

November 02, 2010

Mr. Salman Ali Shaikh
Chairman
Security & Exchange Commission of Pakistan
NIC Building
Jinnah Avenue
Islamabad

PICG PROPOSED CHANGES TO THE CODE OF CORPORATE GOVERNANCE

Dear Sir,

This has reference to the PICG Taskforce proposed changes to the code of corporate governance and the SECP's invitation to stakeholders to submit their comments therein.

The Pakistan Business Council (PBC) as a business policy think tank representing 29 of Pakistan's largest businesses – list attached, has always supported measures that will lead to an improvement in governance practices in the corporate sector. The PBC, however, considers it appropriate to point out that the implementation of corporate governance standards should not be uniform as different companies are at varying levels of evolution. Implementation therefore has to be a gradual, pragmatic process that needs to evolve with local economic imperatives.

Attached are the PBC's comments on the proposed changes; these comments are being submitted after a detailed discussion within the membership and a meticulous review of international best practices. It is worth noting that in most of the jurisdictions, compliance is voluntary and this is exemplified by the UK model where the following principles apply:

- a). **Fit for Purpose:** Blind application of all elements of the Code is not mandatory.
- b). **Comply or Explain:** The Code is a set of principles to be applied intelligently in relation to size, complexity, nature of risks, challenges and alternative control procedures and processes. Companies either comply or explain why they choose not to comply.
- c). **Cost and effort not to outweigh benefits:** Companies are not required to follow a mechanistic approach to compliance. Benefits should outweigh the cost and effort of compliance and where not, the rationale for non compliance should be explained.

We look forward to a detailed meeting with key members of the SECP team to discuss our proposals in greater detail

Yours faithfully,



Encl: PBC Comments on the Proposed Changes to the Code of Corporate Governance

PAKISTAN BUSINESS COUNCIL'S
COMMENTS ON THE PROPOSED CHANGES TO THE CODE OF
CORPORATE GOVERNANCE

Securities & Exchange Commission of Pakistan

(Submitted: November 2nd, 2010)



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PBC Members:

 <p>Abbott A Promise for Life</p>	 <p>Allied Bank</p>	 <p>Atlas</p>	 <p>Colgate Palmolive</p>	 <p>The Dawood Group</p>	 <p>DESCON</p>
 <p>engro corp</p>	 <p>GATRON</p>	 <p>Getz Pharma</p>	 <p>gsk GlaxoSmithKline</p>	 <p>Gul Ahmed TEXTILE MILLS LIMITED, KARACHI</p>	 <p>HBL HABIB BANK</p>
 <p>ICI</p>	 <p>Indus Group of Companies</p>	 <p>TOYOTA DAIHATSU INDUS MOTOR COMPANY LIMITED</p>	 <p>INTERNATIONAL INDUSTRIES LTD.</p>	 <p>KASB</p>	 <p>LAKSON TOBACCO COMPANY LIMITED</p>
 <p>Lotte Pakistan PTA Ltd.</p>	 <p>Lucky Cement Concrete Progress</p>	 <p>MTL Millat Tractors Ltd.,</p>	 <p>NISHAT MILLS LTD.</p>	 <p>50 Years Of dedicated service to the Industry Packages Limited</p>	 <p>pakarab FERTILIZERS LIMITED</p>
 <p>Sapphire</p>	 <p>Standard Chartered</p>	 <p>SIEMENS</p>	 <p>UBL where you come first</p>	 <p>Unilever</p>	

Proposed Changes to the Code of Corporate Governance

No.	SECP proposed Change in the Code - 2002 (Proposed amendments are in bold)	PBC's Proposed Changes (Amendments are in <i>bold italics & underlined</i>)	Rationale
01.	35. All listed companies shall ensure compliance of the following Code of Corporate Governance.		
02.	(i) The Board of Directors shall have a balance of executive and non-executive directors (and in particular) independent directors and those representing minority interests with the requisite range of skills, competence, knowledge, experience and approach so that the Board as a group includes core competencies and diversity considered relevant in the context of the company's operations.	<p>(i) The Board of Directors shall have a balance of executive and non-executive directors (and in particular) independent directors and those representing minority interests with the requisite range of skills, competence, knowledge, experience and approach so that the Board as a group includes core competencies and diversity considered relevant in the context of the company's operations.</p> <p><u>Delete and Replace with:</u></p> <p>There should be a strong and independent element on the Board which is able to exercise objective judgment on corporate affairs independently</p>	The words taken from the Corporate Governance Principles in Singapore capture in a much more eloquent manner the spirit behind the inclusion of this clause

