Enhancing Transparency, Efficiency, and Shareholder-friendliness of Shareholder Meetings in Pakistan

Report of the Committee formed by the SECP

February 2024

Acknowledgment

I would like to express my deepest gratitude to my fellow committee members for their immense contribution in preparing this report. It was a great honour and privilege for me to chair a committee comprising such outstanding and accomplished professionals, namely, Mr. Abdul Samad, Mr. Ajeet Kumar, Mr. Arslan Khalid, Mr. Atif Kaludi, Ms. Saima Akbar, Mr. Sajjad Anwar, Ms. Sumaira Siddiqui, Mr. Memosh Khawaja, and Mr. Yasir Qadri. Despite the demanding work commitments of their respective occupations, the committee members were very generous with time in providing valuable inputs during the extended committee meetings as well as in writing.

I am also grateful to all the individuals and institutions that responded to the calls for comments by providing valuable inputs, which were duly deliberated by the committee and many of the issues and recommendations identified by the market participants have been incorporated in this report.

On behalf of the committee, I would like to express our utmost gratitude to Mr. Akif Saeed, Chairman SECP, and Mr. Abdul Rehman Warraich, Commissioner SECP, for appreciating the need for an in-depth review aimed at enhancing the transparency, efficiency, and shareholder-friendliness of shareholder meetings in Pakistan, and for their guidance and support in enabling this committee complete its work.

Asif Ali Qureshi, CFA
Committee Chair

Table of Contents

Abbreviations 4
Definitions 5
Introduction 6
Executive Summary 8
Shareholder Meetings 17
Election of Directors 26
Proxy Utilisation 39
Monitoring Mechanism and Technology Integration 44
Other Issues 46

Abbreviations

AGM	Annual General Meeting
CDC	Central Depository Company of Pakistan
CPHGC	China Power Hub Generation Company Limited
CRO	Company Registrar Office
DTP	Directors Training Programme
EOGM	Extra Ordinary General Meeting
GM	General Meeting
HUBCO	The Hub Power Company Limited
ICAP	Institute of Chartered Accountants of Pakistan
MUFAP	Mutual Funds Association of Pakistan
PICG	Pakistan Institute of Corporate Governance
PSX	Pakistan Stock Exchange
SECP	Securities & Exchange Commission of Pakistan
SIAS	Securities Investors Association of Singapore
SSGC	Sui Southern Gas Company Limited
TOR	Terms of Reference

Definitions

Code of Corporate Governance	Listed Companies (Code of Corporate Governance) Regulations, 2019
Companies Act	Companies Act, 2017
Postal Ballot Regulations	Companies (Postal Ballot) Regulations 2018

Introduction

Background

General meetings ("GMs") of shareholders including the Statutory Meetings, Annual General Meetings ("AGMs") and the Extra Ordinary General Meetings ("EOGMs") are the most important forms of engagement between shareholders and companies as they are the only formal structure that involves the shareholders (principals) in governance, strategic decisions and accountability of boards and management (agents) of companies.

Rising agency costs driven by changing corporate ownership structures with growing participation of institutional investors, tightening regulatory standards, increasing focus on ESG, relentless technological innovation and changing dynamics of global trade are constantly pushing the envelope of global corporate governance standards requiring increased transparency, accountability, inclusivity and efficiency.

The quality of shareholder meetings reflects on the company's commitment to attaining higher standards of corporate governance. By prioritizing transparency, engagement, and adherence to legal and regulatory requirements, companies can not only enhance the effectiveness of their shareholder meetings but also build trust among stakeholders. Additionally, staying responsive to evolving best practices and technologies can also contribute to the success of these meetings.

Pakistan's listed corporate sector has a preponderance of owner-driven companies wherein sponsors (generally private business groups) hold significant majority shareholdings. Although the standards of corporate governance have been increasing at these companies, the minority shareholders routinely express concerns about generally mediocre quality (at best) of shareholder meetings and frequent denial of shareholder rights in these meetings.

The Securities and Exchange Commission of Pakistan ("SECP" or "Commission") keeps special focus on addressing the challenges being faced by shareholders in general meetings. To this end, the SECP constituted a committee of experts ("the Committee") to review the manner of conduct of shareholder meetings by companies listed on the Pakistan Stock Exchange Limited ("PSX").

The Committee was entrusted with identifying and recommending reforms that would help enhance transparency and improve the overall manner in which the shareholders' meetings are conducted.

Terms of Reference

The Terms of Reference ("TORs") of the Committee included:

i. Review the legal provisions relating to the conduct of shareholders' meetings, identify issues being faced by market participants, particularly the minority shareholders and suggest improvements in the legal and regulatory framework to address the concerns.
ii. Review regulatory requirements governing the manner of election of directors, identify areas

for improvement and suggest reforms.

iii. Review legal and regulatory requirements and market practices relating to use of proxies, identify areas of concerns and suggest reforms.

iv. Propose appropriate monitoring mechanism of proceedings during shareholders' meetings, election of directors, voting process, proxies and recording of minutes of the meeting etc. Identify the role of technology in providing a viable and workable solution.

v. Suggest improvements in the manner of conducting shareholders' meetings, ensuring proper replies/information to the shareholders' queries and ensure compliance with relevant requirements in letter and spirit.

vi. Any other matter as deemed appropriate by the Committee in respect of conduct of shareholders' meetings.

The Committee was encouraged to engage in consultations with other experts and market participants in pursuance of the TORs and submit its final report of findings and recommendations to the Commission.

Committee Members

The Committee comprised following members:

i. Mr. Asif Ali Qureshi (Chief Executive Optimus Capital Management (Private) Limited) as the Chairman of Committee
ii. Mr. Ajeet Kumar (Chief Regulatory Officer, Pakistan Stock Exchange)
iii. Mr. Abdul Samad (Chief Operating Officer, Central Depository Company)
iv. Mr. Yasir Qadri (Mutual Funds Association of Pakistan)
v. Mr. Atif Kaludi (Pakistan Business Council)
vi. Mr. Arslan Khalid (Institute of Chartered Accountants of Pakistan)
vii. Mr. Memosh Khawaja (CEO, Pakistan Institute of Corporate Governance)
viii. Mr. Sajjad Anwar (President, CFA Society Pakistan)
ix. Ms. Saima Akbar Khattak- (Legal Consultant)
x. Ms. Sumaira Siddiqui (Additional Director, SECP)- Secretary to the Committee

Consultation Process

The Committee carried out review of the applicable regulatory provisions pertaining to the TORs, held consultations with stakeholders, sought public comments and held internal deliberations. Key issues were identified based on regulatory review and stakeholder consultations which were deliberated by the Committee, and recommendations were drawn up to address them.

Report

This report presents the findings and recommendations of the Committee.

Executive Summary

Besides fulfilling the regulatory requirements, well-organised shareholder meetings can make the minority shareholders feel part of a company in two ways. Firstly, by learning about the company's performance and business strategy while providing feedback to the company on these subjects and other issues. Secondly, by exercising their fundamental right to vote on important company matters such as election of directors, approval of annual accounts, capital restructuring, amendments in articles and memorandums, etc. However, there are concerns expressed by both shareholders and issuers over the conduct of the other party with respect to the general meetings.

Key shareholder concerns about general meetings are: i) receipt of meeting notices with delay; ii) information provided in notices is often inadequate for making informed decisions; iii) companies occasionally use 'any other business' on the meeting agenda to transact important business without prior disclosures; iv) distribution of gifts by companies at general meetings; v) low director attendance in general meetings; vi) companies choosing the mode of voting that suits the desired outcome; vii) postal ballots carry the risk of not being counted; viii) technical glitches impair the quality of hybrid meetings; and ix) changing the number of directors during the general meeting in which the election of directors is held.

On the other hand, the major concerns expressed by issuers with respect to general meetings include: i) the twenty-one (21) day notice requirement for general meetings is too long especially when urgent/time-bound matters require quicker approvals; ii) rowdy shareholders often disturb the proceedings of meeting; and iii) there is an apparent inconsistency in the regulatory requirements for providing video link facility to shareholders.

The composition and quality of the board of directors is a good indicator of a company's standard of corporate governance. Unfortunately, the absence of consolidated data about listed companies' boards (size, composition, directors' training program certification, timeliness of elections, etc.) constrained the Committee's ability to have complete perspective on the overall governance landscape of listed companies in Pakistan. Moreover, the apparent dominance of sponsor directors on the boards of listed companies in Pakistan, while arguably less desirable, is intricately tied with the country's social, legal and financial ecosystem besides the specific circumstances of individual companies.

Key shareholder concerns with respect to the election of directors include: i) occasional delays in holding of election of directors by companies; ii) unjustified rejection of nomination papers of candidates contesting election of directors; iii) companies discouraging minority shareholders from contesting elections by employing various tactics; iv) category voting shall likely reduce minority shareholder representations on company boards, v) companies do not provide reasons or cogent reasons for choosing the candidates for appointment as independent directors; and vi) independent directors are generally seen as sponsor-friendly directors.

Other issues with respect to election of directors are: i) division of votes on proportional basis across three categories seems inconsistent with Companies Act; ii) there is no defined process to deal with situations where fewer candidates file nominations in a particular category than the requisite number; iii) ambiguities in statutory provisions about appointment of nominee, executive and independent directors iv) inherent issues with appointment of government nominees on SOE boards; v) no provision is available to advance the date of election of directors when the term of office of directors falls a few days after the AGM date; and vi) there is no minimum age and qualification requirements for becoming a director.

The two key concerns of shareholders about appointment of proxies are: i) wrongful rejection of proxy forms, and ii) treating 'Authorised Representative' of a corporate entity as a proxy.

RECOMMENDATIONS

Shareholder Meetings

1. Incorporate the following fundamental principles for holding effective shareholder meetings in guidelines for corporate governance:
    a. Provide clear instructions on how to attend and participate in the meeting.
    b. Ensure shareholders can engage in the business of the meeting whether held physically or in hybrid format.
    c. Update the meeting on matters raised by stakeholder groups that materially affect strategy, performance and culture.
    d. Ensure shareholders have the opportunity to raise questions pertinent to the meeting agenda.
    e. Shareholders must be able to cast their vote in real time or via proxy.
    f. Ensure transparency with shareholders in relation to matters discussed and issued raised at the meeting.

2. The Conduct of Conduct and Best Practice for Shareholder Meetings issued by the Securities Investors Association of Singapore ("SIAS") may be adopted in Pakistan. While these guidelines cover the overall conduct of meetings (before, during and after) and applicable on both companies and shareholders, the chapter on "Rules of Etiquette Applicable to Shareholders" is particularly instructive. It lays out the guidelines for maintaining "General Decorum at the Meeting" and for "Speaking at the meeting".

3. In addition to sending the notice of general meeting to members by post, companies must ensure distribution of the same through electronic means (emails and website) and maintain verifiable record of its dissemination within the stipulated time period. The requirement of publishing meeting notices in newspapers may be done away with. Moreover, companies should be encouraged (or mandated) to add explanatory memoranda to notices (in simple language to the extent possible) particularly when any special business item is on the meeting agenda.

Furthermore, in case of mergers, acquisitions, investments, divestments, sale of assets, etc., the company should explain the basis for valuation and other considerations that the company's board of directors relied on for its decision. Additional public disclosures may be mandated when the transaction involves related parties.

