Oct 2019

PICG ADVISORY UPDATE -28

PICG
Pakistan Institute of Corporate Governance

The Update

Corporate governance refers to the way in which corporations are directed, administered, and controlled. It is concerned with both the relationship between internal and external stakeholders as well as the governance processes designed to help a corporation achieve its goals. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies as well as striking a balance between both economic and social goals and between individual and communal goals.

Compliance with applicable laws and regulations is fundamental to good governance. PICG's Advisory Update, therefore, aims at keeping our members updated with regards to the latest local and international governance-related changes to regulations, practices and corporate reporting.

The Update consists of a Summary Table (with links to relevant information) followed by a Synopsis of the changes. Further, we are introducing a "new feature" pertaining to updates on matters dealing with curbing terror financing and shall be including a special update on it as and when we receive significant news.

A. Summary Table

Pakistan

Sr #	By	Reference	Date	Topic / Update link
1.	**Amendments**			
i	SECP	S.R.O.1239 (I)/2019	Oct 21, 2019	Amendments to the Futures Brokers (Licensing and Operations) Regulations, 2018
ii	SECP	S.R.O.1233 (I)/2019	Oct 16, 2019	Amendments in the Non-Banking Finance Companies and Notified Entities Regulations, 2008
iii	SECP	S.R.O.1223 (I)/2019	Oct 10, 2019	Amendments to the Credit Rating Companies Regulation, 2016 + Clean Copy of Credit Rating Companies Regulations, 2016
iv	SECP	S.R.O.1195(I) /2019	Oct 3, 2019	Alteration in the Third Schedule to the Companies Act, 2017
2.	**Others**			
i	SBP	BPRD Circular Letter No. 23 of 2019	Oct 25, 2019	Submission of Quarterly and Annual (Audited) Capital Adequacy Returns
ii	SBP	BPRD Cir Letter No 22 of 2019	Oct 21, 2019	Employment Quota for Persons with Disabilities
iii	SECP	S.R.O. 1196 (I)/2019	Oct 3, 2019	Placement of information on website of public companies
iv	SECP	Press release	Oct 2, 2019	Revocation of licenses of Not for Profit Companies

International

Topic	Links
OECD Capital Market Series Report on ownership structure of listed companies worldwide	Owners of the World's Listed Companies
IFC-supported Sustainable Banking Network report on sustainable innovations in policy and industry actions in emerging markets	Global Progress Report 2019
OECD Report on 'What Drives People and Businesses to Pay Tax?'	OECD Report Tax Morale

"Trust starts with trustworthy leadership. It must be built into the corporate culture."

–Barbara Brooks Kimmel

B. Synopsis of changes

Pakistan

1. Amendments

a. Amendments in the Futures Brokers (Licensing & Operations) Regulations, 2018

The Securities and Exchange Commission of Pakistan (SECP) has notified amendments in the Regulations to bring business efficiency, remove regulatory impediments and create a more pro-growth regulatory regime for futures brokers. The primary amendments include introduction of the requirement to submit an undertaking at the time of renewal evidencing compliance with regulatory requirements instead of submitting detailed documents relating to education, financial standing, sponsors and directors, etc.

In addition, the requirement for CEO to hold a postgraduate degree has been relaxed in lieu of possession of at least 7 years' senior management experience.

Further, SECP has eliminated the obligation to maintain a net capital balance of Rs5million since risk is managed through cash margins in futures trading. Moreover, the sponsors are only required to submit a tax certificate from an auditor as evidence of their net worth. A grace period of 30 days has been allowed to the broker to rectify non-compliance relating to financial resources requirement.

b. Amendments in the Non-Banking Finance Companies and Notified Entities Regulations, 2008

The SECP has made amendments to the Regulations, making the Listed Companies (Code of Corporate Governance) Regulations 2019 applicable to Asset Management Companies (AMCs) and deposit-taking Non-Banking Financial Institutions (NBFCs); provided that the Commission may exempt any specific NBFC or class of NBFCs from this regulation.

According to the SRO, every Asset Management Company (AMC) must have at least one investment committee which will be responsible for selecting and developing appropriate investment and risk management strategies for the proper performance of the Collective Investment Schemes (CISs). Further, an employee of an AMC shall not hold office as an employee in another AMC or hold any office, including that of a director, of another AMC and engage in brokerage services.

