

PICG Advisory Update

July - September 2016

A. Summary Table

Sr #	Issued by	Reference	Date	Update link
1	SBP	BPRD Circular No. 11	Aug 22 ,2016	Guidelines on Performance Evaluation of BoD
2	SECP	SECP Press Release	Aug 22 ,2016	Principles of Corporate Governance for Non-Listed Companies
3	SECP	SRO 790(I)/2016	Aug 23 ,2016	Amendment in Public Sector Companies (Corporate Governance) Rules 2013, issued for public feedback
4	SECP	SRO 794(I)/2016	Aug 25 ,2016	Amendment in s.187 of Companies Ordinance 1984 (Ineligibility of certain persons to become director)
5	SECP	SECP Press Release July 20, 2016	Sept 22, 2016 (last updated draft)	Draft Companies Bill 2016 issued for discussion

B. Synopsis of changes

1. Guidelines on Performance Evaluation of Board of Directors.

SBP has issued guidelines to provide the basic mechanism, techniques, and approaches through which the performance of the boards of banks/ DFI's shall be evaluated; and to bring uniformity to the existing practices of performance evaluation. Salient features of the guidelines include:

- Boards of banks/DFIs shall annually evaluate performance of overall board, its committees and individual directors whereas the same shall be undertaken by an **external independent evaluator at least every three years.**
- The annual report shall include in-depth **disclosure of the complete mechanism** adopted and the approaches & techniques used in the performance evaluation process.
- Subsequent to the performance evaluation process, the identified issues, weaknesses and challenges need to be addressed adequately through a **proper action plan.**

The Chairman of the Board shall be responsible for the implementation of these guidelines.

2. Amendment to Public Sector (Corporate Governance) Rules, 2013 [PSC Rules]

SECP has issued a draft of amendments to the PSC Rules to obtain feedback from stakeholders and the public. It was deemed necessary to introduce certain amendments to the rules to facilitate compliance and to ensure good corporate governance principles amongst PSC's, being significant economic players.

The provisions which have been proposed to be amended or added to the rules includes introduction of criteria for sound and prudent management of public sector companies, change in the proportion of independent directors on the boards from a majority to a minimum of one-third, specifying additional grounds for removal of non-performing directors, revision of criteria for appointment of chairman and chief executive, requirement for the government to enter into performance contracts with directors at the time of their appointment, optimization of fit and proper criteria for the directors, etc.

3. Ineligibility of certain persons to become director (Sec 187(i) Companies Ord, 1984)

SECP has issued notification stating that any person who has been declared by a Court of competent jurisdiction as defaulter in repayment of loan to a financial institution **for any amount** shall be ineligible to become a director of a listed company. This supersedes SRO 922(1)/2003 dated September 17, 2003, whereby ineligibility arose from a default in repayment of loan exceeding Rs 1 million.

4. Draft Companies Bill 2016

The SECP has posted the final draft of the Companies Bill, 2016 on its website, inviting public suggestions about the new provisions, and has formally sent the draft Bill to the Ministry of Finance for initiating necessary legislative process and its passage by the Parliament. SECP also organized a national level seminar on the draft on September 5, 2016.

The major focus of this draft Bill is the facilitation to the corporate sector and other stakeholders as well as strengthening of the regulatory frame work, maximum emphasis on the use of technology, abolishment of unnecessary requirements, and protection of the interest of shareholders and a softer regime for companies having no stake of the general public. There is more focus on facilitation to and regulation of Public Sector Companies and protection of interest of creditors.

5. Principles of Corporate Governance for Non-Listed Companies

The SECP has approved Principles of Corporate Governance for Non-listed Companies (NLCs) to promote greater transparency and accountability. These are voluntary guidelines that are applicable to NLCs in Pakistan and have two parts:

- Part 1 : NLCs except small sized companies
- Part 2 : Public interest and large sized companies.

The principles are **not** applicable to public sector companies that are governed under Public Sector Companies (Corporate Governance) Rules, 2013.

Refer **Annexure 1** for salient features of the approved Principles of Corporate Governance for Non-listed Companies.