4. In exceptional situations, a shorter notice period of not less than seven (7) days may be allowed for holding EOGMs when any urgent matter requires faster shareholder approvals. However, the company must disclose valid and verifiable reasons for a shorter notice period.

5. The presence of the entire board of directors along with senior management should be encouraged at shareholder meetings particularly at the AGM, while the attendance of independent directors should be made mandatory unless there are compelling reasons for any director for not attending the meeting, which should be notified in writing to the Company Secretary/Chairperson in advance. The attendance record of directors in shareholder meetings should be included in the company's annual report and also published separately on the company website.

6. All special resolutions should be put to poll and show of hands should be reserved for routine matters only. E-voting and postal ballots should be the preferred methods for voting on resolutions. Electronic voting machines or mobile application may be used to cast votes during the meeting. These measures shall help make the voting process quick and transparent. Paper ballots (in person) or by post may be eventually phased out.

7. All business items to be transacted at a shareholders meeting should be clearly listed on the meeting agenda specified in the notice for general meeting. Companies should not be allowed to transact any business which was not specifically listed in the agenda for meeting contained in the notice sent to shareholders.

8. Audio and video recordings of all shareholder meetings should be made and archived by companies, and be made readily available to the regulators, if required. Detailed technical requirements (number and positioning of cameras, audio system, capturing video/screen image of speaker, etc.) for effective audio/video recordings should be issued as separate guidelines. The sound system and display screens should be such that participants joining virtually and physically should be able to clearly hear and see each other.

9. A mechanism/procedure such as an electronic portal/communication channel should be in place to enable the individual shareholders send questions on agenda items ahead of the general meeting. Questions submitted in advance and answers to such questions should also be presented at the AGM.

10. The apparent inconsistency between Section 134 (1b) of the Companies Act and SECP's Circular No. 2021 pertaining to providing video link facility for members, needs to be rectified. The Companies Act requires a company to provide video link facility on demand by shareholders holding at least ten percent (10%) of the voting power in the company, while the SECP circular

requires the facility to be provided as a regular feature, irrespective of any such demand by shareholders with at least ten percent (10%) voting rights.

11. Distribution of gifts and serving food/refreshments should not be allowed at shareholder meetings while the annual reports be provided to shareholders through electronic means as approved by SECP or on demand at the time of meeting at (nominal) cost. The notice for a general meeting should clearly state that no gift and food shall be provided at the meeting while the hard copy of annual report shall be provided on payment of a specified charge to recover the report's cost of printing.

12. The role of the Scrutinizer may be expanded to include that of an independent Observer at the general meetings where the appointment of Scrutinizer is mandated. The independent observer would submit an Observation Report (not the minutes of the meeting) to the company within fourteen (14) working days after the meeting. Subsequently, the company can be mandated to append this Observation Report to the Minutes of the general meeting, which are then submitted to SECP/PSX, as required under the law.

13. If shareholder approval is required for change in the number of directors then it should be sought in a separate general meeting from the one in which election of directors shall take place.

Election of Directors

14. A calendar/record of director election of all listed companies should be published on PSX website. This shall enhance transparency and provide sufficient lead time to shareholders for preparing and participating in election of directors.

15. Delay in holding of election of directors shall only be permitted under extraordinary circumstances (e.g., natural calamity or court injunction) that are beyond the control of the company. Delay for any other reason should be swiftly penalized by the SECP, and directives shall be issued and enforced by the CRO/SECP for holding of the election by the subject company at the earliest possible date.

16. The scope of work for the Scrutinizer, appointed by a company in a general meeting in which election of directors is to be held, should be expanded to include the scrutiny/verification of nomination papers of candidates contesting the election of directors. The Scrutinizer shall also review due diligence carried out by a company (under section 166 of the Companies Act) on nominations filed for candidates in the independent directors' category. The acceptance or rejection of nomination of any candidate should be the Scrutinizer's responsibility. This will enhance the transparency of the process, prevent unjust rejection of nominations and reduce the risk of legal challenges to the election of directors.

17. The PICG database of independent directors should be upgraded to make it more user-friendly and it may contain fields/filters to enable companies to select independent directors according to their required expertise and experience.

18. The criteria and process for number of nominee directors on a board should be defined with clarity especially in the context of category voting for election of directors. The appointment of nominee directors either by creditors or other special interests under contractual arrangements must not put minority shareholders at disadvantage by increasing the shareholding threshold required for electing a director. Moreover, a nominee director must possess basic qualification, experience and expertise required to act as a director.

19. Section 166 (2c) of the Companies Act should be clarified to explain if a person with 10% or more shareholding of a listed company can contest the election of directors of that company in the independent director category.

20. There should be a regular independent evaluation of the board's performance at least every three (3) years by an external certified body/organization (e.g., PICG). This evaluation should be based on standardised criteria which may be laid out in the Code of Corporate Governance.

21. A casual vacancy arising in any category of directors should be filled by the board with a director fulfilling the requirements of that category or by adding additional independent/female director. This should be made part of the Code of Corporate Governance.

22. Contesting an election of directors should be made possible via the E-Governance portal to make the process transparent while allowing the shareholders to nominate contestants easily. Complete credentials and profile of contestants should be visible via the directors' database for transparency and effective voting.

23. The voting scheme under the category voting regime needs to be revised. Instead of distributing a member's total votes (shares held by him/her multiplied by the number of directors to be elected) across the three enumerated categories, he should be assigned votes on consolidated/aggregate basis which he may choose to may give to a single candidate in any category or distribute among multiple candidates in the same or different categories. This shall help serve three purposes: i) remove the apparent inconsistency between the Companies Act and the Code of Corporate Governance, ii) increase the competition in election of directors across all categories, and iii) provide a more levelled field for minority shareholders to have board representation.

24. The term 'ex-officio' director should be clarified and the process of appointment of government officials on SOE boards should be streamlined to remove any procedural hiccups and regulatory deviations.

25. Where the gap between the date of AGM and the date of election of directors is small, a minimum period may be specified wherein companies may hold election of directors at the AGM, provided that the effective date for the appointment of directors shall be the actual date on which the directors are to be appointed.

26. At least 10 years of experience at senior management level may be required for an individual to be appointed as director of a listed company.

Proxy Utilisation

27. Expand the requirement for listed companies to provide electronic voting facility, which is presently mandatory for voting on resolutions for special business and for election of directors, to all types of resolutions (ordinary and special). This shall enable the shareholders to cast their votes without physically attending the meetings thereby minimising the need for voting through proxies.

28. A digital platform for appointing proxy (e-Proxy system), operated by depository, may be introduced whereby the shareholder could electronically appoint another person as his/her proxy for shares held in CDS. This shall eliminate the risk of wrongful rejection of proxy form by any company while also saving the company time and effort consumed in verification of physical proxy forms.

29. The PSX and SECP should ensure that a company's notices for general meetings contain the correct instructions **and minimum required disclosures** to shareholders for: i) attending meetings and ii) appointment of proxies.

30. In a general meeting where a Scrutinizer is appointed under Regulation 11 of the Postal Ballot Regulations, all proxy forms received by the company shall be provided to the Scrutinizer for review along with the company secretary's decision regarding their acceptance or rejection. The Scrutinizer's report under regulation 11A (2) the Postal Ballot Regulations shall contain his comments on proxy forms accepted and/or rejected by a company.

Monitoring Mechanism and Technology Integration

31. The use of technology (E-Proxy and E-Voting) can address the shareholder concerns about rejection of proxy forms and allowing electronic voting on all resolutions (ordinary and special) shall provide greater transparency in the conduct of business during general meetings.

32. The investor information section on a company's website shall carry detailed information about the upcoming general meeting, including: i) date, time and place of meeting; ii) helpline number and email address for any queries regarding the meeting; iii) complete notice of the meeting in html format; iii) additional information/annexures preferably in machine readable/searchable format; iv) profiles of all candidates, in case of directors' elections; v) proxy form in pdf format with editable fields for blanks required to be filled in; and vi) a code of conduct for meeting.

33. Companies shall be encouraged to provide a communication channel preferably in the meeting notice for shareholders to send in their questions regarding items on meeting agenda and sharing other feedback and concerns about the company's policies and strategy. For example, a

shareholder may have questions about the annual financial statements to be approved in AGM. The company may choose to address the shareholder questions and concerns ahead of the meeting or during the meeting.

34. All general meetings whether held in physical, virtual or hybrid format shall be video-recorded with good sound and picture quality. The meeting recordings from all cameras shall be professionally edited and converted into a single recording. It shall be ensured that no speech/dialogue is edited out. The source video recordings and the final edited version shall be kept safe by the company for a period of at least three (3) years.

35. A YouTube channel may be created by PSX, SECP or PICG for creating awareness and educating shareholders on different aspects of general meetings including the applicable regulatory provisions, rights and responsibilities, code of conduct, penalties for misconduct, how to ask questions, etc. The channel shall be promoted via other social media platforms and advertising media.

36. The launch of E-Governance portal currently being jointly developed by CDC and PICG will be an interactive and user-friendly platform designed to provide shareholders with easy access to comprehensive information on corporate governance practices. It will serve as a one-stop hub for resources, training, and learning modules, catering to shareholders of various levels of experience and expertise. Furthermore, it will include services to assist in corporate governance functions, such as e-Meetings, e-Voting and e-Proxy, and thus equip the shareholders and issuers with the tools to make sound governance decisions. The portal will be helpful in enhancing shareholder knowledge, fostering engagement and empowering shareholders.

The Role of Institutional Investors

37. The regulatory and corporate governance structure of institutional investors in Pakistan needs overhauling. While asset management companies and insurance companies are already regulated by the SECP, all pension and other employee benefit funds should also be brought under the regulatory domain of the SECP. This could be done by the government mandating that all pension and employee benefit funds can only be managed by a fund manager licensed by the SECP.

38. With listed companies now required to offer video link facility for all general meetings, institutional investors should be required to ensure participation in as many general meetings of investee companies as possible. In case of overlapping general meetings of investee companies, an institutional investor should prioritise meetings and record the reasons for attending or skipping meetings. The reasons may include the relative size of investment in company, meeting agenda (transaction of special business), election of directors, etc.

39. The participation of institutional investors in general meetings of investee companies shall either be in person through their representative (who must be an employee of the institutional investor and not otherwise associated with the investee company), or by using the video link facility. An

institutional investor shall not appoint any third person as proxy for participating in any general meeting of the investee company.

40. As listed companies are now required to provide electronic voting facility to members for all businesses classified as special business under the Companies Act and for election of directors, the institutional investors must ensure that they vote electronically on these matters for all companies in their portfolios.

41. The institutional investor's voting policy (prescribed under the stewardship guidelines and/or other regulatory requirements) shall lay out the guidelines/criteria for voting in election of directors of investee companies based on principles of diligence, independence and transparency. The institutional investor shall maintain sufficient documentation to demonstrate compliance with the voting policy.

42. Institutional investors shall maintain complete record of how they voted on resolutions in the general meetings of investee companies.

Corporate Briefings

43. Only PSX's video link service/facilities should be used by listed companies for holding CBS and the latest audio and/or video CBS recordings must be kept available at a centralised online library of PSX and company websites for reference/use of market participants.