No.	SECP proposed Change in the Code - 2002 (Proposed amendments are in bold)	PBC's Proposed Changes (Amendments are in <i>bold italics & underlined</i>)	Rationale
03.	(b) the Board of Directors of each listed company shall have not less than 1/3rd or 3, whichever is higher, of the total members of the board as independent directors. At least one independent director shall have relevant experience. The Board should identify in the annual report each non-executive director it considers to be independent. The Board should determine whether the director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect the directors judgment.	(b) the Board of Directors of each listed company shall have not less than 1/3rd or 3, <u>1/5th or two (2)</u> whichever is higher, of the total members of the board as independent directors. At least one independent director shall have relevant experience. The Board should identify in the annual report each non-executive director it considers to be independent. The Board should determine whether the director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect the directors judgment.	Having more than 2 independent directors would be inappropriate for smaller Boards as it reduces the number of non-executive / executive directors who could be appointed by the shareholders. Further, the Prudential Regulations require banks to have two independent directors on the Board irrespective of the size of their Boards
04.	<i>[Explanation: For the purpose of this clause, the expression "independent director" means a director who is not connected with the listed company or its promoters or directors on the basis of family relationship and who does not have any other relationship, whether pecuniary or otherwise, with the listed company, its associated companies, subsidiaries, holding company or directors. (deleted: executive or related partied) The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent business judgment without being subservient to any apparent form of interference.</i>	<i>[Explanation: For the purpose of this clause, the expression "independent director" means a director who is not connected with the listed company or its promoters or directors on the basis of family relationships <u>being a family member</u> and who does not have any other relationship, whether pecuniary or otherwise, with the listed company, its associated companies, subsidiaries, holding company or directors. (deleted: executive or related partied) The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent business judgment without being subservient to any apparent form of interference. <u>For the purpose of this explanation a "family member" is defined as</u></i>	The purpose of this amendment is to provide a better definition of what constitutes "family relationships". This definition follows the definition in the Banking Companies Ordinance 1962 (Section 5).

No.	SECP proposed Change in the Code - 2002 (Proposed amendments are in bold)	PBC's Proposed Changes (Amendments are in <i><u>bold italics & underlined</u></i>)	Rationale
		<i><u>being a spouse, dependent lineal ascendants and descendants and dependent brothers and sisters</u></i>	
05.	Provided that without prejudice to the generality of this explanation no director shall be considered independent if one or more of the following circumstances exist:		
	<ul style="list-style-type: none"> • he has been an employee of the company, any of its subsidiaries, associated company, associated undertaking or holding company within the last three years; 	<ul style="list-style-type: none"> • he has been an employee of the company, any of its subsidiaries, associated company, associated undertaking or holding company within the last three <i><u>two (2)</u></i> years; 	A period of three years is too long and a bar is unjustified for a person with related experience.
	<ul style="list-style-type: none"> • he has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director of a body that has such a relationship with the company; 	<ul style="list-style-type: none"> • he has, or has had within the last three <i><u>two (2)</u></i> years, a material business relationship with the company either directly, or as a partner, shareholder, director of a body that has such a relationship with the company; 	A period of three years is too long and a bar is unjustified for a person with related experience.
	<ul style="list-style-type: none"> • he has received in the three years preceding his appointment as a director or receives additional remuneration excluding retirement benefits from the company apart from a director's fee or has participated in the company's share option or a performance-related pay scheme; 	<ul style="list-style-type: none"> • he has received in the three <i><u>two (2)</u></i> years preceding his appointment as a director or receives additional remuneration excluding retirement benefits from the company apart from a director's fee or has participated in the company's share option or a performance-related pay scheme; 	A period of three years is too long and a bar is unjustified for a person with related experience

