

Listed Companies (Code of Corporate Governance) Regulations, 2017

Frequently Asked Questions (FAQs)

1. What is the effective date for compliance with the Listed Companies (Code of Corporate Governance) Regulations, 2017 (the Regulations)?

The Regulations primarily relate to strengthening the governance doctrine already prevalent in companies (through Code of Corporate Governance, 2012) while changes in board structures are explicitly period marked. Therefore, the companies are expected to ensure compliance with the requirements of subject regulations from the calendar year starting January 01, 2018.

2. Does the Regulations conflict with the Companies Act, 2017 (the Act)?

The Regulations are framed to ensure not to reproduce or be in conflict with the requirements of the Act. However, in case of any conflict, the requirements of Act shall prevail.

3. In a board of seven, what will be the composition as per the criteria laid down in the Regulations?

If there are seven directors on the board of a listed company, the composition as per the Regulations will be two independent directors, two executive directors (including the CEO) and three non-executive directors.

4. What parameters must be considered for independent directors under Section 166 of the Act and the Regulations?

The jist of selection of independent directors in terms of Section 166 of the Act and the Regulations is seeking independence in relationship and ability of individual to take independent decisions. The nature of relationship have been explained as being employed, material business relationship, major shareholder, deriving remuneration (other than director fee), family or relations that lead to conflict of interest. Further, the generality of the circumstances given under Section 166 of the Act affecting such independence is expressly stated. However, list of such circumstances is not conclusive and hence companies and

individuals must be vigilant towards any transaction, relationship or conduct that may impede independence under the Act.

5. Section 166(2)(g) of the Act provides that an independent director shall not be considered independent if he has served on the board for more than three consecutive terms from the date of his first appointment provided that such person shall be deemed independent director after a lapse of one term. If an independent director fills casual vacancy and holds office till conclusion of the remaining term, will his/her remaining term be considered a complete term?

The Act has used the word term and not number of years. In terms of Section 161 (2) of the Act, a director filling casual vacancy shall hold office till conclusion of the remaining term. This implies that in case of casual vacancy, regardless of remaining number of months/ years, such remaining term shall be considered as a complete term. Accordingly, an independent director filling casual vacancy, shall have two more consecutive terms in that particular company. Similarly, if an independent director resigns or vacates office of director before the next election of the board, he shall have two more consecutive terms in that particular company.

Further, there is no provision for relaxation of clause (g) of proviso to sub-section (2) of section 166 of the Act.

6. Whether the appointment of a non-executive director as chairman of the Board of Directors of a listed company is mandatory?

Yes. The provisions of Section 192 of the Act requires that the board of a listed company shall within fourteen days from the date of election of directors, appoint a chairman from among the non-executive directors.

7. Whether an independent director serving as chairman of the board is eligible to be chairman of audit committee?

No. In terms of Regulation 28, the independent director who is serving as the chairman of the Board cannot be the chairman of audit committee.

8. What is the difference between an executive and a non-executive director?

Section 181 (2) of the Act defines non-executive director. Generally, executive directors are the working, whole-time directors of a company. Non-executive directors, on the other hand are those who are not from among the executive management team and may or may not be independent. An executive director cannot be categorically defined as a "paid director" and a non-executive director as one who is "not a paid director". The guiding factor in distinguishing between executive and non-executive directors of a company is the extent of their involvement in managing the affairs of the company rather than their pecuniary interests.

9. Should the CFO or head of internal audit have prior experience (in public practice/managing corporate/financial affairs) in a listed company?

Although prior experience in listed company is not mandatory however, keeping in view essence of best practices, it is preferred that companies appoint such individual who have experience of working in finance or audit departments of a listed company.

