approved by the board, subject to such conditions as may be specified.
- a. sale, purchase or supply of any goods or materials;
  - b. selling or otherwise disposing of, or buying, property of any kind;
  - c. leasing of property of any kind;
  - d. availing or rendering of any services;
  - e. appointment of any agent for purchase or sale of goods, materials, services or property; and
  - f. such related party's appointment to any office or place of profit in the company, its subsidiary company or associated company.

The above shall not apply to transactions by a company in the ordinary course of business on an arm's length basis. In cases where the majority of directors are interested in any of the above-mentioned related party transactions, the matter shall be placed before the general meeting for approval as a special resolution. The term related party has also been explained in the section.

- ix. the concept of inactive company has been introduced to provide flexibility to owners to keep companies alive with no compliance requirements during the inactive period.
- x. companies with a paid-up capital up to Rs1 million are not required to get the financial statements audited.
- xi. alternative dispute resolution mechanism has been provided in the law, namely resolution through mediation, which will assist companies to resolve matters in lesser time without having to pay hefty legal fees for formal dispute resolution.

The new Act also encourages the use of technology and electronic mediums of communication with all relevant stakeholders, through various sections included therein.

This Act came into immediate effect on May 30, 2017 after it was assented to by the President [except section 456 (Acceptance of advances by real estate companies engaged in real estate projects) and certain sub-sections as are mentioned within the Act (eg. selection of independent directors from a data bank as mentioned above) which shall come into force once notified in the official Gazette].

## **7. Enterprise Technology Governance & Risk Management Framework for Financial Institutions**

Technology governance is an integral part of a financial institutions (FIs)' corporate governance framework and consists of the overall leadership and organizational structure that aligns a company's IT strategy with its business strategy, optimizes resources, delivers value and measures performance to achieve business objectives and effective technology risk management. Technology and automation in the financial services sector is becoming increasingly complex, with FIs' offering innovative products, efficient services and venturing into new business models, hence, the need to govern technology and technology-enabled business developments have never been greater.

Consequently, in order to provide baseline technology governance and risk management principles to FIs, the SBP has developed a framework on 'Enterprise Technology Governance & Risk Management in Financial Institutions'. This framework shall be integrated with the FIs' overall enterprise risk management program to identify, measure, monitor and control technology risks.

Further, the following factors shall be noted:

- i. The framework is applicable to all FIs including commercial banks (public and private sector banks), Islamic banks, Development Finance Institutions and Microfinance Banks.
- ii. The framework is not "one-size-fits-all" and its implementation needs to be risk-based and commensurate with the size, nature and types of products/services offered and complexity of technology operations of the individual FI.
- iii. FIs shall exercise sound judgement in determining the applicable provisions relevant to their technology risk profile while implementing this framework.
- iv. Senior management shall ensure the implementation of this framework, and
- v. Board of Directors shall review the implementation status on at least a quarterly basis.

FIs shall assess and conduct a gap analysis between their current status & this framework and draw a time-bound action plan to address the gaps and comply with the guidelines in this framework. A phased approach towards implementation of the framework may be followed to upgrade systems, controls and procedures, however, FIs shall ensure compliance with this framework latest by June 30, 2018.

#### **8. Draft Modaraba Bill 2017**

The SECP issued a draft of the proposed new Modaraba law on May 31, 2017, which shall replace the existing 37-year-old Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980. The draft Modaraba Bill has been issued for public comment till June 14, 2017 and consultations with various stakeholders have been initiated in this regard.

The draft Bill aims to provide a proper and logical structure to Pakistan's modaraba law, remove numerous inconsistencies and gaps that have been noted in the existing Ordinance; as well as introduce a number of new concepts. An comprehensive provision to curb the misuse of the word "modaraba" has been added (prohibiting any entity or person from using it as part of its name or inviting or collecting deposit or raise funds from the public by use of the word "modaraba or musharakah") and the fact that contravention shall be considered a criminal offence, punishable both with imprisonment and a significant fine.

The new law proposes various reforms supporting growth of the modaraba sector and good governance including:

- i. enabling provisions for fit and proper criteria for CEO, directors and key executives
- ii. empowerment to the certificate holders, concept of AGM of the modaraba certificate holders, appointment of auditor by the certificate holders, certificate holders' right to apply for the change of MMC, change of CEO/director and for the appointment of administrator.
- iii. bar on shareholders of MMC on obtaining facility/loan from the modaraba or use of its assets as security,
- iv. the establishment of unlisted modaraba,
- v. performance-based remuneration (share of profit) of modaraba management company (MMC),
- vi. Shariah governance mechanism,
- vii. exhaustive enforcement action by the SECP, including powers to monitor the business activities, powers to remove the chief executive, director or key executives of MMC,
- viii. additional grounds to initiate winding up of a modaraba by court and mechanism for resolution of disputes through mediation.

## International

### **1. Corporate Governance Regulations - Saudi Arabia**

The Capital Market Authority (the CMA) of the Kingdom of Saudi Arabia (the Kingdom) has approved new corporate governance regulations for joint stock companies listed on the Saudi exchange (Tadawul) replacing the 2006 version. The Regulations provide shareholders and board members with improved rights, greater clarity and more transparency as to their respective roles and responsibilities.

The regulations are intended to harmonize the CMA's own rules with the revised Companies Law, which came into effect on May 2, 2016. By enhancing the regulatory oversight of listed companies, the CMA seeks to bring its standards in line with those of other leading global exchanges with the Kingdom pursuing its Saudi Vision 2030, a royal decreed initiative to help diversify the country away from its heavy reliance on declining oil revenue.

The regulations formally came into effect on 22 April 2017, thereby replacing the 2003 version of the same. Some of the provisions, however, such as those requiring corporate governance policies to be drafted and published, will only come into force on 31 December 2017.

The main objectives of the regulations include:

- i. Enhancement and protection of shareholder rights;
- ii. clarifying board, committee and executive management roles and responsibilities, including their decision making mechanisms;
- iii. achieving greater openness, competitiveness, transparency and disclosure;
- iv. avoiding and disclosing conflicts of interest;
- v. improving accountability and control over employees;
- vi. overseeing corporate actions; and
- vii. raising the professional standards of listed joint stock companies.

### **2. Establishment of Corporate Governance Council - Singapore**

The Monetary Authority of Singapore (MAS) formed a Corporate Governance Council in February 2017, chaired by former Chairman of the Singapore Exchange, to review the Code of Corporate Governance (CG Code) which was last reviewed in 2012.

The previous review brought about changes to strengthen Board independence and enhance remuneration practices and disclosures. Currently, considering market developments and industry feedback, the Council is expected to consider how the "comply-or-explain" regime under the CG Code can be made more effective, including improving the quality of companies' disclosure of their CG practices and explanations for deviations from the code; as well as propose mechanisms to monitor the progress made by listed companies to strengthen their corporate governance practices.

The Council members are drawn from various stakeholder groups to provide a broad and diverse perspective on CG issues and will include representatives from the MAS, the Accounting and Corporate Regulatory Authority and the Singapore Exchange. The council will also consult with the public on its recommendations before finalising them.

Regular review of the CG Code ensures that it remains relevant and progressive, and supports sustained business growth and innovation and also takes into account changes in the corporate landscape as well as international developments.

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those companies that do not have  
sound corporate governance”**

- *Mervyn King*

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