Principles of Corporate Governance for Non-Listed Companies**Annexure 1****Applicability:**

All Non-Listed Companies except Small Sized Companies, Not for Profit Companies having annual gross revenue (grants/subsidies/donations) not exceeding Rs. 100 million and Public Sector Companies

Principle	Requirement	PICG Service Offerings
I – General	<ul style="list-style-type: none">• A governance framework may be established by shareholders• It shall preferably be covered in the constitutive documents• May include schedule of matters which are reserved for owner’s decision and those which are to be delegated to the Board	Development/Review of: <ul style="list-style-type: none">• Corporate Governance Framework• Investor Relations Policy• Whistleblowing Policy
II - Board of Directors	<ul style="list-style-type: none">• Every company may strive to establish an effective Board for the leadership and long term success of the company• Size and composition may be based on the scale and complexity of the company’s activities• The board<ul style="list-style-type: none">▪ may appoint a CEO and elect a Chairman▪ may develop explicit procedure for new appointments and orderly succession planning of the Board▪ may invite independent directors to ensure objective decision making▪ is responsible for monitoring and evaluating management performance▪ may set the strategic objectives, values and standards of the company▪ shall ensure compliance with Articles, laws, regulations and governance requirements▪ may have a schedule of matters which are reserved for Board’s decision and which are to be delegated to the management▪ may develop Terms of Reference to set out the roles and responsibilities of each director	<ul style="list-style-type: none">• Development of Terms of Reference for Directors• Director Placement Services
III - Meetings of Board of Directors	<ul style="list-style-type: none">• The board may meet regularly to enable it to effectively discharge its duties(at least once a quarter)• Chairman to ensure provision of appropriate, accurate and clear information in a timely manner, to the Board by the management	

Principle	Requirement	PICG Service Offerings
IV - Remuneration of Board of Directors	<ul style="list-style-type: none"> • Remuneration should be sufficient and appropriate to attract, retain and motivate quality executive and non-executive directors to run the company successfully • There should be a distinction between remuneration for executive and non-executive directors • Remuneration should reflect the time commitment and responsibilities of the directors • A formal and transparent remuneration policy may be developed 	<ul style="list-style-type: none"> • Development of Terms of Reference for Human Resource & Remuneration Committee • Director Placement Services • Workshop on Strategic Approach to HRM
V - Internal Control	<ul style="list-style-type: none"> • The board <ul style="list-style-type: none"> ▪ may maintain a system to safeguard shareholder investment and company assets ▪ is responsible for risk oversight and should regularly review the need for a formal internal control and risk management function ▪ may establish formal arrangements for the application of financial reporting standards 	<ul style="list-style-type: none"> • Development of: <ul style="list-style-type: none"> ▪ Terms of Reference for Audit Committee ▪ Internal Audit Charter • Risk Mitigation and Oversight Workshop • Finance for non-finance directors/senior managers - Workshop
VI - Training of Board of Directors	<ul style="list-style-type: none"> • All directors may receive <ul style="list-style-type: none"> ▪ orientation ▪ director training ▪ regular updates and trainings 	<p>Director Development courses offered:</p> <ul style="list-style-type: none"> • Director Training Program (in collaboration with IFC) • Director Orientation Workshop <p>Awareness session for Directors on the following:</p> <ul style="list-style-type: none"> • Strategy formulation • Finance for non-finance directors/senior managers • Risk management • HR and Remuneration • Ethics • Sustainability • Family Business Governance, etc
VII - General meetings	<ul style="list-style-type: none"> • Responsibility of the Board to ensure satisfactory dialogue between shareholders and the Board in a practical and efficient manner • The Chairman sets the agenda and s/he is responsible for ensuring that shareholder views are presented to the Board • All shareholders are to be treated equally 	<ul style="list-style-type: none"> • Being a Company Secretary Workshop • Company Secretary Training (in collaboration with IFC)

The following additional principles are applicable on:

Public Interest Companies, Large Sized Companies and Not for Profit Companies having annual gross revenue (grants/subsidies/donations) exceeding Rs. 500 million except, Public Sector Companies:

Principle	Requirement	PICG Service Offerings
VIII - Role of Chairman and Chief Executive	<ul style="list-style-type: none"> Chairman and CEO positions to be held by different individuals 	Formal schedule of responsibilities
IX - Independent /Non-Executive Director	<ul style="list-style-type: none"> Board may have a balanced representation with a mix of competencies and experience as well as independent directors to provide an independent, objective view and an outside perspective on strategy and control 	Director Placement Services
X - Board Committees	<ul style="list-style-type: none"> Board may establish committees based on company requirement, such as audit committee and investment committee Formal terms of reference may be developed for each Board committee Independent directors may play a significant role in committees 	Development/Review of Terms of Reference
XI - Appraisal of Board of Directors	<ul style="list-style-type: none"> Board may undertake a periodic appraisal of <ul style="list-style-type: none"> board performance individual directors 	<ul style="list-style-type: none"> Board Evaluation Program Board Evaluation Workshop
XII - Annual Report	<ul style="list-style-type: none"> Board of directors may <ul style="list-style-type: none"> present a balanced and understandable assessment of company position and prospects establish a system of stakeholder engagement 	
XIII - Compliance or Disclosure of Deviation	<ul style="list-style-type: none"> Statement of compliance with CCG may be circulated with the annual report 	