44. The CBS must be moderated by a company's Investor Relations manager or other executive of the company.

45. The primary audience for CBS are investment analysts and fund managers and they should be permitted to attend in-person CBS only after registration. No walk-in participation in CBS should be permitted.

46. No refreshments should be served and any no gifts/souvenirs distributed at the CBS. This should be clearly stated in the company's announcement for the CBS.

Book Closure Timeline

47. In order to streamline the process, guidelines are required to be issued to companies to avoid starting the book closures on the weekends and/or public holidays.

Corporate Governance Department at SECP

48. A dedicated Corporate Governance Department needs to be setup at SECP whose objective shall be to collaborate with different companies, PICG, shareholders, investors. This department would deal with all corporate governance matters and will be responsible for:

i. Introduction of the regulatory reforms in line with international best practices for all companies to whom the governance framework is applicable, to facilitate the corporate sector in doing business while also protecting the interest of minority shareholders;
ii. Providing feedback/ clarifications on compliance with the requirements of the CCG regulations
iii. Issuing Guidelines/ FAQs
iv. Collaborating with the PICG in identifying gaps in governing models and implementing procedures, create awareness.

Shareholder Meetings

Background

While shareholder meeting is not the only mode of engagement between a company and its shareholders, its importance as a formal forum for interactive exchange between the board, management and shareholders, particularly the minority shareholders, cannot be overemphasised. Besides fulfilling the regulatory requirements, well-organised meetings can make the minority shareholders feel part of company in two important ways. Firstly, by providing an opportunity for the shareholders to learn about the company's performance and business strategy from the company's management while offering the opportunity to provide feedback to the management on these matters and other issues of concern for the shareholders. Secondly, by enabling the shareholders to vote on important company matters such as election of directors, approval of annual accounts, capital restructuring, amendments in articles and memoranda, etc.

With increasing focus on corporate governance and the growing role of institutional investors, the shareholders meetings have been an important area of research and regulatory reforms globally. A recent working paper[1] published by the European Corporate Governance Institute ("ECGI") noted that shareholder meeting suffer from several limitations as an engagement mechanism including: i) being once-a-year event with highly structured agenda, mostly comprising already known information, being discussed in public glare, the shareholder meetings provide limited opportunity for the shareholders to enter into fluid, interactive and candid discussions regarding a company's affairs; ii) shareholder attendance in meetings is generally very low in most jurisdictions; iii) the act of voting only provides shareholders with an opportunity to signal approval or disapproval of the particular proposal reflected in the resolution put to the vote; it does not allow for discussion or negotiation of the proposal or potential alternatives; iv) the institutional investors with large number of companies in their portfolios face challenge in focusing attention on individual shareholder meetings as most annual meetings are held within a short time period; v) unfavourable legal rules can also frustrate shareholders' ability to use voting at shareholder meetings to exert influence; and vi) the shareholder meeting, as currently constructed, does not provide an ideal engagement forum for many so called 'retail' shareholders.

In addition to the aforementioned set of limitations affecting the shareholder meetings universally, the usefulness of shareholder meetings in achieving their fundamental objectives is further diminished in Pakistan by the unhelpful attitudes, ranging from indifference to hostility, of companies' managements, boards (dominated by the sponsors' representatives) and minority shareholders.

The remaining part of this chapter comprises three sections, including, 1) a review of the legal provisions governing the shareholder meetings; 2) key issues that diminish the effectiveness of shareholder meetings; and 3) recommendations for improving the effectiveness of shareholder meetings.

[1] Tim Bowley, Jennifer G. Hill & Steve Kourabas, "Shareholder Engagement Inside and Outside the Shareholder Meeting" (June 2023), ECGI

Regulatory Review

The Companies Act requires every company to hold its annual general meeting within one hundred and twenty (120) days from the close of its financial year. The notice of the meeting is required to be disseminated to every member of the company, published in English and Urdu language newspapers and placed on the company website, twenty-one (21) days before the meeting date. The general meeting notice must include the time, date and place of the meeting, and the general nature of businesses to be transacted. In case of special business, a statement setting out all material facts and draft resolutions must also be enclosed with the notice. The notice of the meeting is required to prominently set out the member's right to appoint proxy and the proxy form must also be enclosed with the notice. In addition to physical holding of general meetings (as a regular feature), the companies must make arrangements for simultaneous holding of general meetings through zoom, webinar or other electronic means. E-voting and ballot paper facilities are required to be provided to every member is case of special business and election of directors.

For the election of directors, existing directors are required to fix the number of directors to be elected in the general meeting, not later than thirty-five (35) days before such meeting. The notice of the meeting for election of directors must expressly state the number of directors fixed and the names of the retiring directors.

Statement of material facts annexed to the notice must indicate the justification for choosing the candidate for independent director. All notices received by the company, must be transmitted to members not later than seven (7) days before the date of the meeting in the same manner as for general meetings. The notice is required to contain information regarding the Independent and Female Directors i.e., names, profile and category for which he/she is contesting the election of director, and justification for selecting the candidate for the appointment of independent director.

Key Issues

1. **Delays in receipt of meeting notices and matters requiring shorter notice periods**

   Sections 132 and 134 of the Companies Act require that the notice for a general meeting of shareholders shall be disseminated to every member, auditor and director and shall also be sent to the Commission and published in English and Urdu languages, at least twenty-one (21) days before the meeting.

   However, delayed receipt of notice of meeting is a common complaint of minority shareholders. The delays are particularly problematic when the shareholder intends to contest in the election of directors for which nominations are required to be filed with the company at least fourteen (14) days before the date of the general meeting, or when he/she wants to assign someone else as their proxy for which the proxy forms must reach the company at least forty-eight (48) hours before the meeting time.

On the other hand, some companies find the twenty-one (21) day notice period to be outdated given the technological advancements in communication. Moreover, sometimes the urgent nature of business requires an early shareholders' approval but the current legal provisions do not permit a shorter notice period for general meeting for listed companies. As a case in point, HUBCO held an EOGM on a five (5) day notice in February 2023 to get shareholders' approval for issuance of a Corporate Guarantee in favour of its associated company, CPHGC, as required by the latter's lenders, to replace an expiring Standby Letter of Credit. The company issued the notice on February 15, 2023 for the EOGM to be held on February 20, 2023. The substitution of Standby Letter of Credit with Corporate Guarantee was beneficial for the company and its shareholders but the company had to breach the statutory requirement of twenty-one (21) day notice period.

2. Inadequate disclosures for making informed decisions about complex matters

At times, the meeting agenda items and related text of resolutions are not easy for ordinary shareholders to fully comprehend due to the inherent complexity of the subject. Moreover, the additional information (statement of material facts) released for certain corporate actions requiring shareholder approval is also sometimes inadequate to enable the shareholders arrive at well informed decisions.

Matters such as financial restructuring, investments in associated companies, mergers, acquisitions, and divestments are areas where most individual and sometimes even institutional investors struggle due to scarcity of details. For example, the valuation reports prepared by independent financial advisors that board of directors rely on to approve share swap ratio for mergers are generally not made available to the minority shareholders while the sponsor shareholders may have access to it by virtue of their presence on the company's board. This creates informational asymmetry between the sponsors and the minority shareholders.

3. Using 'any other business' as backdoor for approval of important items

Generally, the last item listed on the meeting agenda on the meeting notice sent to shareholders is "to transact any other business with the permission of the chair". This is sometimes used as a backdoor by some companies to push through other material items which otherwise should have been specifically disclosed in the notice of meeting.

4. Rowdy shareholders often disturb the proceedings of meeting

Some individuals are known for buying small number of shares (up to a few hundred) in listed companies just for attending their shareholder meetings as means for extracting financial and other benefits such as collecting annual reports for sale, asking companies for gifts, feasting meals, asking management for personal favours such as employment, etc. These individuals often attend shareholder meetings as a group and display total disregard for meeting decorum by interjecting while company management or other shareholders are speaking, by talking loudly, hackling, and other forms of anti-social behaviour. On the other hand, company managements sometimes also 'use' these rowdy shareholders to rush through the meeting agenda.

5. Companies distributing gifts at meetings

While Section 185 of the Companies Act strictly prohibits companies from distributing gifts in any form to their members at general meetings, some companies reportedly indulge in such activities to ensure, arguably, an orderly conduct of the meeting by pacifying the rowdy, fractional shareholders.

6. Directors presence in shareholder meetings is generally thin

The Code of Corporate Governance mandates that all directors of a company shall attend its general meeting(s) unless precluded from doing so due to any reasonable cause. However, the attendance of directors in shareholder meetings is generally observed to be low, especially in case of smaller companies. Thin attendance of directors in shareholder meetings is reflective of lower importance that they assign to engagement with minority shareholders. This indifferent attitude is sometimes driven by actual or perceived lack of meaningful contribution from the minority shareholders in general meetings.

7. Companies choose the mode of voting that suits the desired outcome

According to the Companies Act, a resolution put to vote at a general meeting shall be decided on a show of hands, unless a poll is demanded. As per the Companies Act, the poll may be ordered by the chairman of the meeting on his own accord or if demanded by members (present in person or by proxy or through video link) holding at least ten percent (10%) of the voting power. Moreover, the Postal Ballot Regulations allow the members to cast their votes using e-voting facility till 5.00 PM on the date preceding the date of the poll.

There have been some complaints from minority shareholders about instances where the companies ignored the calls for poll (demanded in person or through video link) and used the show of hands to push through the agenda items. On a show of hands, every member present in person has one vote irrespective of the number of shares he/she holds. Moreover, votes polled using e-voting system ahead of the meeting are not taken into account if the resolution is decided on show of hands. The result of vote on a resolution may change if votes are counted rather than carrying it on show of hands.

8. Apparent inconsistency in the regulatory requirements for video link facility

Section 134 (1b) of the Companies Act requires a company to provide video link facility if members holding at least ten percent (10%) of the company's paid-up capital, demand such facility for attending the meeting. However, SECP's circular no. 4 of 2021 directs all listed companies to ensure participation of members in general meeting through electronic means as a regular feature, in addition to the requirement of holding physical meeting.

While the SECP circular directs companies to offer video link facility for all general meetings, some companies offer this facility only when it is demanded by members holding at least ten percent

(10%) of the voting rights, based on the argument that law (Companies Act) take precedence over regulatory directive (SECP circular).

9. Postal ballots carry risk of not being counted

Regulation 4 (1A) of the Postal Ballot Regulations requires listed companies to provide the right to vote through postal ballot to their members for all businesses classified as special business under the Companies Act and in case of election of directors. However, voting through postal ballots seem outdated in the modern age of communication whilst also being prone to either unwarranted rejection by companies or not being counted due to delays in delivery by postal service.

10. Technical glitches impair the quality of hybrid meetings

Members joining general meeting via video-link often find themselves at a disadvantage as compared with those attending the meeting in person, for a variety of technical reasons. Firstly, those connected online are generally unable to hear the questions of the members attending the meeting in person and the reverse is also sometimes true. Secondly, the online participants often do not get the opportunity to ask questions when they raise hands and/or send questions via chat box feature of the video conferencing application. Lastly, the quality of video/voice quality is generally not good due to connectivity issues.