Also, a NBFC shall now ensure compliance with the following requirements while appointing independent directors on its board:

i. Independent directors shall be selected from the data bank notified by the Commission in accordance with section 166 of Companies Act 2017[1].

ii. The independent directors shall be elected in the same manner as shareholder directors are elected in accordance with section 159 of the Companies Act 2017.

SECP further specified limits for total outstanding exposure (fund based and non-fund based) by an NBFC along with making some other changes.

[1] PICG was notified to maintain the databank of Independent directors by SECP. Refer : https://www.secp.gov.pk/wp-content/uploads/2018/07/Press-Release-July-16-Independent-directors%E2%80%99-databank-gets-operational.pdf

c. Amendments in the Credit Rating Companies Regulations, 2016

The SECP has introduced amendments in the Credit Rating Companies Regulations, 2016 to provide a more conducive regulatory environment to Credit Rating Companies (CRCs) as Credit Rating Agencies (CRAs) play a vital role in the development of financial markets and conduct independent, professional and impartial assessments of credit risk associated with a particular instrument or a corporate entity.

The changes in regulatory framework aim at providing ease of doing business, reducing cost of doing business and promoting the rating business without compromising quality of ratings. In this regard, the SECP has abolished the requirements for disengagement period of two years for private ratings, submission of annual accounts of associated concerns and obtaining documents relating to default status of associated concern. In addition, the requirements for submission of industry specific studies, additional copies of application, submission of updated resume, and dissemination of the financial statements of CRCs on their website also removed.

Further, in order to reduce cost of doing business, the SECP has waived the fee to be paid at the time of permission and renewal of license. Further, the fee at the time of grant of licnese has been reduced from Rs1,000,000 to Rs100,000 only. To encourage new professional entrants with extensive research experience, individuals have been allowed to hold 40% of shareholding of the CRCs, and CRCs have been allowed to outsource their internal audit and compliance functions to independent chartered accountants firms.

d. Alteration in the Third Schedule to the Companies Act, 2017

The SECP has made amendments to the criteria of ‘Non-Listed Companies’ classified as ‘Public Interest Companies’ in the Third Schedule to the Companies Act, 2017. Serial No. 1, clause (b), of the Third Schedule now states that the following non-listed companies shall be considered as public interest companies:

“Non-listed company which is:

(i) a public sector company as defined in the Act; or

(ii) registered and/or licensed under the Administered Legislation or Rules, or regulations made thereunder, as follows:-

  a) Non-banking Finance Companies which are Asset Management Companies, Pension Fund Managers, REIT Management Companies or Deposit Taking NBFCs;
  b) Modaraba Company
  c) Insurer
  d) Securities Exchange
  e) Commodity Exchange
  f) Central Depository
  g) Clearing House; or

(iii) Registered, notified and/or licensed under the Banking Companies Ordinance, 1962 (LVII of 1962) or Microfinance Institutions Ordinance, 2001 (LV of 2001), as follows:

  a) Banking Company including Foreign Banking Company
  b) Microfinance Bank
  c) Development Finance Institution (DFI)”

2. Others

a. Submission of Quarterly and Annual (Audited) Capital Adequacy Returns

SBP has now automated the submission of periodical Capital Adequacy Reporting (CAR) returns by Microfinance Banks (MFBs) on the Data Acquisition Portal (DAP) of SBP, in order to bring efficiency in the Capital Adequacy Reporting of MFBs.

In this regard, the SBP has directed all MFBs to comply with the following with immediate effect:

a. In addition to manual submission of periodical (quarterly and annual audited) CAR returns in hard copy format, the same shall also be uploaded on DAP, as per the following timelines;

    i. Submit quarterly CAR returns within fourteen (14) working days from the close of each calendar quarter;

    ii. Submit annual audited CAR returns, duly certified by external auditor, within three (03) months from the close of each calendar year.

b. Upload historical quarterly/annual audited CAR returns starting from June 30, 2015 on DAP within two (02) months from issuance of the Circular Letter.