10. a) Is there any requirement of evaluation of board performance?

b) should the evaluation of board performance be undertaken in-house or outsourced to any external consultants?

a) Yes, the board of directors shall ensure that a formal and effective mechanism is put in place for an annual evaluation of the board's own performance, members of board and of its committees.

b) Annual evaluation can be undertaken either in-house directly or by engaging external independent consultants and if so appointed, a statement to that effect shall be made in the directors' report disclosing name, qualifications and major terms of appointment. The only condition for such evaluation is ensuring that such individuals/ team carry out their assignment objectively and independently.

11. Does the board of directors of a listed company need to specify the limits of materiality?

Yes, in terms of Regulation 10(3), the level of materiality should be determined by the board meeting.

**12. If a foreign director on the board of a listed company has already participated in a directors' training program abroad. Will it still be mandatory for him/ her to attend a) the orientation?
b) directors' training program as required by the Regulations?**

a) It is mandatory for the company to provide orientation to all directors - local and foreign. An orientation should cover the relevant information about the company as well as the relevant governing laws, rules and regulations.

b) Foreign directors who have received training aboard shall be exempt from Directors' Training Program requirement of the Regulations if the program they attended broadly covered the areas stated in the criteria specified by the SECP for the purpose and placed as Annexure-I.

13. Can the same person be appointed as the CFO and the Company Secretary of a listed company?

No. The terms of reference of the two positions are distinct. Therefore, separate persons should handle the functions of the CFO and company secretary within a listed company.

14. Can the positions of company secretary and internal auditor be given to one person within a listed company?

No. The two positions carry minimal synergy and, therefore should be performed by separate persons.

15. Can a full time employee (including the CFO and company secretary) of a listed company hold a similar position in an unlisted group company?

The Regulations do not restrict any full time employee in a listed company from working in a similar position in an unlisted group company. However, appropriate steps should be taken by the board of directors of the companies concerned to ensure that additional workload would not affect the quality of work performed by such employee and no conflict of interest would arise as a result of holding similar positions in two group companies.

16. a) Can an individual who has graduated from a foreign university with an equivalent degree be considered as a postgraduate or equivalent for appointment as a CFO/ head of internal audit?

b) If a person has no practical experience in Pakistan in handling finance, accounts and audit, would such a person be considered an appropriate choice for appointment as the CFO/ head of internal audit of a listed company in Pakistan?

Foreign qualification does not bar any person from pursuing his/ her career as a CFO/head of internal audit in Pakistan. The requirement of the Regulations should be read as a whole and, therefore, a person having both requisite qualification and experience is eligible for appointment as CFO/head of internal of a listed company.

a) The educational qualification requirements for the CFO/internal audit of a listed company are provided in the Regulations. The equivalence of an educational qualification is granted by the Higher Education Commission ("HEC") and the applicant may, therefore, be asked to provide an equivalence certificate from the HEC. The educational qualifications, once verified by the HEC, are sufficient requirement for the purposes of the Regulations.

b) If the applicant has requisite years of experience in handling financial, corporate or audit affairs, inside or outside Pakistan, he shall be deemed as eligible for the purpose. However, suitability of candidates for appointment of CFO/head of internal audit holding qualification and experience as provided under sub-regulation (c) of Regulation 23 and Regulation 24 shall require prior approval of the Commission.

17. Is there a standard format for Secretarial Compliance Certificate?

Secretarial Compliance Certificate is not required under the Regulations.

18. Is the requirement for the external auditors to initial the financial statements before these are considered/approved by the Audit Committee and the board of directors, inconsistent with the provisions of the Act, which states that responsibility for preparation of financial statements lies with

the directors of the company and that the auditors express their opinion after these have been prepared and approved by the directors?

The requirement for the auditors to initial the financial statements is for identification only. The responsibility of preparation of financial statements rests with the board in accordance with provisions of the Act.

19. Is there a standard format for the statement of compliance with best practices that has to be published in the annual report of listed companies?

A standard format for the compliance statement to be published in the annual report of listed companies is provided in Annexure “A” of the Regulations. However, companies are encouraged to make optimal disclosure of relevant information about their governance practices.