11. Change in the number of directors fixed by the Board

According to section 159 (1) of the Companies Act, the existing directors of a company shall fix the number of directors to be elected in the general meeting, not later than thirty-five (35) days before convening of such meeting and the number of directors so fixed shall not be changed except with the prior approval of the general meeting in which the election is to be held. However, change in the number of directors during the general meeting in which the election of directors is to be held creates additional challenges as the process of filing nominations and voting through postal ballots and e-voting is completed ahead of the general meeting.

Changing the number of directors during the general meeting from what was earlier disseminated in the notice of the meeting can be potentially detrimental to the interest of minority shareholders who had already voted (through postal ballot or e-voting) or had worked out a voting plan based on the earlier notified number of directors. Although rarely but some companies have reduced the number of directors during the general meeting to increase the minimum threshold of votes required for minority shareholder director to get elected.

Recommendations

1. Adopt fundamental principles for holding effective shareholder meetings

The Code of Corporate Governance should define a set of fundamental guiding principles to be followed by all listed companies for holding effective shareholder meetings. One such set of seven (7) principles were proposed in an article[2] published by the partners of a UK law firm, Farrer & Co. These principles cover pre, during and post meeting engagements with shareholders. These principles are:

i. Provide clear instructions on how to attend and participate in the meeting.
ii. Ensure shareholders can engage in the business of the meeting whether held physically or in hybrid format.
iii. Update the meeting on matters raised by stakeholder groups that materially affect strategy, performance and culture.
iv. Ensure shareholders have the opportunity to raise questions pertinent to the meeting agenda.
v. Shareholders must be able to cast their vote in real time or via proxy.
vi. Ensure transparency with shareholders in relation to matters discussed and issued raised at the meeting.

2. Code of conduct for shareholder meetings should be defined and enforced

Shareholder meetings that are well-structured and carried out in a congenial environment are mutually beneficial for both sides i.e. companies and their shareholders. There is a need for defining and enforcing the baseline code of conduct for companies and shareholders.

The Securities Investors Association of Singapore ("SIAS") has published the "Conduct of Conduct and Best Practice for Shareholder Meetings[3]". While this document covers the overall conduct of meetings (before, during and after), and is applicable to both companies and shareholders, the chapter on "Rules of Etiquette Applicable to Shareholders" is particularly instructive. It lays out the guidelines for maintaining "General Decorum at the Meeting" and for "Speaking at the meeting". These guidelines may be adopted in Pakistan and made part of the notice for the general meetings.

3. Timely and effective communication of meeting agenda

In addition to sending the notice of general meeting to members by post, companies must ensure distribution of the same through electronic means (emails and website) and maintain verifiable record of its dissemination within the stipulated time period. The requirement of publishing meeting notices in newspapers may be done away with. A separate section on the company website, with distinct and noticeable link on the homepage, should contain all the information about the upcoming general meeting. This should include the meeting notice, proxy form and any supplementary information.

[2] Simon Ward, Richard Lane and India Benjamin, "Good governance guide: effective shareholder meetings", (2012)
[3] https://www.sid.org.sg/images/PDFs/Resources/GUIDE_ON_BEST_PRACTICES_FOR_SHAREHOLDER_MEETINGS_OF_LISTED_COMPANIES.pdf

Moreover, companies should be encouraged (or mandated) to add explanatory memoranda to the notices (in simple language to the extent possible) particularly when any special business item is on the meeting agenda. In case of mergers, acquisitions, investments, divestments, sale of assets, etc., the company should explain the basis for valuation and other considerations that the company's board of directors relied on for its decision. Additional public disclosures may be mandated when the transaction involves related parties.

4. Shorter notice periods may be considered for urgent matters

In exceptional situations, a shorter notice period of not less than seven (7) days may be allowed for holding extraordinary general meeting when any urgent matter requires faster shareholder approvals. However, a company must have valid and verifiable reasons for a shorter notice period.

5. Mandatory attendance of directors in shareholder meetings

The presence of the entire board of directors along with senior management should be encouraged at shareholder meetings particularly at the AGM, while the attendance of independent directors should be made mandatory unless there are compelling reasons for any director for not attending the meeting which should be notified in writing to the Company Secretary/Chairperson in advance. The attendance record of directors in shareholder meetings should be included in the company's annual report and also published separately on the company website.

6. Polls should be made mandatory for all special resolutions

All special resolutions should be put to poll and show of hands should be reserved for routine matters only. E-voting and postal ballots should be the preferred methods for voting on resolutions. Electronic voting machines or mobile application may be used to cast votes during the meeting. These measures shall help make the voting process quick and transparent. Paper ballots (in person) or by post may be eventually phased out.

In Hong Kong, the listing rules[4] require that any vote of shareholders at a general meeting must be taken by poll except where the chairman, in good faith, decides to allow a resolution which relates purely to a procedural or administrative matter to be voted on by a show of hands.

7. No special business should be transacted without proper disclosure

All business items to be transacted at the shareholder meeting must be clearly listed in the meeting agenda specified in the notice for general meeting. Companies must not transact any business which was not specifically listed in the agenda for meeting contained in the notice sent to shareholders.

8. Audio and video recording of shareholder meeting should be mandatory

Audio and video recording of all shareholder meetings should be made and archived by companies, and be made readily available to the regulators, if required. This will encourage better behaviour

[4] Rule 13.39 (4), Listing Rules and Guidance, HKEX

during the general meetings by company's management, directors and shareholders. Moreover, the audio recordings shall also help streamline the minute-taking process while serving as evidence in case of any disagreement about the meeting minutes.

Detailed technical requirements (number and positioning of cameras, audio system, capturing video/screen image of speaker, etc.) for effective audio/video recordings should be issued as separate guidelines. The sound system and display screens should be such that participants joining virtually and physically are able to hear and see each other.

9. Receiving questions in advance from shareholders

A mechanism such as an electronic portal should be in place to enable the shareholders send questions on agenda items ahead of the general meeting. This will allow the company's management and board to address such questions during the meeting.

10. Regulatory variations pertaining to hybrid meeting should be addressed

The apparent inconsistency between Section 134 (1b) of the Companies Act and SECP's Circular No. 2021 pertaining to providing the video link facility for members, needs to be rectified. The Companies Act requires a company to provide video link facility on demand by shareholders holding at least ten percent (10%) of the voting power in the company, while the SECP circular requires the facility to be provided as a regular feature, irrespective of any such demand by shareholders with at least ten percent (10%) voting rights.

11. No gifts, refreshments at meetings and annual reports be provided at printing cost

In addition to enforcement actions against companies that distribute gifts at shareholder meetings, there is also a need for action against the individuals who demand gifts and favours at meetings or display anti-social behaviour during the meetings. Video recording shall help in preventing such demands and behaviour while also providing the evidence for enforcement actions, if required. There should also be restriction on serving meals, tea or refreshments at the shareholder meetings. Lastly, hard copy of company's annual report should be made available on a payment covering the printing cost. The notice for general meeting should clearly state that no gift and food shall be provided at the meeting and that the hard copy of annual report shall be provided on payment of specified amount.

12. Scrutinizer to also act as 'Observer' at shareholder meetings

The role of the Scrutinizer may be expanded to include that of an independent Observer at the general meetings where the appointment of Scrutinizer is mandated. The independent observer would submit an Observation Report (not the minutes of the meeting) to the company within fourteen (14) working days after the meeting. Subsequently, the company can be mandated to append this Observation Report to the Minutes of the general meeting, which are then submitted to SECP/PSX, as required under the law.

13. General meeting for change in number of directors should be segregated from that held for election of directors

The number of directors should be fixed ahead of the general meeting in which the election of directors is set to take place and if shareholder approval is required for change in the number of directors then it should be sought in a separate general meeting from the one in which election of directors shall take place.

Election of Directors

Regulatory Review

Companies Act and the Code of Corporate Governance constitute the statutory framework governing the formulation and workings of a company's board of directors. Following are the key provisions pertaining to election of directors that are relevant to the scope of work of the committee.

- A listed company shall have not less than seven (7) directors and only a natural person can be a director of a company. The chief executive officer of a company is treated as a deemed director with all the rights and responsibilities of a director.
- Directors comprising the board of a company fall into three main types: (i) non-executive directors that include independent directors, (ii) executive directors from amongst employees of the company, and (iii) nominee directors that represent special interests or creditors of a company.
- The term of office of an elected director is three (3) years and any casual vacancy is filled by the directors and the person so appointed shall hold office for the remainder of the term of the director in whose place he is appointed.
- The existing directors continue to perform their functions until their successors are elected. In case of any impediment in holding timely elections, the directors are required to report the same to the registrar within forty-five (45) days before the due date of the general meeting for election of directors. The elections cannot be delayed for more than ninety (90) days from the due date or such extended time as may be allowed by the registrar in case of exceptional circumstances beyond the control of the directors or in compliance of any order of the court.
- The election of director shall take place in a general meeting and the existing directors shall fix the number of directors to be elected not later than thirty-five (35) days before the convening of such meeting. The number of directors so fixed cannot be changed except with prior approval of the general meeting in which the election of directors is to be held.
- The notice of general meeting for election of directors must be sent to all members at least twenty-one (21) days before the date of the general meeting. The notice must expressly state i) the name of directors fixed by the board and ii) the names of retiring directors.
- Any member seeking to contest the election must file a notice of his intention to offer himself for election as a director, with the company not later than fourteen (14) days before the date of the general meeting for election of directors. However, any such person may withdraw his notice at any time before the holding of election.
- All nominations for election of director received by the company shall be transmitted to the members not later than seven (7) days before the date of the general meeting for election of directors. In the case of a listed company such notice shall be published in English and Urdu language in at least on issue of daily newspaper of respective language.
- Effective from July 2023, the election of directors of a listed company is required to take place in three (3) categories: i) female director, ii) independent director, and iii) other directors. The

maximum number shall be one (1) in female director category and at least two (2) or one-third (1/3) of the board strength, whichever is higher, in the independent directors' category. All remaining directors shall fall in the category of other directors.

- For the purpose of election of directors (when contesting candidates are more than the number of directors to be elected), total voting rights allocated to each shareholder are equal to the total number of shares held by him multiplied by the total number of directors to be elected. Under the category voting regime, these voting rights are divided into three categories in proportion to the number of board seats in such category. However, as percentage of total votes in any category, a member's total voting rights are the same as his overall percentage shareholding in the company.
- An independent director as a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest. Section 166 (2) of the Companies Act defines the specific circumstances in which a director shall not be considered independent.
- An independent director shall be selected from the databank maintained by PICG for this purpose. Companies shall exercise their own due diligence before selecting an individual as candidate for selection as an independent director. Moreover, the justification for selection of a candidate for appointment as independent director shall be provided in the statement of material facts to be attached with the notice of general meeting for election of directors.
- Subsequent to election of directors, if a member acquires requisite shareholding to have himself elected as a director of the board of a company then he may require the company to hold fresh elections and the board of the company shall hold fresh elections within thirty (30) days from the receipt of such requisition.
- The Court may, on the application of members holding ten percent (10%) of the voting power in a company, made within thirty days (30) of the date of election, declare the election of all directors or any one or more of them invalid, if it is satisfied that there has been material irregularities.