Thus, all MFBs should ensure systems are in place to ensure compliance with the above requirements.

b. Employment Quota for Persons with Disabilities

The SBP has advised all banks, Microfinance banks and Development Finance Institutions to ensure compliance with the 'Disable Persons' (Employment and Rehabilitation) Ordinance, 1981' which was promulgated to provide for the employment, rehabilitation and welfare of persons with disabilities.

Similar legislation on Provincial level is also in force. Accordingly, Federal and Provincial Government establishments as well as commercial and industrial establishments are inter-alia required to maintain a quota for employment of persons with disabilities.

c. Placement of information on website of public companies

The SECP, in supersession of previous related notifications, has directed every public company to maintain a functional website with immediate effect. Other companies are also encouraged to maintain functional websites.

Companies are encouraged to provide all relevant information to stakeholders through their functional websites, however, certain minimum information has been specified by the SECP (in English and Urdu languages) as mandatory, in addition to any other material information.

The information has been laid out under the following categories:

a) Profile of Company (vision, mission, principle business, status, address, etc)
b) Governance (profile of the Board of Directors; shareholding pattern of companies having share capital; name of auditor; and legal advisor).

c) Investor Relations (online form/contact details of person(s) designated by the company for assisting; and handling investors' complaints and grievances;Updated logo of SECP Service Desk Managements System's ("SDMS") ; Corporate Social Responsibility Reports, if any; notices of general meetings, dividends / bonus declarations and right issue; etc)
d) Media (national /International Awards, recognition, if any; membership of industry associations and trade bodies, if any; etc)
e) Information to be provided at homepage of website [link of SECP's investor education portal "JamaPunji" (www.jamapunji.pk);and information of companies' own complaint handling cell and contact person(s)) at a prominent place on homepage as a primary point of contact].
f) Information of the Group companies registered with the Commission under Group Companies Registration Regulations, 2008 (annual financial statements of their group along with the mandatory reports wherever required).

Certain additional disclosure requirements for listed companies have also been stated:

g) Election of Directors (notices relating to election of directors along with statement of material facts; names and profiles of persons chosen from the databank, information with respect to election of Directors, etc)
h) Investor Information (symbol assigned by the PSX; annual reports for the last three financial years; financial highlights for previous five years; quarterly financial statements issued during the current year as well as past three years; earning per share (basic and diluted), price to earnings ratio and breakup value of shares, dividend payout ratio as per latest available annual audited financial statements; etc).

Every company shall also deploy appropriate measures and safeguards for security of its website against service attacks, defacements and any other vulnerability that may adversely affect the access to the website or mandatory information placed on it.

Further, companies shall ensure that mandatory information on its website is available in the same sequential order, as enumerated under the notification.

Any contravention or non-compliance with the requirements of the notification shall be liable to a penalty of level 3, as provided under sub-section (2) of section 510 of the Act, although companies may apply for relaxation from specific requirements of the notification.

d. Revocation of licenses of Not for Profit Companies

SECP revokes licenses of 22 not for profit companies for non-compliance of statutory requirements (i.e. non-filing of financial statements and annual returns). Some of them were dormant since incorporation.

Companies licensed under section 42 of the Companies Act, upon revocation of license, have to follow the procedure for winding up voluntarily and in case of having no assets and liabilities they shall apply for striking their names off the register of the companies in terms of section 43 of the Companies Act, 2017 read with the Associations with Charitable and Not for Profit Objects Regulations, 2018.

SECP stated that the list of companies whose licenses have been revoked is available on its website.

International

a. OECD Report: Owners of the World's Listed Companies

The report is part of the OECD Capital Market Series, which highlights policy discussions on how capital markets can serve their key role of channeling financial resources from households to productive investments in the real economy.

Informed policy making with respect to corporate governance policies and regulations requires reliable and up-to-date information about corporate ownership structures. The distribution of ownership among different categories of owners is of particular interest, as is the ownership concentration in individual companies. This report provides a detailed picture of the ownership structure of listed companies worldwide with a combined market capitalisation of USD 75 trillion.

