



Corporate Governance in Pakistan

CCG Regulations 2019

effective from Sep 25, 2019



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Overview of Corporate Governance in Pakistan-2019

Corporate Governance is an effective tool to grow company beyond a certain level and sustain the growth. It gives confidence to investors and stakeholders on how the company is being governed.

The Institute of Chartered Accountants of Pakistan (ICAP) has been promoting the idea of Corporate Governance since ages and it had “All Pakistan Chartered Accountants Conference” in 1998 on Corporate Governance theme. ICAP has been in dialogue with Securities Exchange Commission of Pakistan (SECP) on issuing the Code of Corporate Governance (CCG).

Over the period, corporate governance has evolved in Pakistan to an extent that companies, whether listed or not, have focused on corporate governance. It is witnessed that even private limited family owned companies are considering having outside family directors on the Board for an independent viewpoint.

SECP issued first Code of Corporate Governance in 2002 with few compulsory regulations and more of recommendatory.

Later in 2012, SECP issued another CCG for listed companies repealing the earlier one. This code was kind of principle-based. Further, this code introduced the regulation of directors training program whereby every director was required to attend directors training program unless meets certain conditions.

Again in 2017, SECP issued another code replacing 2012 code. This code was more towards rule-based where all regulations were compulsory with few exceptions like forming a Nomination Committee.

Now in Sep 2019, new Code of Corporate Governance 2019 has been issued by introducing major shift in approach. This code is good hybrid of Rule and Principle-based.

This new code has introduced the terms of Mandatory and Comply or Explain. There are certain regulations mandatory, means there will be penalty if not followed. Companies can seek relaxation from application of mandatory regulations from case to case basis.

Comply or Explain approach means discretion of a company with respect to non-mandatory provisions of these regulations either to comply or provide appropriate explanation as to any impediments in compliance in the compliance report.

Our understanding of the code is that each regulation is Mandatory or Non-mandatory. Non-mandatory regulations using the words shall and may.

Mandatory regulations attract penalty, if not complied with.

Non-mandatory regulations are also to be complied with. In case of non-compliance, these are to be explained for non-compliance.

Now with the introduction of Comply or explain approach, it is the responsibility of Board to use this approach wisely and of investors to assess differing company approaches thoughtfully.

Highlights of CCG 2019

Mandatory regulations mean such regulations that MUST be complied with by a listed Company. Non-compliance will attract penalty.

'Comply or explain approach' has been defined to make an assessment by the listed Company itself as to whether a non-mandatory provision is to be complied with or explained due to any impediment.

No person shall be the Director of more than 7 listed companies at a time.

The mandatory condition of Directors' training has been relaxed.

The answer to one-third numbers of members of the Board may come out as a fraction. In case of independent directors, it shall be explained as to why such fraction is not rounded up as one.

The answer to one-third numbers of members of the Board may come out as a fraction. In case of executive directors, it shall be explained as to why such fraction is rounded up as one.

Human Resource Committee is no more mandatory.

External auditors and its associated companies and undertakings can not be appointed as internal auditor.

External auditors' associated company and associated understaking can not be outsourced internal audit function.

Definitions

The Following new terms have been introduced in CCG Regulations, 2019;

<p>“Comply or explain approach”</p>	<p>“Mandatory”</p>
<p>means discretion of a Company with respect to non-mandatory provisions of these Regulations either to comply or provide appropriate explanation as to any impediment in its compliance in the compliance report along with the financial statements.</p>	<p>in relation to these Regulations, means such provisions that are construed to be strictly complied with by the Company and non-compliance of such Regulations leads to penal proceedings.</p>

This introduction of Mandatory and Comply or explain brings more clarity. The “comply or explain” approach empowers a company to decide and explain the impediment that caused non-compliance of non-mandatory regulation.

Directorships of a Person

Mandatory

The CCG 2019 has prescribed that a person can maximum be elected or nominated or hold office as a Director including as an alternate Director of seven listed companies simultaneously.

Now directorships of listed subsidiaries of listed companies will also be counted towards maximum directorships.