Key Issues

1. **Non availability of the statistics/consolidated data on the board composition, elections due date etc. constrained analysis**

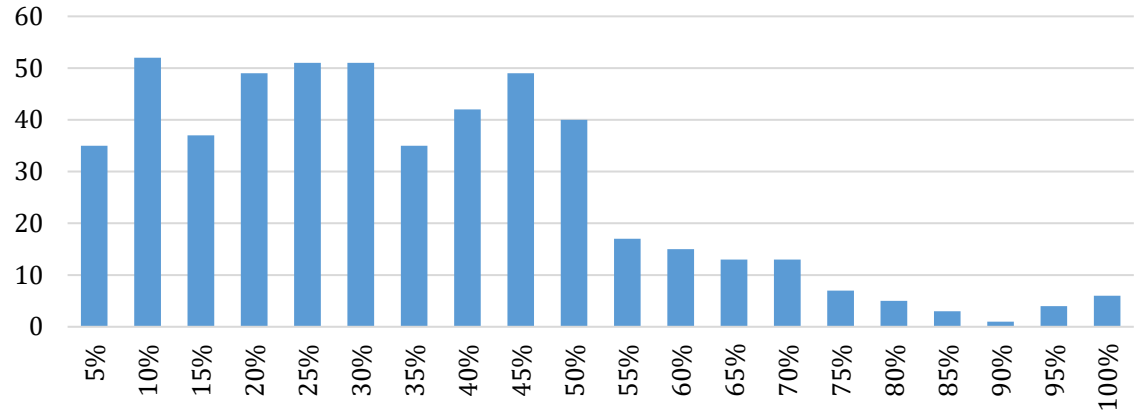
   The composition and quality of the board of directors is a good indicator of a company's standard of corporate governance. Unfortunately, the absence of consolidated data about listed companies' boards (size, composition, directors training program certification, timeliness of elections, etc.) has constrained the Committee's ability to have complete perspective, backed by statistical evidence, on the overall governance landscape of listed companies in Pakistan. Statistics about the size of companies' boards and their composition in terms of independent, female, nominee, executive and non-executive directors is apparently not being consolidated by any institution.

2. Board composition and corporate governance issues cannot be viewed in isolation

The dominance of sponsor directors on the boards of listed companies in Pakistan, while arguably less desirable, is intricately tied with the country's social, legal and financial ecosystem besides the specific circumstances of individual companies. The overall ecosystem is defined by the state of development of private enterprise, capital markets, banking sector and legal system as well as cultural factors.

Pakistan has a bank-dominated financial sector which links the supply of credit to borrowers with the financial strength and commitment to its sponsors, especially in case of project financing. Moreover, with dearth of risk capital, the country's capital markets are stuck in perpetual infancy offering little supply of outside financing to companies. As the supply of capital pivots around the sponsors, companies essentially become an extension of their sponsors who end up holding majority or super majority ownership in companies. This is manifested in a relatively low overall market free-float of less than 27%. Moreover, only 15% of the total listed companies have free float of more than 50%. With skewed risk-reward distribution between sponsor and minority shareholders, there is a tendency for sponsors to retain greater control over the boards of their companies.

Chart-1: PSX: Number of Companies by Free Float



Source: PSX

The ownership structure and board composition of companies are closely linked with the level of development of economies and capital markets of their home countries. The lack of availability of consolidated data analysis available to the Committee, as explained above, the comparison of board structures in Pakistan could not be done. However, a study published by India's Institutional Investor Advisory Services in May 2021 analysing the board composition, structure and oversight of listed companies in India (NIFTY 500) provided an interesting peer comparison with companies in the US (S&P 500) in Box-1 below:

Box-1: Board Structures – India vs. the United States

	S&P 500	NIFTY 500
Average board size	10.7	9.1
Independent directors as % of all directors	85%	49%
Women as a % of all directors	28%	17%
Boards with at least one-woman director	100%	95%
Independent chairperson	34%	22%

Source: Indian Board: Structure and Breadth, Institutional Investor Advisory Services, May 2021
S&P 500 data is based on proxy year 24 May 2019, through 20 May 2020.
NIFTY 500 data is as on 31 December 2020.

The US companies in S&P500 have larger boards and significantly higher percentages of independent directors, women directors and independent board chairpersons than the companies in NIFTY 500.

Independent directors comprised 85% of the total board members in the US compared with 49% in India. The differences in board composition are reflective of company ownership structures in the two countries. While Indian companies are predominantly owned and controlled by promoters, the US companies are largely owned institutionally and managed professionally.

3. Delays in holding of election of directors

The Companies Act fixes the term of office of a director at three (3) years. Fresh election of directors are held on completion of the term of the board but the existing directors continue to hold their positions until their successors are appointed. However, it has been noted that election of directors upon the expiry of the term of office are occasionally delayed by companies and the reasons for the delay are sometimes not publicly disclosed.

Section 158 of the Companies Act requires that if for some genuine reason it is not possible to conduct election in time, directors shall inform the registrar, forty-five (45) days before the due date of AGM/EOGM in which election of directors is to be held, about the impediment in holding the election on due date, "provided that the holding of annual general meeting or extra ordinary general meeting, as the case may be, shall not be delayed for more than ninety (90) days from the due date of the meeting or such extended time as may be allowed by the registrar, for reasons to be recorded, only in case of exceptional circumstances beyond the control of the directors, or in compliance of any order of the court." Further, immediate steps must be taken by retiring directors to overcome such practical difficulties and to conduct the election without any further delay.

Delays in holding election of directors are more common in case of SOEs although private companies also sometimes push board elections beyond the due date. Generally, the 'impediments' in holding timely elections are not announced through the PSX even when companies notify

seeking extension in holding election of directors from the SECP. In some cases, no announcement is made at all by companies even when the election of directors is delayed by a few months.

In case of SOEs, the delay in elections is generally at the behest of their line ministries. For example, the term of the current board of directors of Sui Southern Gas Company Limited ("SSGC") completed on 28th October 2022 but despite the lapse of more than fourteen (15) months since the expiry of the directors' term of office (at the time of writing of this report) the new board elections are yet to be held.

Under Section 158 of the Companies Act, the registrar is empowered to direct a company to hold its AGM or EOGM for the election of directors upon expiry of any extension allowed to it by the SECP, and non-compliance with such direction shall result in an offence liable to a fine of level 2 on the standard scale. However, SECP/CRO seem to adopt a softer stance about delay in holding election of directors by SOEs allowing them successive extensions even after issuing directives to hold election of directors on/by a specified date.

Sometimes, private companies also delay board elections particularly in situations where the sponsor shareholders fear losing majority control of the board or when they suspect that some 'unfriendly' minority shareholders may be in a position to have their representatives elected as directors even if the sponsors would continue to retain the control of the board. The delay tactics are used to negotiate with such shareholders to dissuade them from contesting board elections themselves or through proxies.

4. Rejection of candidates' nominations resulting in litigation

Section 158 of the Companies Act, provides for the procedure for the election of the directors and the persons interested to contest election file their nominations their nominations fourteen (14) days before the date of election. However, it has been noted that the nomination papers of contesting candidates representing minority shareholders are sometimes rejected by companies on arbitrary grounds. Such rejections often lead the aggrieved contestants to challenge the rejections in the court of law who may grant injunction against holding the election of directors till the final decision of the court.

As a case in point, Hum Network Limited ("HUM") published notice on July 24, 2020 for holding its 9th EOGM for election of directors on August 22, 2020. The number of directors was fixed at seven (7). On August 13, 2020, the Company announced that it had received fifteen (15) notices of intention to contest elections as directors and that on scrutiny of papers, the Company had found eight (8) contestants to be ineligible to contest elections as their nominations were in violation of, inter alia, Regulation 11(1) and (3) of PEMRA (Television Broadcast Station Operations) Regulations 2012, as well as directions issued recently by PEMRA to the Company regarding the change in management or control of the Company. The election of directors was questioned by the candidates declared ineligible by the Company while the elected directors also filed a suit in the Sindh High Court which stayed the election of the directors until the court had decided the case.

With the decision of the court still awaited, the board elections of HUM have been overdue for almost 3.5 years.

5. Discouraging minority shareholders from contesting elections

Regulation 5 of the Code of Corporate Governance requires that minority shareholders, as a class, shall be facilitated by the board to contest election of directors by proxy solicitation. However, local business groups, including some large conglomerates, are generally averse to the idea of meaningful outside representation on the boards of companies wherein they are the largest shareholders. There is a general corporate tendency of having boards comprising directors that are elected uncontested i.e., the number of nominations filed for contesting the elections do not exceed the number of directors to be elected. To keep the minority shareholder representation on boards minimal, company sponsors employ various tactics to discourage the minority shareholders from fielding their candidates in the election of directors.

6. Category voting is likely to reduce minority shareholders' representation on boards

Under the regulations of the Code of Corporate Governance, listed companies are required to have at least two (2) or one-third (1/3) of the total board strength, whichever is higher, of the board as independent directors and at least one (1) female director. However, a number of listed companies are non-compliant with these requirements.

Under the recent amendment to the Code of Corporate Governance by addition of "Regulation 7A, voting in separate categories for female and independent directors in the election of directors", the election to the board shall take place in three categories: i) female director, ii) independent director, and iii) other directors. The maximum number of seats shall be one (1) in female director category and at least two (2) or one-third (1/3) of the board strength, whichever is higher, in the independent directors' category. All remaining directors shall fall in the category of other directors.

Total voting rights for each shareholder are equal to the total number of shares held by him/her multiplied by the total number of directors to be elected. However, in category voting, these voting rights shall be divided into three categories in proportion to the number of board seats in such category. For example, a person holding X% shares in a company will have X% of total voting rights in each category.

While the introduction of category voting is intended to ensure representation of female and independent directors on the boards, it increases the shareholding threshold required for candidates of minority shareholders to be elected to the board.

Example: Category Voting vs. General Voting

Sponsors hold 70% shareholding a company that has a seven (7) member board.

Category Voting	**General Voting**

• Independent Directors[5]: 2 • Sponsor Directors (incl. female director): 4 • Minority Directors: 1 • **Female director shall be from sponsors.** Assuming two contestants in the category, with one from sponsors and the other supported by minority shareholders, the sponsor supported candidate will get 70% of the total votes in the category while the other candidate can get a maximum of 30% of the total votes in the category if all minority shareholders vote for her. • **Both independent directors can be elected with sponsors' votes.** Assuming three contestants in the category, with two nominated by sponsors and one supported by minority shareholders, the sponsor supported candidates shall each get 35% of the total votes in the category while the candidate supported by minority shareholders can get a maximum of 30% of the total votes in the category if all minority shareholders vote for him/her. • **Sponsors shall be able to get at least three (3) out of the four (4) seats in other directors' category.** Assuming sponsors nominate four (4) candidates while minority shareholder nominate one (1), each sponsor supported candidate will get 17.5% of the total votes in the category while the other candidate will get 30% of the total votes in the category if all minority shareholders vote for him/her. If minority shareholders nominate two candidates and vote for them equally i.e., 15% of the total votes in the category, the sponsors will be able to get all four (4) of its candidates elected as directors.	• Independent Directors: 2 • Sponsor Directors (incl. female director): 3 • Minority Directors: 2 With seven (7) directors to be elected, a candidate with 14.3% of total votes shall be able to get elected to the board. With 30% shareholding available with minority shareholders, they can have two (2) directors elected to the board. Assuming that the sponsors comply with the regulatory requirements for board elections, they will need to have two (2) independent directors elected, leaving three (3) directors to be elected from amongst the sponsors.