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	<ul style="list-style-type: none"> he is a close relative of the company's directors or major shareholders; 	<ul style="list-style-type: none"> he is a close relative <i><u>family member</u></i> of the company's directors, (i.e. spouse, parents, dependent and non dependent children of such directors <i><u>a spouse, dependent lineal ascendants and descendants and dependent brothers and sisters</u></i>) or major shareholders <i><u>(i.e. a shareholder with minimum shareholding of 10% or more)</u></i> 	<p>For clarity, it is important to define a family member and a major shareholder so there is no ambiguity.</p>
	<ul style="list-style-type: none"> He holds cross directorships or has significant links with other directors through involvement in other companies or bodies 	<ul style="list-style-type: none"> He holds cross directorships or has significant links with other directors through involvement in other companies or bodies 	<p>The reference to cross directorships is not limited only to group companies and therefore is extremely broad. Further, the reference to "significant links" is imprecise and would require subjective judgment. In any event the relationships have already been covered sufficiently in the earlier clauses.</p>
	<ul style="list-style-type: none"> he has served on the board for more than two consecutive terms from the date of his first election or appointment provided that such person shall be deemed "independent director" if re-elected after a lapse of one term. 	<ul style="list-style-type: none"> he has served on the board for more than two <i><u>three (3)</u></i> consecutive terms from the date of his first election or appointment provided that such person shall be deemed "independent director" if re-elected after a lapse of one term. 	<p>Three Terms are allowed by the Indian Law and there is no limitation in the UK Code. In the UK Code after 9 years, the Company has to explain to the Regulator why the director is still considered independent. A person who is new in the Company would require a settling down period and his directorship would bring value to the Company in his second term.</p>

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06.	(c) executive directors, i.e., paid executives are not less than 2 and more than 1/3rd of the elected directors, including the Chief Executive.	(c) executive directors, i.e., paid executives are not less than 2 and more than 1/3rd of the elected directors, including the Chief Executive.	Companies would now have independent directors on the Board. Beyond that the division of Board members between executive and non executive directors should be left to respective Boards and no upper or lower limit should be prescribed. As currently worded the provision was specifying a minimum rather than a maximum limit. Currently some listed companies just have one Executive Director on the Board i.e. the Chief Executive and a minimum should therefore not be specified in any event
07.	QUALIFICATION AND ELIGIBILITY TO ACT AS A DIRECTOR		
	iii.No person shall be appointed as a director of more than five listed companies simultaneously. This limit shall not include directorship of a person on any number of listed subsidiary companies of a Holding company of which such person is already a director.	iii.No person shall be appointed as a director of more than <u>five seven (7)</u> listed companies simultaneously. This limit shall not include directorship of a person on any number of listed subsidiary companies of a Holding company of which such person is already a director.	For practical purposes, directorship restricted to 5 is not advisable as it would restrict investment. A restriction would discourage sponsorships of new companies by existing investors. The term already is ambiguous as it implies that provision is only applicable for directors who are currently directors of holding companies

No.	SECP proposed Change in the Code - 2002 (Proposed amendments are in bold)	PBC's Proposed Changes (Amendments are in <i>bold italics & underlined</i>)	Rationale
	<p>ix. The Chairman and the Chief Executive Officer, by whatever name called, shall not be the same person. The Chairman shall be elected from amongst the non-executive directors of the listed company. The Chairman is responsible for leadership of the board and to ensure that the Board plays an effective role in fulfilling all its responsibilities. The Board of Directors shall clearly define the respective roles and responsibilities of the Chairman and Chief Executive.</p>	<p>ix. The Chairman and the Chief Executive Officer, by whatever name called shall, <i>should preferably</i> not be the same person. <i><u>Where the offices are held by two different persons the Chairman shall should preferably</u></i> be elected from amongst the non-executive directors of the listed company <i><u>and that</u></i> the Chairman is responsible for leadership of the board and to ensure that the Board plays an effective role in fulfilling all its responsibilities. The Board of Directors shall clearly define the respective roles and responsibilities of the Chairman and Chief Executive <i><u>where the two positions are held by separate individuals.</u></i></p>	<p>It should be the discretion of the majority shareholders to decide if they would like to have separate persons for the two positions. Separation is not mandatory in the UK, India, Singapore and some other jurisdictions. In fact there are many examples of successful companies worldwide where the offices are combined.</p>
08.	<p>RESPONSIBILITIES, POWERS AND FUNCTIONS OF BOARD OF DIRECTORS</p>		
	<p>viii. Board of directors of a listed company shall ensure that: a 'Statement of Ethics and Business Practices' is prepared and circulated annually to establish a standard of conduct for directors and employees, which Statement shall be signed by each director and employee in acknowledgement of his understanding and acceptance of the standard of conduct;</p>	<p>viii. Board of directors of a listed company shall ensure that: a 'Statement of Ethics and Business Practices' is prepared and circulated annually to establish a standard of conduct for directors and employees, which Statement shall be signed by each director and employee <i><u>in the management cadre</u></i> in acknowledgement of his understanding and acceptance of the standard of conduct;</p>	<p>It is not practical to get the Statement signed and filed for each and every employee as sometimes their numbers can run into thousands. It is therefore being recommended that directors and executives be required to sign the statement.</p>