Earlier directorships of such listed subsidiaries were not counted for maximum directorships.

Earlier a person could have been elected, appointed or nominated or hold office as a Director in maximum five listed Companies simultaneously.

If any director is in non-compliance due to inclusion of listed subsidiaries, then such director will ensure compliance of this regulation on next reconstitution of Board.

Independent Directors

Mandatory

There is no change regarding requirement of independent directors as still minimum two or one-third, whichever is higher number of directors will be on Board.

But if there is any fraction contained in such one-third numbers, which is not rounded up as one, the Company shall explain this fact in its statement of compliance report.

There was no explanation required regarding such fraction of one-third of members in CCG Regulations, 2017.

Female Director

Mandatory

There is no change in this requirement, as still every board has to have at least one female director.

Executive Directors

Mandatory

There is no change regarding requirement of Executive directors, as still Executive Directors including CEO shall not be more than one-third of the Board.

But if there is any fraction contained in such one-third numbers, which is rounded up as one, the Company shall explain this fact in its compliance report.

There was no explanation required regarding such fraction of one-third of members in CCG Regulations, 2017.

Chairman of the Board & CEO

Non-Mandatory

Code requires that Chairman and CEO shall not be same person. Code has not made this regulation Mandatory.

Companies Act 2017 specifies under section 192 that Board shall elect its chairman from non - executive directors.

Although the Code has made this regulation non-mandatory but effectively this is mandatory regulation in the light of section 192 of the Companies Act 2017.

Annual Review of Business Risk

Non-Mandatory

Now the Board is encouraged to carry out annual review of business.

Earlier, it was mandatory for Board to undertake at least annually an overall review of business risk.

Code of Conduct

Non-Mandatory

Every company is to ensure that formal code of conduct is in place that promotes ethical culture and prevents conflict of interest in the company. The company may place it on website.

Earlier company was to have either code of ethics or code of conduct and this was to be placed on website.

Formal Mechanism for Senior Executives

Removed

Earlier, board was to have formal mechanism for selecting, compensating, monitoring and replacing senior executives.

Decisions by Board

Removed

Earlier in CCG Regulations, 2017 the Board was required to pass resolutions on the following matters:

- i. Investment and disinvestment of funds where the maturity period of such investment is six months or more;
- ii. Determination of nature of loans or advances made by the listed Company and fixing a monetary limit thereof.

Level of Materiality

Removed

Earlier code required that Board shall define the level of materiality keeping in view specific circumstances of Company and the recommendation of any technical executive sub-committee.

Related Party Transactions

Non- Mandatory

The details of related party transactions shall be placed before Audit committee. Upon recommendation of audit committee, the same shall be placed before the Board for its review and approval.

Earlier, there was additional requirement to place separately the related party transactions, which are not executed at arm's length price, before Board.

Conflict of Interest

Removed

Earlier Code required that if at agenda item to be discussed in Board meeting where any director has conflict of interest, then there should be at least two Independent Directors present in such Board meeting.

Director's Remuneration

Non-Mandatory

There is no change regarding having a formal policy and determination of director's remuneration.

Still the guiding principle is laid down that level of remuneration shall be appropriate and commensurate with the level of responsibility and expertise, to attract and retain directors needed to govern affairs of the company successfully and to encourage value addition. But remuneration shall not be at a level that could be perceived to compromise their independence.

Directors Training Program

Non-Mandatory

There is no change regarding directors' orientation requirement.

Directors participation in Directors Training Program dates have been changed as under:

- i. by June 30, 2020, at least 50% of the Directors on the Board
- ii. by June 30, 2021, 75% of the Directors on the Board
- iii. by June 30, 2022, all the Directors on the Board

A newly appointed director on the Board may acquire, the directors training program certification within a period of one year from the date of appointment as a director on the Board.

Directors having a minimum of 14 years of education and 15 years of experience on the Board of a listed company shall be exempt from the directors training program.