[5]On a seven (7) member board, the number of independent directors should be three (3) as the fraction is required to be rounded up. However, companies may explain reasons for not rounding up. Most seven (7) member boards have two (2) independent directors.

7. Division of votes on proportional basis seems inconsistent with the Act

As per section 159 (5) of the Companies Act, a member's total votes in an election of directors is equal to the product of the number of voting shares held by him and the number of directors to be elected, and he may give "all his votes" to a single candidate or distribute them amongst more candidates, as he may choose. The mandatory division of a member's total votes across three categories under the category voting regime introduced via amendment to the Code of Corporate Governance appears to be inconsistent with the Companies Act.

8. Situations where nominations filed are less than the number of directors to be elected

Situations may arise where fewer nominations are received for contesting elections in a certain category (e.g., independent directors) than the requisite number of directors in that category. This may happen when a company is running into serious financial difficulties, or when it is a subject of criminal inquiries/investigations. The regulation introducing category voting is silent on how such a situation would be addressed.

9. Justifications for choosing the candidates for appointment as independent directors

Section 166 (3) of the Companies Act requires companies to publish a statement of material facts, annexed to the notice of the general meeting for election of directors, providing the justification for choosing the candidates for appointment as independent directors. However, companies generally provide general statements that the selected candidates fulfil the requirements to quality as independent director rather than explaining how the chosen candidates' education, experience and skills shall benefit the company.

10. Independent directors are generally seen as sponsor-friendly directors

The overall purpose of having independent directors is to have a competent, independent voice on the board, representing particularly the interests of minority shareholders. However, the process of appointment of independent directors results in twofold issues: Firstly, the nomination of less suitable individuals as independent directors and, secondly, insufficient opportunity for representative and qualified people to become independent directors.

As the election of independent directors on boards is essentially dependent on the sponsors voting them in, the general perception about independent directors is that they are not truly independent. They are seen as sponsor-friendly directors rather than acting with independence and objectivity in looking after the interests of minority shareholders and that of the company. Moreover, a common feedback from issuers about the value of independent directors is that their contributions are generally in areas such regulatory compliances and procedural matters but limited value is added by them in strategic matters.

11. Ambiguities about appointment of nominee, executive and independent directors

Section 164 of the Company Act states that in addition to the directors elected or deemed to have been elected by shareholders, a company may have directors nominated by the company's

creditors or other special interests by virtue of contractual arrangements. However, the criteria and process for setting the number of nominee directors that can be appointed on a board is not clearly defined. It is unclear if the appointment of nominee director by creditors would change the size of the board and how it fits into the category voting classification.

The Companies Act also allows for employees of a company to be elected as executive directors. However, it does not elaborate the nomination process for these directors. Similarly, it is stipulated that the chief executive officer of a company, by whatever name called, shall be a deemed director with all the rights and responsibilities of a director. It is assumed that the nominee and executive directors as well as the chief executive officer must all satisfy the criteria laid down for qualification/election of directors in the Companies Act and rules and regulations made thereunder.

As per Section 162 (2c) of the Companies Act a director shall not be considered an independent director if "he has, or has had within the last three years, a material business relationship with the company either directly, or indirectly as a partner, major shareholder or director of a body that has such a relationship with the company. Explanation: The major shareholder means a person who, individually or in concert with his family or as part of a group, holds 10% or more shares having voting rights in the paid-up capital of the company."

There is a difference in the interpretation of this provision as some believe that a person shall not be considered as an independent director of a company if he owns 10% or more shareholding in that company while others believe that a person shall not be considered as an independent director is he holds at least 10% shareholding in the other company which has material business relationship with the first company. It is therefore unclear if a person holding 10% or more shareholding of a listed company can contest election of directors of that company in the independent director category.

12. Appointment of 'ex-officio' directors on the boards of SOEs

Upon completion of the term of office, all directors on the board of listed SOEs (including government officials and government nominated independent directors) are generally appointed through fresh elections held in general meetings, just like other private companies. The government officials appointed on SOE boards are generally termed as 'ex-officio' directors i.e., they hold the directorships by virtue of their positions in the government, generally in the line ministry governing the SOE.

The appointment of 'ex-officio' directors carries some inherent issues. Firstly, the term ex-officio director is not defined in the Companies Act. As per the Companies Act, directors comprising the board of a company fall into three main categories: i) non-executive directors that include independent directors, ii) executive directors from amongst employees of the company, and iii) nominee directors that represent special interests and creditors of a company.

Secondly, as senior government officials are moved across ministries regularly, in-term change of ex-officio directors is quite common. Consequently, these directors often do not complete a full term on the boards.

Thirdly, the process of in-term replacement of 'ex-officio' director also sometimes creates procedural challenges, as the outgoing director has to first resign and then the new appointee has to be co-opted by the board. Furthermore, the qualifications stipulated for acting as a director are defined for a real person, not a position. Consequently, these are not taken into consideration for ex-officio directorships while frequent changes and short stints make it difficult for ex-officio directors to make effective contribution at the board.

Fourthly, ex-officio directors may have conflicts of interest, especially where the ex-officio director is secretary in charge of a ministry, and the sector regulator reports to him whereas he is also a director of a company regulated by the sector regulator.

13. No provision available for advancing election of directors to merge with AGM date

Under section 132 of the Act, companies are required to hold their annual general meeting within 120 days following the close of financial year. Consequently the last date for holding the AGMs for the June end companies is 28th October of the financial year which may be few days before the completion of tenure of the directors which may be two to three days. Since there is no provision available for holding of election of directors earlier than the end of term of office, a company may have to hold an EOGM for election of directors a few days after having its AGM thereby resulting in additional costs.

14. Minimum age and experience criteria for becoming a director

Although neither Pakistani law nor that of any other major jurisdiction prescribes minimum age for contesting election of directors, the laws of US, UK and Australia prescribe experience and expertise criteria that can only be possessed at or above a certain age. Consequently, the average age of a director in these countries is 62-63 years whereas the average age of an independent director is above 40 years. In the United States, Bloomberg ESG data (October 2022) shows the average age for directors at Russell 1000 companies as 63.1 years. In the UK, a 2023 Heidrick & Struggles report states that based on FTSE 350 companies, the average age for non-executive directors in 2022 was 62.7 years. The Australian Institute of Company Directors' 2022 Directors' Census shows the average age of directors on ASX 200 boards as 62.1 years. By contrast, it is not unusual for Pakistani companies to have directors that are much younger primarily because of being part of the family of dominant shareholders.

Recommendations

1. A calendar/record of director election of all listed companies should be published on PSX website. This shall enhance transparency and provide sufficient lead time to shareholders for preparing and

participating in election of directors. For this purpose, a centralised database may be created and maintained by PSX or the e-Governance portal which is being developed by CDC/PICG may be used for this purpose. It should contain the following information at the minimum:

a. Date of last election of director;
b. Date of next election of director;
c. Total number of director;
d. Number of elected directors;
e. Number of nominee directors;
f. Number of independent directors;
g. Number of female directors;
h. List of all directors with description (independence, nominees, executive, non-executive);
i. Remarks/reason for delay in election (if applicable);
j. Impediment filed for delay (if any);
k. Extension granted by the registrar with reasons.

Companies should be mandated, via amendments in relevant regulations, to ensure that the requisite information is provided and kept updated on timely basis.

2. Delay in holding of election of director should only be permitted under extraordinary circumstances (e.g., natural calamity or court injunction) that are beyond the control of the company. Delay for any other reason should be swiftly penalized by the SECP and directives should be issued and enforced by the CRO/SECP for holding of the election by the subject company at the earliest possible date.

3. The scope of work for the Scrutinizer, appointed by a company in a general meeting in which election of directors is to be held, should be expanded to include the scrutiny/verification of nomination papers of candidates contesting the election of directors. The Scrutinizer shall also review due diligence carried out by a company (under section 166 of the Companies Act) on nominations filed for candidates in the independent directors' category. The acceptance or rejection of nomination of any candidate should be the Scrutinizer's responsibility. This will enhance the transparency of the process, prevent unjust rejection of nominations and reduce the risk of legal challenges to the election of directors.

4. The PICG database of independent directors should be upgraded to make it more user-friendly and it may contain fields/filters which may enable companies to select independent directors according to their required expertise and experience.

5. The criteria and process for the number of nominee directors on a board should be defined with clarity especially in the context of category voting for election of directors. The appointment of nominee directors either by creditors or other special interests under contractual arrangements must not put the minority shareholders at disadvantage by increasing the shareholding threshold required for electing a director. Following specific situations must also be clearly addressed:
   a. Creditors that are also shareholders;

b. Creditors that are not shareholders; and
c. Special interests under a contractual arrangement.

Moreover, a nominee director must possess basic qualification, experience and expertise required to act as an elected director.

6. Section 166 (2c) of the Companies Act should be clarified to explain if a person with 10% or more shareholding of a listed company can contest the election of directors of that company in the independent director category.

7. There should be a regular independent evaluation of the board's performance at least every three (3) years by an external certified body/organization (e.g., PICG). This evaluation should be based on standardised criteria which may be laid out in the Code of Corporate Governance.

8. A casual vacancy arising in any category of directors should be filled by the board with a director fulfilling the requirements of that category or by adding additional independent/female director. This should be made part of the Code of Corporate Governance.

9. Contesting an election of directors should be made possible via the E-Governance portal to make the process transparent and allow shareholders to nominate contestants easily. Complete credentials and profile of contestants should be visible via the directors' database for transparency and effective voting.

10. The voting scheme under the category voting regime needs to be revised. Instead of distributing a member's total votes (shares held multiplied by the number of directors to be elected) across the three enumerated categories, he should be assigned votes on consolidated/aggregate basis which he may choose to may give to a single candidate in any category or distribute among multiple candidates in the same or different categories. This shall help serve three purposes: i) remove the apparent inconsistency between the Companies Act and the Code of Corporate Governance, ii) increase the competition in election of directors across all categories, and iii) provide a more levelled field for minority shareholders to have board representation.

11. The term 'ex-officio' director should be clarified and the process of appointment of government officials on SOE boards should be streamlined to remove any procedural hiccups and regulatory deviations.

12. Where the gap between the date of AGM and the date of election of directors is small, a minimum period may be specified wherein the companies may hold election of directors at the AGMs, provided that the effective date for the appointment of directors shall be the actual date on which the directors are to be appointed.

13. At least 10 years of experience at senior management level may be required for an individual to be appointed as director of a listed company.

Proxy Utilisation

Regulatory Review

Participation in meetings of companies by members

Section 134 (4) of the Companies Act provides that members of a company may participate in the meeting personally, through video-link or by proxy. Further, Section 134 (9) of the Companies Act states that on a poll, votes may be given either personally or through video-link or by proxy or through postal ballot.

Proxy Voting

For participation in meetings through proxy, the section 137 of the Companies Act allows a member of a company entitled to attend and vote at a meeting of the company to appoint another person as his proxy to exercise all or any of his rights to attend, speak and vote at a meeting. Following are the key requirements for appointing a proxy:

- A member can appoint only one proxy to attend any one meeting, and if instruments of proxy for more than one proxy are deposited with a company then all such instruments are rendered invalid.
- A proxy must be a member of the company unless the articles of the company permit otherwise.
- Regulation 43 of Table A in the First Schedule of the Companies Act sets out the form and contents of the proxy instrument and such instrument shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles.
- The instrument of proxy must be in writing and be signed by the appointer or his attorney duly authorised in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
- The proxies must be lodged with the company not later than forty-eight (48) hours before the time for holding a meeting and in calculating the period no account shall be taken of any part of the day that is not a working day.