20. What are the consequences for non-compliance with the Regulations?

These Regulations have been issued under the Act and the Commission shall directly supervise their compliance. Regulation 41 provides penalty for non-compliance of these regulations.

21. How can I resolve my queries pertinent to the Regulations?

Any query on the Regulations can addressed to the following email address: cgc@secp.gov.pk.

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Frequently Asked Questions (FAQs)

The following FAQs on Listed Companies (Code of Corporate Governance) Regulations, 2017 (“the Regulations”) are in addition to FAQs issued by Securities and Exchange Commission of Pakistan (SECP) and placed on website of SECP on December 06, 2017.

22. Can foreign directors attend general meeting through video conferencing?

Foreign directors can attend general meeting through video conferencing facility. However other directors are required to attend the general meetings of the shareholders in person except precluded for any reasonable cause.

23. For related party disclosures, will the statement of compliance under the Code of Corporate Governance 2012 (“Code 2012”) be used instead of compliance statement under the Regulations?

Related party requirements are not materially changed in the Regulations except that it provides compliance with Section 208 of the Companies Act, 2017 (the Act). Pending issue of regulations under Section 208 of the Act, the statement of compliance to the extent of related requirements may be given in line with earlier practice.

24. For companies whose financial year ends on March 31, 2018, June 30, 2018 or September 30, 2018, can the format of Statement of Compliance under Code 2012 be used instead of Compliance statement under the Regulations?

The Regulations are applicable from January 1, 2018 therefore such companies will be facing practical difficulty as two set of laws i.e. Code 2012 and the Regulations are applicable on the financial years ending on March 31, 2018, June 30, 2018 and September 30, 2018. The statement of compliance under Code 2012 and the Regulations are materially similar with exception of certain deletions, therefore the Board may choose to follow either of the statement of compliance while giving additional disclosure for clarity.

25. How will independent director be elected?

In view of the requirements of Section 153 and 166 of the Act, an independent director shall be a member. However such member shall, in addition to test and circumstances of independence as stated in Section 166 of the Act, not hold more than 10% of the shares of the Company. Therefore, the requirements of being member shall be fulfilled by such independent director prior to contesting elections. In this regard, companies shall facilitate such directors by making amendment in their Articles of Association regarding qualification shares, where required.

The conduct of the election and removal of independent director/s shall be made in accordance with the election procedures as per Section 159 and 163 of the Act respectively and articles of association of Company. Further, the statement of material facts annexed to the notice of the general meeting called for the purpose of elections shall indicate the justification for such person/s contesting election as independent director. Moreover, it shall be the responsibility of the Chairman of the Meeting to inform all members in attendance of the mandatory requirement of electing independent director/s. Chairman shall also ensure that an independent director/s are elected during the general meeting and specific slot/s for independent directors shall not be filled-up by unqualified nominees.

Criteria for Institutions desirous of offering Directors' Training Program

The Regulations require the directors of the listed companies to have certification under directors' training program offered by any institution, local and/or foreign, that meet the criteria specified by the SECP.

This document lays down the minimum criteria for the eligibility of institutions and the areas that have to be covered in the Directors' Training Program (DTP) offered by them. The formal set of criteria to assess and evaluate the programs as well as the institutions offering these programs are given below.

For the aforesaid certification required under the Regulations, foreign directors who have already participated in a training program that broadly covers the areas listed under para 6 below shall be exempt from the requirement of DTP. However, SECP shall determine the sufficiency of requirements on application from the Company.

Criteria for Institutions

DTP may be offered by an institution, after seeking prior approval of the SECP and subject to any conditions imposed by the SECP. An application received by the SECP from any of the institutions, will be judged on the following minimum parameters:

- permanent training set up;
- infrastructure and facilities;
- track record of the institution for the last five years;
- program content and structure as given in this document; and
- key resource (faculty) profile (permanent and adjunct).

The institutions approved by the SECP, will seek its prior approval, if any material change is to be brought to the DTP. The names of the institutions that are approved by the SECP to offer DTP will be placed on the website of the SECP.