The report presents:

- a global overview of ownership of publicly listed companies by different categories of investors and cross-border ownership
- the degree of ownership concentration at the company level
- the increasing role of institutional investors in global equity markets
- the importance of public sector ownership in publicly listed companies

The report covers information from almost 10 000 companies representing 90% of the global market capitalisation. The dataset covers 54 markets and is compiled from several financial databases and publicly available company sources. A set of selected indicators and a description of data sources as well as the methodology for data collection and classification are provided for in the annexure to the report.

b. OECD Report - Tax Morale: What Drives People and Businesses to Pay Tax?[2]

The OECD Report assesses the various drivers behind voluntary compliance with tax obligations, particularly in developing countries where issues of governance are more acute. The report demonstrates that compliance with tax obligations is not solely determined by tax rates or the threat of penalties, but rather by a wide range of socio-economic and institutional factors that vary across regions and populations.

The report focuses attention on tax morale in developing countries, which face a range of challenges to increasing domestic revenues and funding actions to meet the UN Sustainable Development Goals, such as:- small tax bases, large informal sectors, weak governance and administrative capacity, low per capita income, low levels of domestic savings and investment, and tax avoidance and evasion by firms and individuals - and are complicated by low tax morale.

The aim of the report is to assist governments in the design of tax policies and their administration, particularly in developing countries where compliance rates are low. This report builds on previous OECD research to identify some of the key factors of tax morale across developing countries, and seeks to test for evidence of the social contract by examining the impact of public services on tax morale.

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[2] OECD (2019), *Tax Morale: What Drives People and Businesses to Pay Tax?*, OECD Publishing, Paris, https://doi.org/10.1787/f3d8ea10-en.

It also uses new data to explore tax morale in ‘businesses’, where existing research is very limited. Finally, the report identifies a range of factors related to the tax system that may affect business decision making, how they vary across regions, and suggests some areas for future research. The OECD report shows that age, gender, education levels and religiosity of taxpayers all have an influence on tax morale.

Overall, the report provides a range of suggestions for further work, and how tax morale considerations can be integrated into complete tax compliance strategies.

c. Sustainable Banking Network (SBN)'s Global Progress Report

The IFC-supported Sustainable Banking Network (SBN)'s second Global Progress Report documents the progress of SBN members in translating policy innovations into practical implementation. It includes 30 country reports that capture sustainable finance market transformation across 38 emerging markets, representing $43 trillion, or 86 percent, of emerging markets banking assets. The report builds on the 2018 Global Progress Report and applies a robust measurement framework agreed on by all SBN members.

The Sustainable Banking Network, is a voluntary community of financial sector regulatory agencies and banking associations from emerging markets that have committed to advancing sustainable finance in line with international best practices. SBN provides a platform for knowledge sharing and capacity building that helps members design and implement national sustainable finance initiatives.

The 2019 report indicates continuous and significant progress made by emerging markets. It also provides a path for policy development and implementation, as well as how to promote behavior change in the finance sector.

The SBN Measurement Framework was developed by members and is based on their practical experiences and lessons learned over the past decade. It reflects the elements that are consistently seen as essential to developing robust and effective national approaches to promoting sustainable finance. The framework consists of three pillars which are based on three essential components identified by SBN members for building effective national enabling frameworks for sustainable finance:

- Strategic Alignment: members find that national policies that are aligned with global good practices and international frameworks are more likely to be effective and to attract international investment.
- Climate & Green Finance: new financial products that address climate, environmental, and social objectives are becoming increasingly popular as a way to achieve national sustainability goals while unlocking financial sector innovation.
- ESG integration: better management of environmental, social, and governance (ESG) risks by banks is also leading to reduced credit risk, while contributing to financial stability.

New Feature

S.R.Os under UNSC 1267 sanctions

In a move aimed at seeking removal of Pakistan's name from the FATF 'grey list', Government of Pakistan has issued guidelines detailing steps to implement UNSC resolution 1267 to curb terror financing. The Ministry of Foreign Affairs (MoFA) will from time to time issue SROs to provide legal cover for implementing the sanction measures including assets freeze, travel ban, and arms embargo in addition to other measures. All banks/DFIs/MFBs are advised to ensure compliance with the sanction measures in accordance with the UNSC resolutions.

In this space, we will keep you informed of the S.R.Os as received from MoFA. On 11 October 2019 MoFA has issued S.R.O No. 1215(I)/2019.