Appointment of CFO, Company Secretary & Head of Internal Audit

Non-Mandatory

As such no change, still the Board shall appoint, determine remuneration, renew contracts and terms and conditions of employment of CFO, company secretary and head of internal audit of the company.

Removal of CFO, Company Secretary & Head of Internal Audit **Non-Mandatory**

There is a slight change that earlier non-renewal of contract of CFO, company secretary and head of internal audit was considered as REMOVAL. CCG 2019 is silent on that, as it has no governance impact.

The removal decision of CFO, company secretary and head of internal audit remains with Board.

Head of internal audit may be removed only upon recommendation of the audit committee.

Qualification of CFO, Company Secretary & Head of Internal Audit **Non-Mandatory**

No change is introduced by CCG 2019 with regard to qualification to appoint CFO, company secretary and head of internal audit.

Financial Statements Endorsement **Non-Mandatory**

There is no change regarding endorsement of quarterly, half yearly and annual financial statements by CEO and CFO prior to placing and circulating the same for consideration and approval of the Board.

Financial Statements initiated by External Auditor **Non-Mandatory**

There is no change regarding annual and interim financial statements that CEO and CFO shall get these initialed by external auditor before presenting it to the audit committee and the Board for approval.

Audit Committee **Mandatory**

There is no change regarding formation of audit committee, as still Board is required to form it.

The Board shall provide adequate resources and authority to audit committee.

Meetings of Audit Committee **Mandatory**

Now minutes of audit committee may be circulated along with Board minutes, if chairman has shared synopsis with the Board.

Audit committee meeting shall also be held, if requested by the external auditors, head of internal audit or by chairman of the audit committee.

Audit Committee Terms of Reference **Mandatory**

There is no change in current code. Still the Board of every company shall determine the terms of reference of the audit committee.

Human Resource and Remuneration Committee

Non-Mandatory

There is no change regarding human resource and remuneration committee as still Board shall establish HR & remuneration committee.

Nomination Committee

Non-Mandatory

No change regarding formation of Nomination Committee, as still Board may constitute it.

Now, company is required to explain non-compliance.

Earlier, company was not required to explain non-formation of this committee.

Risk Management Committee

Non-Mandatory

No change regarding formation of Risk Management Committee, as still Board may constitute it. Now, company is required to explain non-compliance.

Earlier, company was not required to explain non-formation of this committee.

Internal Audit Function

Non-Mandatory

While outsourcing the internal audit function, the company shall not appoint its external auditors or any of its associated company or associated undertaking.

Earlier, this restriction was limited to external auditors only.

External Audit

Mandatory

There is no change introduced.

Director's Report

Non-Mandatory

There is no change regarding director's report and components of director's report.

Although, the Code has made this regulation non-mandatory but this regulation is effectively mandatory in the light of Companies Act 2017.

Disclosure of Significant Policies on Website

Non-Mandatory

There is no change about it. CCG 2017 list has been included in CCG 2019.

In addition to aforementioned list, the company may give brief synopsis of terms of reference of the Board's committees including;

- i. Audit Committee
- ii. HR and Remuneration Committee
- iii. Nomination Committee

Compliance Statement and Auditor Review

Mandatory

There is no change regarding publishing of statement of compliance along with its annual reports to set out the status of their compliance with the requirements of these regulations and the said statement shall be specific and supported by necessary explanations.

Penalty

A company failing or contravening to comply with mandatory regulations shall be punishable with penalty as provided under sub section 2 of section 512 of the Companies Act 2017. The penalty under the act for these regulations may extend up to Rs.5 million.

Relaxation from requirements of Regulations

Where the Commission is satisfied that it is not practicable to comply with any of the mandatory requirements of the regulation 3, 6, 7, 8, 27, 32, 33 and 36 of these Regulations, it may, for reasons to be recorded in writing, on the application by the company, extend the time for compliance of the same subject to such conditions as it may deem fit.