Program outline

The following minimum criteria shall be met by the institutions who intend to offer DTP:

1. The DTP shall be designed to impart knowledge and develop skills of the board of directors of listed company that are essential for successful achievement of the company's objectives;
2. The course of study shall include both theory and case studies;
3. All faculty members shall have both practical experience as well as an appropriate academic background, suitable for carrying out DTP effectively;
4. The DTP must be spread over a span of at least 40 hours (divided into modules);
5. To increase the knowledge base, it is recommended that pre-training material based on the key elements of corporate governance should be developed and distributed amongst the trainees. The institution shall also provide latest research to the trainees as post-training material to keep them updated with the latest developments taking place around the globe in the areas including following:
 - Good board practices;
 - Control environment and processes;
 - Disclosure and transparency; and
 - Protection of shareholders' rights.
6. The program must cover, inter alia, an overview of the principles and the key pillars of corporate governance, its benefits and objectives, the roles and responsibilities of the board and executive management in light of relevant regulatory requirements and latest trends in corporate governance. This will assist the participants to be better equipped to understand and evaluate different approaches to structuring the ownership, control and regulation of companies.

The following topics at a minimum shall be included in the course contents:

a) Legal overview

- An overview of relevant laws that have to be adhered to, including the Regulations, the Companies Act, 2017 and Securities Act, 2015;
- The key principles and elements of good corporate governance;
- Significance of director's report in the annual report;
- Directors' fiduciary duties to shareholders under the law; and
- Procedure of election, retirement and removal of directors.

b) Role and responsibility of the Board of Directors

- Development of code of conduct and other policies, and internal control system;
- Conduct of meetings of board of directors;
- Ethical obligations;
- Board composition, roles and responsibilities, powers and functions, duties and liabilities & procedures and practices;
- The right mix of skills and board diversity;
- The institution and importance of independent directors;
- Executive and non-executive remuneration – how to attract, retain and motivate directors and officers;
- Board committees and their roles;
- determining terms of appointment of the CEO and evaluating performance of the CEO;
- Defining the roles and responsibilities of the Chairman and the CEO;
- Performance evaluation of board and committees;
- stressing the importance of substance over form; and
- Control environment.

c) Financial overview

- Related party transactions;
- Disclosures and financial reporting framework;

- The benefits of corporate governance including its impact on profitability and shareholder value; and
- How to read, understand and interpret financial statements.

d) Risk management

- Governance, risk management and compliance (GRC) issues; and
- Measures to assess risk

e) International trends and practices

- Global best practices;
- The importance of integrity and ethical obligations in exercising business decisions;
- Corporate Social Responsibility (CSR) and Sustainability reporting; and
- Corporate governance framework concerns and challenges.

7. An assessment at the end of each module/section and/or the whole course is mandatory to qualify for the certification.

Additional general requirements

1. The institutions offering DTP shall place the names of the certified directors on their websites and also disseminate their names amongst industry and business associations, chambers of commerce and industry, etc. through an appropriate mechanism, so that their names are readily available to the companies who wish to have trained directors on their boards. The names of certified directors shall also be sent through email to the SECP and PSX within 15 days of the conclusion of a DTP and PSX shall maintain a consolidated list of certified directors on its website.

2. The institutions shall strive to meet or exceed all established standards, both domestically as well as internationally. The institution shall clearly lay down the objectives of the DTP.

3. The availability and proper utilization of high quality instructional material is essential for conducting effective DTP. The institutions shall ensure that adequate material including relevant laws, case studies, syllabus, multimedia, reference texts etc. are made available for instructional purposes. Special focus should be on developing case studies, which are relevant to the business environment of Pakistan and these should be included in the curriculum.
4. The institutions are encouraged to arrange research programs, seminars, conferences, workshops, etc. for promoting good corporate governance practices in Pakistan.
5. The potential of undertaking continuing professional development of the trainees through the institution's websites in the form of on-line, self-study courses may be considered by the institutions.