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	d) not later than two years from the coming into force of this provision, a mechanism is put in place for undertaking annually an evaluation of the Board's own performance and of its committees to enhance board performance.	d) not later than two years from the coming into force of this provision, <i>it is recommended that</i> a mechanism is put in place for undertaking annually an evaluation of the Board's own performance and of its committees to enhance board performance.	As this is a new concept, it is recommended that it should not be made mandatory at this stage. Further Boards should themselves decide the frequency depending on the size of the company and the issues faced by the Board.
09.	ORIENTATION COURSES/ DIRECTORS' EDUCATIONAL PROGRAM		
	It will be mandatory for all the directors of the listed companies to have certification under any director training/education program offered by any organization, which meets the criteria or benchmark specified by the Securities and Exchange Commission of Pakistan.	It will be mandatory for all the directors of the listed companies to have certification <i>training on an ongoing basis</i> under any director training/education program offered by any organization, which meets the criteria or benchmark specified by the Securities and Exchange Commission of Pakistan.	Directors training are a continuous process and Boards should decide what sort of training will be required by Directors. Training taken should be from a recognized institution. Certification is not a requirement in major jurisdictions.
	Provided that at least one director shall be required to have such certification up to June 30, 2011 and thereafter, every following year minimum one director on the Board shall acquire the said certification under this program.	Provided that at least one director shall be required to have such certification up to June 30, 2011 and thereafter, every following year minimum one director on the Board shall acquire the said certification under this program.	Redundant after acceptance of above

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10.	QUALIFICATION OF CFO, COMPANY SECRETARY AND HEAD OF INTERNAL AUDIT		
	B he is a postgraduate in finance from a recognized university or equivalent, having at least two years experience in handling financial or corporate affairs of a listed public company or a bank or a financial institution.	B he is a post graduate in finance <u>a graduate</u> from a recognized university or equivalent, having at least two years <u>five years</u> experience in handling financial or corporate affairs of a listed public company or a bank or a financial institution.	It is recommended that current practice be continued i.e. he is a graduate from a recognized university or equivalent, having at least five years experience in handling financial or corporate affairs of a listed company or a bank or a financial institution
	(xvii) (a) No person should be appointed as the Head of Internal Audit of a listed company unless he is:		
	(b) a part qualified accountant with two years of relevant experience in internal audit; or	(b) a part qualified accountant with two years of relevant experience in internal audit <u>or a graduate from a recognized university with five years of relevant audit experience in internal audit</u> ; or	To ensure that the incumbent is properly qualified.
11.	THE DIRECTORS' REPORT TO SHAREHOLDERS		
	The Directors' Reports of listed companies shall also include the following, where necessary: <ul style="list-style-type: none"> shareholders holding five percent or more voting rights in the <i>listed</i> company (name wise details). 	The Directors' Reports of listed companies shall also include the following, where necessary: <ul style="list-style-type: none"> shareholders holding five <u>ten (10)</u> percent or more voting rights in the <i>listed</i> company (name wise details). 	It is proposed that a shareholding of 10% should be the threshold as proposed in the definition of major shareholding.