Repeal and Savings

1. The Listed Companies (Code of Corporate Governance) Regulations, 2017, hereinafter called as repealed regulations, shall stand repealed:

Provided that repeal of the repealed regulations shall not;

- a) revive anything not in force at the time at which the repeal take effect; or
 - b) affect the previous operation of the repealed regulations or anything duly done or suffered thereunder; or
 - c) affect any right, privilege, obligation or liability acquired, accrued or incurred under or in respect of the said repealed regulations; or
 - d) affect any penalty imposed, forfeiture made or punishment incurred in respect of any offence committed against or in violation of the repealed regulations; or
 - e) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if these Regulations has not been notified.
2. Save as otherwise specifically provided, nothing in these Regulations shall affect or deemed to effect any action taken, orders issued, application received, relaxation granted unless withdrawn, fee paid or accrued, resolution passed, direction given under the repealed regulations shall, if in force at the effective date of these Regulations and not inconsistent with provision of these Regulations, shall continue to be in force and have effect as if it were respectively taken, made, directed, received, passed, given, executed or issued under these Regulations.

Mandatory Regulation

Description	Regulation
No person shall be elected or nominated or hold office as a Director of a listed Company including as an alternate Director of more than seven listed Companies simultaneously.	3
Each listed Company shall have at least two or one third members of the Board, whichever is higher, as independent Directors.	6(1)
Independent Director shall submit his consent to act as Director, along with declaration to the Company that he qualifies the criteria of independence notified under the Act and such declaration shall be submitted to chairman of the Board at first meeting which is held after election of Directors as well as on an event of any change affecting his independence.	6(3)
The Board shall have at least one female Director when it is reconstituted after the expiry of its current term.	7
Executive Directors, including the chief executive officer, shall not be more than one third of the Board.	8
The Board shall constitute audit committee keeping in view the following requirements: <ul style="list-style-type: none"> • The committee shall have at least three members comprising of Non- Executive Directors and at least one Independent Director • Chairman of the Audit committee shall be an Independent Director • At least one member of the audit committee shall be “financially literate • Audit committee shall appoint a secretary of the Committee 	27(1)
Requirements to hold Audit committee meetings: <ul style="list-style-type: none"> • One Audit committee meeting in each quarter • Meeting of the Audit committee shall be held if requested by external auditors, head of internal audit and Chairman of the audit committee • The head of internal audit and external auditors represented by engagement partner or in his absence any other partner designated by the firm shall attend all meetings of audit committee at which issues related to accounts and audit are discussed. 	27(2)
The Board shall determine terms of reference of the audit committee	27(3)
The Board shall provide adequate resources and authority to enable the audit committee to carry out its responsibilities effectively and the terms of reference of the audit committee shall be explicitly documented.	27(4)
The Secretary of audit committee shall circulate minutes of meetings of the audit committee to all members, Directors, head of internal audit and where required to chief financial officer prior to the next meeting of the Board.	27(5)
The Company shall not appoint an external auditor, a firm of auditors, which has not been given a satisfactory rating under the Quality Control Review program of the Institute of Chartered Accountants of Pakistan and registered with Audit Oversight Board of Pakistan.	32(1)
The Company shall not appoint as external auditors, a firm of auditors which or a partner of which is non-compliant with the International Federation of Accountants' Guidelines on Code of Ethics, as adopted by the Institute of Chartered Accountants of Pakistan.	32(2)
The Board of a Company shall recommend appointment of external auditors for a year and its remuneration, as suggested by the audit committee and such recommendations shall be included in the Directors' Report and in case a recommendation for appointment of an auditor is other than the retiring auditor, the reasons for the same shall be included in the Directors' Report.	32(3)

Description	Regulation
Auditors shall not be appointed to provide services in addition to audit, except in accordance of Regulations.	32(4)
The Company shall ensure that the auditors do not perform management functions or make management decisions, for which Board and management of the Company is responsible.	32(5)
The person who is close relative (spouse, parents, dependents and non-dependent children) of the chief executive officer, the chief financial officer, the head of internal audit, the Company secretary or a Director of the Company shall not be appointed as external auditors.	32(7)
Every Company shall require the external auditors to furnish a management letter to its Board within 45 days of the date of audit report.	32(8)
All listed companies in the financial sector shall change their external auditors every five years.	33(1)
All listed companies other than those in the financial sector shall, at the minimum, rotate the engagement partner after every five years.	33(2)
The Company shall publish and circulate a statement, as given under Annexure A to these Regulations, along with their annual reports to set out the status of their compliance.	36(1)