Representation of body corporate or corporation at meetings

Section 138 of the Companies Act states that in case of the member being a body corporate or a corporation, the member may by resolution of its board or other governing body, authorise an individual to act as its representative at any meeting of that other company, and the individual so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents.

Key Issues

1. **Wrongful rejection of proxy forms**

   The Companies Act explains the form and contents of the proxy instrument, and provides that the instrument shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles. However, a frequent complaint received from market participants is that companies prevent minority shareholders' proxies from participating in general meetings by rejecting the proxy forms often on wrongful or weak grounds. Following are the typical reasons cited by companies for rejecting the proxy forms:

   - Signature of member and/or witnesses do not match with that on their Computerized National Identity Card ("CNIC").
   - Revenue stamp was not affixed on the proxy form, or that the revenue stamp value was lower than that required in the relevant geographical jurisdiction.
   - The proxy form was received less than forty eight (48) hours before the meeting date.

2. **Requirement for witnesses**

   Regulation 42 of Table A of the First Schedule to the Companies Act, provides the format and contents of the instrument of proxy which does not require the instrument of proxy to be signed by any witnesses. However, the SECP, vide Circular No. 1 dated January 25, 2000, had introduced the requirement for the proxy form to be signed by two witnesses whose names, addresses and CNIC numbers shall be mentioned on the proxy form, and attested copies of CNICs of the proxy and beneficial owner furnished with the form. Moreover, companies additionally require attested copies of the CNICs of the witnesses to be submitted along with the proxy forms. All these requirements pertaining to witnesses not only put unnecessary burden on the members but also increase the risk of rejection of proxy forms by companies on account of small shortcomings e.g., signature differences or non-attestation of witnesses' CNICs.

3. **Treating 'Authorised Representative' of a corporate entity as a Proxy**

   There are variations across companies in interpretation and application of statutory provisions with respect to representation of members, which are corporate entities, at general meetings.

   Pursuant to section 138 of the Companies Act, an individual appointed as the authorised representative through board resolution/power of attorney of a corporate entity which is a shareholder in a company can attend the latter's general meeting. The authorised representative is not required to be a member him/herself of the company whose general meeting it is authorised to attend, and he/she can attend the general meeting of the company by producing the board resolution/power of attorney at the time of attending the meeting.

   However, many companies treat the 'authorised representative' as a 'proxy' of the member corporate entity and require that the proxy form for the individual appointed as the authorised representative be filed with the company in addition to the board resolution/power of attorney for the authorised representative. Treating the 'Authorised Representative' as a 'Proxy' means that the

individual must also be a member of company whose meeting he is attending and the proxy forms must reach the company at least forty-eight (48) hours before the time of the general meeting.

By imposing the requirements of a proxy on the authorised representative of a member, the company exercises even more discretion in barring the authorised representative from attending the general meeting on account of non-submission of proxy form and/or the authorised representative is not a member of the company.

Exhibit-1 below illustrates the differences in the requirements for attending the meetings published in the notices for election of directors of two listed companies, Habib Bank Limited and Pakgen Power Limited. Evidently, Pakgen imposed an additional requirement of submission of proxy form for authorised representative of corporate entities while Habib Bank did not.

Exhibit-1: Examples of Notices for General Meetings for Directors' Elections – Requirements for Attending Meeting & Proxy Appointments

Habib Bank Limited Notice for AMG for Directors' Elections Meeting Date: March 25, 2021	**Pakgen Power Limited** Notice for EOGM for Directors' Elections Meeting Date: September 01, 2023
A. Requirements for attending the meeting: a. In the case of individuals, the account holder or sub-account holder whose registration details are uploaded as per the Central Depository Company of Pakistan Limited Regulations, shall authenticate his/her identity by showing his/ her valid original CNIC or original passport at the time of attending the Annual General Meeting. b. In case of a corporate entity, the Board of Directors' resolution/power of attorney, with specimen signature of the nominee, shall be produced at the time of the Annual General Meeting, unless it has been provided earlier. **B. Requirements for appointing proxies:**	**A. Requirements for attending the meeting:** a. In case of individuals, the account holder and/or sub-account holder whose registration details are uploaded as per the CDC Regulation, shall authenticate his/her identity by showing his/her original CNIC or, original passport along with copy of CDC account registration details duly authenticated by the concerned participants/investor account services at the time of attending the meeting. b. In case of corporate entity, the person attending the meeting on behalf of the corporate entity must produce board resolution duly certified by the chief executive/ director and/or a duly notarized power of attorney in his favour **along with copy of proxy form** submitted with the company, the board resolution/power of attorney must contain specimen signature of the person attending meeting.

a. In case of individuals, the account holder or sub-account holder whose registration details are uploaded as per the Central Depository Company of Pakistan Limited Regulations, shall submit the proxy form as per the above requirement. b. The **proxy form shall be witnessed by two persons** whose names, addresses and CNIC numbers shall be mentioned on the form. c. Attested copies of the valid CNICs or the passports of the beneficial owner(s) and the proxy shall be furnished with the proxy form. d. The proxy shall produce his/her valid original CNIC or original passport at the time of the Annual General Meeting. e. In case of a corporate entity, the Board of Directors' resolution/power of attorney, with specimen signature of the nominee, shall be submitted to the bank along with the proxy form unless the same has been provided earlier.	**B. Requirements for appointing proxies** a. In case of individuals, the account holder and/or sub-account holder whose registration details are uploaded as per the CDC Regulations, shall submit the proxy form as per above requirements. b. The **proxy form shall be witnessed by two persons**, whose names, addresses and CNIC numbers shall be mentioned on the form. c. Attested copies of the CNICs or the passport of beneficial owners, proxy holder and witnesses shall be furnished with the proxy form. d. The proxy shall produce his original CNIC or original passport at the time of the Meeting. e. In case of corporate entity, board resolution duly certified by the chief executive officer/ director and/or duly notarized power of attorney in favour of proxy holder along with proxy form to the company. The board resolution/power of attorney must contain specimen signature of proxy holder.

Recommendations

1. Expand the requirement for listed companies to provide electronic voting facility, which is presently mandatory for voting on resolutions for special business and for election of directors, to all types of resolutions (ordinary and special). This shall enable the shareholders to cast their votes without physically attending the meetings thereby minimising the need for voting through proxies.

2. A digital platform for appointing proxy (e-Proxy system), operated by a depository, may be introduced whereby the shareholder could electronically appoint another person as his/her proxy for shares held in CDS. This shall eliminate the risk of wrongful rejection of proxy form by any company while also saving the company time and effort consumed in verification of physical proxy forms. CDC has the requisite capability for developing and managing the e-proxy system. The following table contains the list of depositories in other countries the region that are providing e-Proxy service to shareholders:

Name of Entity	Country	Website
KSEI – Indonesia Central Securities Depository	Indonesia	https://www.ksei.co.id/
KSD – Korea Securities Depository	South Korea	https://www.ksd.or.kr/en/
TSD - Thailand Securities depository	Thailand	https://www.set.or.th/
MMK – Central Securities Depository of Turkey	Turkey	https://www.mkk.com.tr/

3. The SECP may issue detailed guidelines on appointment of proxies and representation of corporate entities at general meetings to ensure correct, consistent and uniform application of applicable regulatory provisions by all listed companies. The following points are proposed to be covered in the guidelines:
    a. The instructions for: i) attending the meeting and ii) appointment of proxies, to be published by listed companies in the notice to shareholders for general meeting.
    b. Remove the requirement of proxy forms being signed by two witnesses, and withdraw circular no. 1 dated January 26, 2000 issued by the SECP.
    c. The requirement of affixing revenue stamp on proxy form should be done away with, and the requisite stamp duty should be borne by the company.
    d. A company must not treat an authorised representative of a corporate entity as a proxy, and the requirements of filing proxy form for authorized agent, or the authorised representative being a member of the company shall not apply.
    e. A company's meeting notice should specify that the proxy forms via fax or email will not be entertained.
    f. A company's secretary should provide the reason for rejecting any proxy form via email to the member and his appointed proxy at least twenty four (24) hours before the general meeting.
    g. Companies should maintain complete record of all rejected proxy forms and send a summary report of rejected proxies (names of shareholder, name of proxy, number of shares, reasons for rejection, etc.) to the SECP.
    h. Strict penalties for wrongful rejection of proxy forms should be levied on the company secretary personally, where fault is established.

4. The PSX and SECP should ensure that a company's notices for general meetings contain the correct instructions **and minimum required disclosures** to shareholders for: i) attending meetings and ii) appointment of proxies.

5. In a general meeting where a Scrutinizer is appointed under Regulation 11 of the Postal Ballot Regulations, all proxy forms received by the company shall be provided to the Scrutinizer for review along with the company secretary's decision regarding their acceptance or rejection. The

Scrutinizer's report under regulation 11A (2) the Postal Ballot Regulations shall contain his comments on proxy forms accepted and/or rejected by a company.

Monitoring Mechanism and Technology Integration

1. **E-Proxy and Electronic Voting**
   The use of technology can address shareholder concerns about rejection of proxy forms and allowing electronic voting on all resolutions (ordinary and special) shall provide greater transparency in the conduct of business during general meetings. These recommendations have been discussed in more details in earlier chapters.

2. **Extensive investor information section on company website**
   The investor information section on a company's website should carry detailed information about an upcoming general meeting, including: i) date, time and place of meeting; ii) helpline number and email address for any queries regarding the meeting; iii) complete notice of the meeting in html format; iii) additional information/ annexures preferably in machine readable/searchable format; iv) profiles of all candidates, in case of directors' elections; v) proxy form in pdf format with editable fields for blanks required to be filled in; and vi) a code of conduct for meeting.

3. **Pre-meeting engagement with shareholders**
   Companies should be encouraged to provide a communication channel for shareholders to send in their questions regarding items on meeting agenda and for sharing other feedback and concerns about the company's policies and strategy. For example, the shareholders may have questions about the annual financial statements that are to be approved in the AGM. A company may choose to address the shareholder questions and concerns ahead of the meeting or during the meeting.

4. **Video recording of general meetings**
   All general meetings whether held in physical, virtual or hybrid format, should be video recorded with good sound and picture quality. The video recording of a physical meeting should be done through at least three fixed cameras covering i) the table seating the company representatives, ii) the microphone for shareholders to ask questions, and iii) wide angle coverage of all shareholders seated in the hall. The virtual meeting should also be recorded using the video recording feature of the video conferencing software being used. The meeting recordings from all cameras shall be professionally edited and converted into a single recording. It should be ensured that no speech/dialogue is edited out. The source video recordings and the final edited version shall be kept safe by the company for a period of at least three (3) years.

5. **YouTube channel for shareholder awareness and education**
   A YouTube channel may be created by the PSX, SECP or PICG for creating awareness and educating shareholders on different aspects of general meetings including the applicable regulatory provisions, rights and responsibilities, code of conduct, penalties for misconduct, how to ask questions, etc. The channel should be promoted via other social media platforms and advertising media.