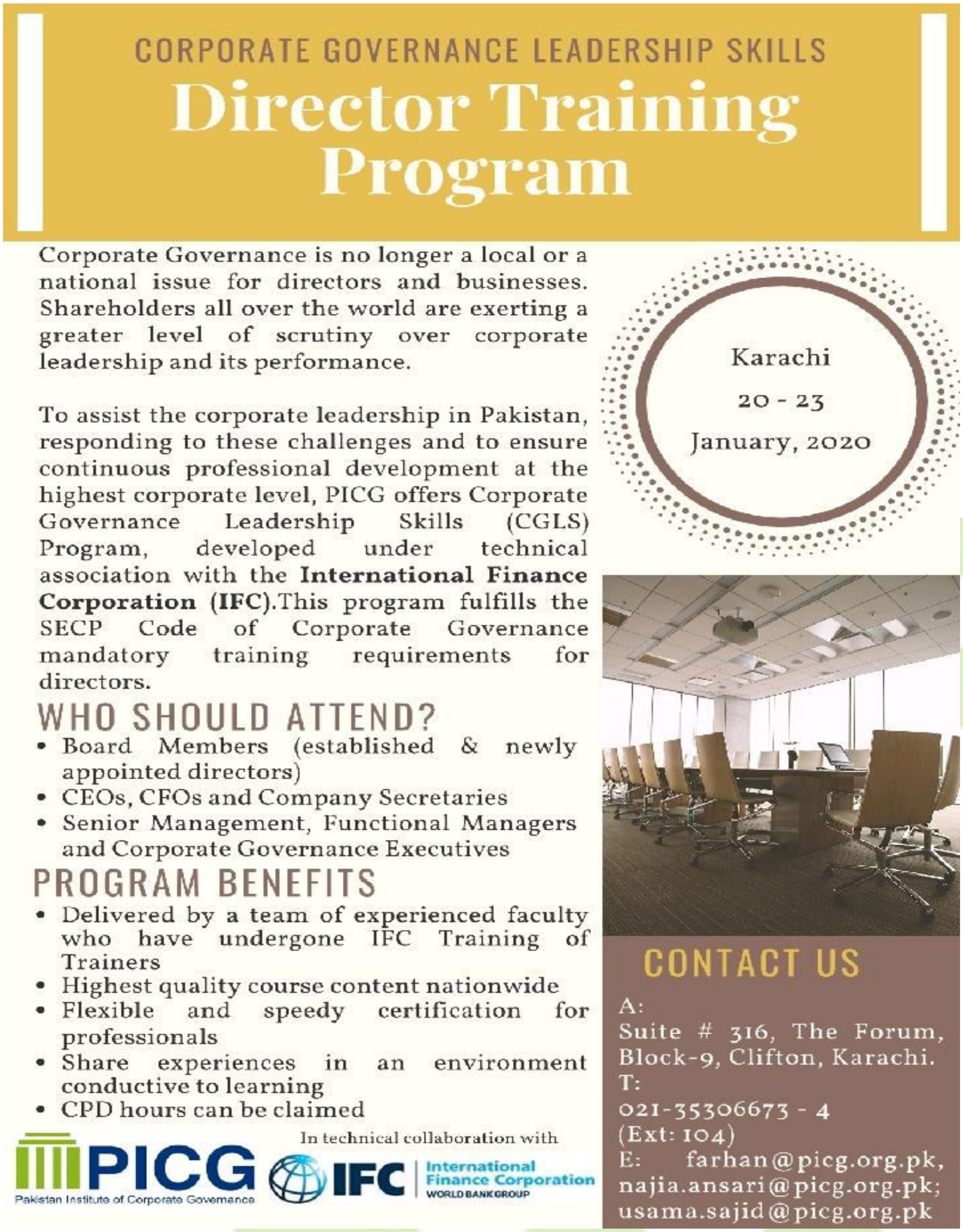
Link to S.R.O

The objective of the Implementation Guidelines is to help officials in various ministries, departments and agencies at the federal and provincial levels understand the provisions of the UNSC 1267 Sanctions regime.

Link to Guidelines

The FATF typologies report on proliferation financing provides a starting point to the public and private sectors in understanding the threats and situations where customers, transactions and other account activities may be involved in proliferation financing.

Link to FATF



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