Non-Mandatory Regulations

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Statement of Compliance with Listed Companies CCG Regulations 2019

The company has complied with the requirements of the Regulations in the following manner;

1. The total number of directors are ____ as per the following;
 - a. Male:
 - b. Female:
2. The composition of the Board is as follows:
 - i. Independent directors
 - ii. Non-executive directors
 - iii. Executive directors
 - iv. Female directors
3. The directors have confirmed that none of them is serving as a director on more than seven listed companies, including this company;
4. The company has prepared a code of conduct and has ensured that appropriate steps have been taken to disseminate it throughout the company along with its supporting policies and procedures;
5. The Board has developed a vision/mission statement, overall corporate strategy and significant policies of the company. The Board has ensured that complete record of particulars of the significant policies along with their date of approval or updating is maintained by the company;
6. All the powers of the Board have been duly exercised and decisions on relevant matters have been taken by the Board/ shareholders as empowered by the relevant provisions of the Act and these Regulations;
7. The meetings of the Board were presided over by the Chairman and, in his absence, by a director elected by the Board for this purpose. The Board has complied with the requirements of Act and the Regulations with respect to frequency, recording and circulating minutes of meeting of the Board;
8. The Board have a formal policy and transparent procedures for remuneration of directors in accordance with the Act and these Regulations;
9. The Board has arranged Directors' Training program for the following:
(Name of Director)
(Name of Executive & Designation (if applicable));
10. The Board has approved appointment of chief financial officer, company secretary and head of internal audit, including their remuneration and terms and conditions of employment and complied with relevant requirements of the Regulations;
11. Chief financial officer and chief executive officer duly endorsed the financial statements before approval of the Board;
12. The Board has formed committees comprising of members given below;
 - a. Audit Committee (Name of members and Chairman)
 - b. HR and Remuneration Committee (if applicable) (Name of members and Chairman)
 - c. Nomination Committee (if applicable) (Name of members and Chairman)
 - d. Risk Management Committee (if applicable) (Name of members and Chairman)
13. The terms of reference of the aforesaid committees have been formed, documented and advised to the committee for compliance;

14. The frequency of meetings (quarterly/half yearly/ yearly) of the committee were as per following;
 - a. Audit Committee;
 - b. HR and Remuneration Committee (if applicable);
 - c. Nomination Committee (if applicable);
 - d. Risk Management Committee (if applicable);
15. The Board has set up an effective internal audit function/ or has outsourced the internal audit function to who are considered suitably qualified and experienced for the purpose and are conversant with the policies and procedures of the company;
16. The statutory auditors of the company have confirmed that they have been given a satisfactory rating under the Quality Control Review program of the Institute of Chartered Accountants of Pakistan and registered with Audit Oversight Board of Pakistan, that they and all their partners are in compliance with International Federation of Accountants (IFAC) guidelines on code of ethics as adopted by the Institute of Chartered Accountants of Pakistan and that they and the partners of the firm involved in the audit are not a close relative (spouse, parent, dependent and non-dependent children) of the chief executive officer, chief financial officer, head of internal audit, company secretary or director of the company;
17. The statutory auditors or the persons associated with them have not been appointed to provide other services except in accordance with the Act, these Regulations or any other regulatory requirement and the auditors have confirmed that they have observed IFAC guidelines in this regard;
18. We confirm that all requirements of regulations 3, 6, 7, 8, 27,32, 33 and 36 of the Regulations have been complied with; and
19. Explanation for non-compliance with requirements, other than regulations 3, 6, 7, 8, 27, 32, 33 and 36 are below (if applicable):

Signature (s)
(Name in block letters)
Chairman

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