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	<p>The pattern of shareholding shall be reported</p> <ul style="list-style-type: none"> • NIT and ICP 	ICP	ICP wound up.
12.	DIRECTORS REMUNERATION MATTERS:		
	<p>(a) Directors' remuneration packages should encourage value creation within the company, and should align their interests with those of the company. These should be subject to prior shareholder approval. Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully. The remuneration package should be structured so as to link rewards to corporate and individual performance, in the case of executive directors. In the case of non-executive directors, the level of remuneration should reflect the experience and level of responsibilities undertaken by the particular non-executive concerned. However, it should not be structured in a manner which may compromise their independence from the management.</p>	<p>(a) Directors' remuneration packages should encourage value creation within the company, and should align their interests with those of the company. These should be subject to prior shareholder approval. Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully. The remuneration package should be structured so as to link rewards to corporate and individual performance, in the case of executive directors. In the case of non-executive directors, the level of remuneration should reflect the experience and level of responsibilities undertaken by the particular non-executive concerned. However, it should not be structured in a manner which may compromise their independence from the management.</p>	<p>The Board has been elected by the shareholders and trust should be reposed in the Board.</p>

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	(b) The Board should set up a remuneration committee comprising a majority of non executive directors who are independent of Management and free from any business or other relationships, which may materially interfere with the exercise of their independent judgment. This is to minimize the risk of any potential conflict of interest.	(b) The Board should set up a <u><i>Human Resource & Remuneration Committee</i></u> comprising a majority of non executive directors who are independent of Management and free from any business or other relationships, which may materially interfere with the exercise of their independent judgment. This is to minimize the risk of any potential conflict of interest. <u><i>The committee should determine its terms of reference.</i></u>	The term "Human Resource &" has been added. It is suggested that the committee should determine its own TORs in accordance with the requirements of each company. These would be focused on policy and strategic issues rather than issues arising at an operational level (which is not a Board role). Further CEO appointment, compensation and succession planning should be done by the Board as it is too important to be left to a Committee.
13.	COMMITTEES OF THE BOARD		
	(xxix) There shall also be a Human Resources and Remuneration Committee of not less than three members comprising of non-executive directors and including at least one independent director. The board may, in addition, include CEO as a member of the committee. The chairman of the committee shall be a non-executive director. The committee shall be responsible for recommending human resource management policies to the board including executive compensation and succession planning. The committee shall specifically be responsible for recommending to the board the selection,	(xxix) There shall also be a Human Resources and Remuneration Committee of not less than three members comprising of non-executive directors and including at least one independent director. The board may, in addition, include CEO as a member of the committee. The chairman of the committee shall be a non-executive director. The committee shall be responsible for recommending human resource management policies to the board including executive compensation and succession planning. The committee shall specifically be responsible for recommending to the board the selection,	Justification as above

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	evaluation, compensation (including retirement benefits) and succession planning of the Chief Executive Officer and consideration of the CEO's recommendations on such matters for key management positions who report directly to him. The CEO shall not participate in the proceedings of the committee on matters that directly relate to his performance and compensation.	evaluation, compensation (including retirement benefits) and succession planning of the Chief Executive Officer and consideration of the CEO's recommendations on such matters for key management positions who report directly to him. The CEO shall not participate in the proceedings of the committee on matters that directly relate to his performance and compensation.	
14.	FREQUENCY OF FINANCIAL REPORTING		
	Such information shall be disseminated to the abovementioned entities as soon as any such decision is taken/finalized by its Board of Directors in a meeting of the Board held for the purpose, immediately after such Board Meeting has taken place.	Such information shall be disseminated to the abovementioned entities as soon as any such decision is taken /finalized by its Board of Directors in a meeting of the Board held for the purpose, immediately after such Board Meeting has taken place.	This is to clarify that preliminary discussions or intent will not require immediate disclosure. Disclosure will only be required when the decision is finally taken by the Board.
15.	COMPLIANCE WITH CODE		
	xiv. <ul style="list-style-type: none"> • The 'closed period', prior to the announcement of interim/final results, and business decisions, which may materially affect the market price of company's share was determined and intimated to directors, employees, stock exchange(s) and the Securities and Exchange Commission of Pakistan. 	<ul style="list-style-type: none"> • The 'closed period', prior to the announcement of interim/final results, and business decisions, which may materially affect the market price of company's share was determined and intimated to directors, employees, stock exchange(s) and the Security & Exchange Commission of Pakistan. 	For consistency with Paragraph xxvi.
	Appendix 'C'	To be modified in line with changes proposed in other sections of the Code.	For consistency.