6. **E-Governance Portal**

The much needed E-Governance portal which is underway by the CDC and PICG, will be an interactive and user-friendly platform designed to provide shareholders with easy access to comprehensive information on corporate governance practices. It will serve as a one-stop hub for resources, training, and learning modules, catering to shareholders of various levels of experience and expertise. Furthermore, it will include services to assist with corporate governance functions, such as e-Meetings, e-Voting and e-Proxy, and thus equip the shareholders and issuers with the tools to make sound governance decisions. The portal would be helpful in enhancing shareholder knowledge, fostering engagement and empowering shareholders

Other Issues

THE ROLE OF INSTITUTIONAL INVESTORS IN CORPORATE GOVERNANCE

Background

Institutional investors including mutual funds, pension funds and insurance companies hold and manage investments in their names but the underlying funds belong to third parties including individual investors. Globally, institutional investors have become major players in public equity markets holding about 43% of global market capitalisation of listed companies (equivalent to USD 44 trillion) at the end of 2020[6].

The growing size of assets under management and increased use of passive investment vehicles have given rise to concerns about the institutional investors playing their required role in ensuring corporate governance and creating long-term shareholder value. As noted in an OCED publication[7], institutional investors are not like other shareholders but have a unique set of costs, benefits and objectives, and consequently they have not always behaved as desired.

There is a sustained regulatory emphasis on ensuring that institutional investors play their due role in lifting the standards of corporate governance and creating long-term value for shareholders. Many countries have introduced stewardship guidelines and codes for institutional investors and over time, these guidelines/codes have become more stringent. For example, voting guidelines for mutual funds were first introduced by SEBI in India in 2010[8] and amended over time since then. In 2021[9], SEBI made it mandatory for mutual funds to cast votes on resolutions of investee companies in respect to a range of subjects including: i) corporate governance matters; ii) change in capital structure; iii) stocks options and management compensation issues; iv) CSR issues; v) appointment and removal of directors; vi) related party transactions; and vii) any other issue that may affect interest of shareholders in general and unit-holders in particular.

'Direct Voting' is a new trend in developed global capital markets whereby asset managers give large institutional investors of index funds the right to exercise voting rights in portfolio companies in proportion to the percentage of the funds they beneficially own. BlackRock, Vanguard and State Street, commonly referred to as the 'Big Three', have now fully committed themselves to extending voting choice to their institutional clientele[10].

While the overall size of institutional investors and their holdings of listed equities is relatively small in Pakistan, the inherent risks to fiduciary duty and agency costs are higher for them due to their ownership structure and investor base, besides other reasons. These factors also constrain the ability

[6] De La Cruz, A., A. Medina and T. Tang (2021), "Institutional ownership in today's equity markets, Chapter in Festskrift till Rolf Skog – Festschrift in honour of Rolf Skog", Norstedts Juridik, https://www.jure.se/ns/default.asp?url=visatitel.asp?tuid=27001.
[7] OECD (2011), "The Role of Institutional Investors in Promoting Good Corporate Governance". https://www.oecd.org/daf/ca/49081553.pdf
[8] Circular no. SEBI/IMD/CIRNo18/198647/2010 dated March 15, 2010
[9] Circular no. SEBI/HO/IMD/DF4/CIR/P/2021/29 dated March 04, 2021
[10] https://blogs.law.ox.ac.uk/oblb/blog-post/2023/03/direct-voting-institutional-investors-trojan-horse

of local institutional investors in playing their due role in helping lift the levels of corporate governance at listed companies.

Some of the largest institutional investors such as State Life, EOBI, NIT, Provincial Pension Funds, and Employee Funds of SOEs are controlled by the government. Moreover, most of the asset management companies are owned by banks, which in turn (barring some exceptions) are majority-owned by large local industrial groups. On the other hand, large corporate entities are the biggest investors in mutual funds (particularly fixed income funds) and hence exercise considerable influence over how asset managers exercise funds' voting rights in general meetings of listed companies or appointing someone as proxy.

The SECP has introduced stewardship guidelines for institutional investors that comprise a set of six (6) principles, including: i) Stewardship Policy, ii) Voting Policy and its Disclosure, iii) Monitoring Investee Companies, iv) Policy on Engagement with Investee Companies, v) Managing Conflict of Interest and vi) Incorporating Sustainability Considerations. However, the adoption of these guidelines is on 'comply or explain' basis.

With sufficient manoeuvring space, broadly defined guidelines, principles and policies often lead to compliance only in form and not in substance. Given the current state of the institutional investor industry in Pakistan, more explicit and binding regulatory requirements are required particularly in key areas where the conflict of interest could be more pronounced.

Recommendations

1. The regulatory and corporate governance structure of institutional investors in Pakistan needs overhauling. While asset management companies and insurance companies are already regulated by the SECP, all pension and other employee benefit funds should also be brought under the regulatory domain of the SECP. This could be done by the government mandating that all pension and employee benefit funds can only be managed by a fund manager licensed by the SECP.

2. With listed companies now required to offer video link facility for all general meetings, institutional investors should be required to ensure participation in as many general meetings of investee companies as possible. In case of overlapping general meetings of investee companies, an institutional investor should prioritise meetings and record the reasons for attending/ skipping meetings. The reasons may include the relative size of investment in company, meeting agenda (transaction of special business), election of directors, etc.

3. The participation of institutional investors in general meetings of investee companies shall either be in person through their representative (who must be an employee of the institutional investor and not otherwise associated with the investee company), or by using the video link facility. An institutional investor shall not appoint any third person as proxy for participating in any general meeting of the investee company.

4. As listed companies are now required to provide electronic voting facility to members for all businesses classified as special business under the Companies Act and for election of directors, the institutional investors must ensure that they vote electronically on these matters for all companies in their portfolios.

5. The institutional investor's voting policy (prescribed under the stewardship guidelines and/or other regulatory requirements) shall lay out the guidelines/criteria for voting in election of directors of investee companies based on principles of diligence, independence and transparency. The institutional investor shall maintain sufficient documentation to demonstrate compliance with the voting policy.

6. Institutional investors shall maintain complete record of how they voted on the resolutions presented in the general meetings of investee companies and the reasons for their voting decisions.

CORPORATE BRIEFINGS

Background

As per PSX Regulation 5.7.3, every listed company is required to hold at least one Corporate Briefing Session ("CBS") during the financial year for investors and analysts. The PSX has issued guidelines and procedures for holding corporate briefing sessions. The guidelines recommend that a CBS may be held in the PSX premises in Karachi, Lahore or Islamabad Office(s) after seeking confirmation of the availability in advance, and listed companies must provide the facility to participate through electronic means in order to ensure maximum participation and to facilitate those who cannot attend the CBS physically. CBS can be held either physically or through electronic means. However, PSX has recommended that the Listed Companies hold CBS physically and provide facility to participate through electronic means as well.

The frequency and mode of holding CBS varies across the listed companies. Most CBS are held online while some are done in hybrid formats. The venue for physical CBS is generally the company's own office or the PSX premises. For some companies, the CBS is managed by stockbroker who carries out the tasks of organising, publicity and moderating the event.

Generally, stockbrokers leverage the CBS as a marketing opportunity to promote their own brand through social media platforms and direct engagements with foreign and local investors, including their existing and prospective clients. Moreover, audio/video recordings of CBS are generally not available post-event for listening/viewing by market participants who could not attend the live event. Also, the CBS held at the PSX premises are often disturbed by unruly participants who are generally more interested in refreshments than the briefings. They talk over and inject which investment analysts are asking questions.

Recommendations

1. Only PSX's video link service/facilities should be used by listed companies for holding CBS and the latest audio and/or video CBS recordings must be kept available at a centralised online library of PSX and company websites for reference/use of market participants.
2. The CBS must be moderated by the company's Investor Relations manager or other executive of the company.

3. The primary audience for CBS are investment analysts and fund managers and they should be permitted to attend in-person CBS only after registration. No walk-in participation in CBS should be permitted.

4. No refreshments shall be served and any no gifts/souvenirs distributed at the CBS. This shall be clearly stated in the company's announcement for the CBS.

BOOK CLOSURE TIMELINE

Background

As per industry practice, the Book Closure period for General Meetings is generally seven (7) days. As part of the Book Closure, generally on the first day, the current list of members / share book details ("SBD") is to be provided by the CDC, to enable the registrars to complete the requisite activities before the General Meeting. Currently, as the seven (7) days period is linked to calendar days, book closures that start on the weekends result in delay in receipt of the SBD from the CDC as they are closed as of non-working day and do not provide the data on the weekends. The data is subsequently provided on the next working day, thus resulting in reduced time available for the registrars to complete the requisite activities before the General Meeting.

Recommendation

In order to streamline the process, guidelines are required to be issued to companies to avoid starting the book closures on the weekends and/or public holidays.

CORPORATE GOVERNANCE DEPARTMENT AT SECP

Background

The development of the Code of Corporate Governance has been an evolutionary process. It was introduced in 2002 as a part of listing regulations of the stock exchange and was amended significantly in 2012. However, the SECP issued the Listed Companies (Code of Corporate Governance) Regulations, 2017 under section 156 of the Companies Act, 2017. The current version is the Listed Companies (Code of Corporate Governance) Regulations, 2019 ("CCG Regulations") which is applicable to listed companies, asset management companies, and deposit taking NBFCs.

Maintaining high standards of corporate governance is essential for promoting transparency, investor confidence and decision making by companies, all of which contribute towards development of capital markets and higher economic growth.

The G20/OECD Principles of Corporate Governance provide guidance to help policy makers evaluate and improve the legal, regulatory and institutional framework for corporate governance, with a view to supporting market confidence and integrity, economic efficiency, sustainable growth and financial stability. There OCED prescribes six main principles for good corporate governance: i) ensuring the basis for an effective corporate governance framework; ii) the rights and equitable treatment of shareholders and key ownership functions; iiii) institutional investors, stock markets, and other intermediaries; iv) disclosure and transparency; v) the responsibilities of the board; and vi) sustainability and resilience.

The SECP, being the regulator of corporate governance in Pakistan, has been working towards the improvement of the corporate governance framework over the last twenty years and implementation of effective corporate governance structures in companies. To strengthen the regulator's commitment and to have a focussed approach towards ensuring higher standards of corporate governance, there is a need for setting up a corporate governance department at the SECP.

Recommendations

A dedicated Corporate Governance Department needs to be setup at SECP whose objective shall be to collaborate with different companies, PICG, shareholders, investors. This department would deal with all corporate governance matters including, but not limited to, the following:

i. Review the code and introduce reforms in line with the international best practices for the companies, where applicable
ii. Provide feedback/ clarifications on compliance with the requirements of the Corporate Governance regulations
iii. Issue Guidelines/ FAQs on Corporate Governance matters
iv. Collaborate with industry, PICG, ICAP and other institutes/professional bodies in identifying gaps in governing models and implementing procedures, create awareness.
v. Devise a proper mechanism to monitor progress of listed companies in compliance with code and conduct surveys, meetings, webinars etc.
vi. The department may develop stakeholder engagement strategy to ensure that the management of listed companies are aware of their statutory roles, responsibilities and other issues with respect to corporate governance.
vii. Prepare and submit recommendation on corporate governance policies/legal framework from time to time.

End of Report.