



FREQUENTLY ASKED QUESTIONS (FAQs)

CATEGORY-WISE VOTING FOR THE ELECTION OF DIRECTORS

**SECURITIES & EXCHANGE COMMISSION
OF PAKISTAN**

DISCLAIMER

These Frequently asked Questions (FAQs) have been prepared with an intention to create awareness and respond to the basic queries which were received by the Commission after the introduction of the concept of category-wise voting in the election of directors by way of the amendments made mainly in the Listed Companies (Code of Corporate Governance) Regulations, 2019 and consequential changes made in the Companies (Postal Ballot) Regulations, 2018 through its notification dated July 7, 2023.

The information contained in this document is only to facilitate understanding and compliance with the legal framework by the companies while holding the election of directors. The responses provided herein are not legal interpretations and are circumstantial which may vary under different situations. In case any further clarification is required, the companies are advised to refer to the relevant regulations and the related provisions of the Companies Act, 2017 or consult their legal advisors for seeking professional advice.

The FAQs are in addition to FAQs issued by Securities and Exchange Commission of Pakistan (SECP) as part of guide book on Corporate Governance and Frequently Asked Questions dated June 5, 2020 and available on the website of SECP (<https://www.secp.gov.pk/document/guide-book-on-corporate-governance-and-frequently-asked-questions/?wpdmdl=39634&refresh=65155653c181e1695897171>).

FAQs - CATEGORY-WISE VOTING AT THE ELECTION OF DIRECTORS

INTRODUCTION:

The composition of the Board of Directors with proper apportionment between executive, non-executive, independent and female directors is of great importance in order to ensure requisite level of the diversity on the board and to optimise governance. The quality of governance system of a company is also linked directly with the competence, independence and individual commitment of the directors.

LEGAL FRAMEWORK:

Requirement of Independent and Female Director:

Under the provisions of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the “CCG Regulations”), it is mandatory that each listed company shall have at least two or one third members of the Board, whichever is higher, as independent directors.

Section 154 of the Companies Act, 2017 (the “Act”) requires public interest companies to have female representation on their board and under the CCG Regulations it is mandatory that the Board shall have at least one female director.

Selection of Independent director:

Independent director has to be selected from the databank maintained by the institute notified by the Commission (Pakistan Institute of Corporate Governance notified vide S.R.O. 73(I)/2018 dated January 25, 2018). The Commission has also issued the Companies (Manner and Selection of Independent Directors) Regulations, 2018 (the “ID Regulations”) through SRO 556(I)/2018 dated April 26, 2018 in which additional compliance requirements are given for an independent director. The companies are required to exercise their own due diligence before selecting an individual as candidate for selection as an independent director. Further, justification for selection of candidate for appointment as independent director is to be provided in the statement of material facts attached with the respective notice of meeting under the provisions of Section 166(3) of the Act.

Concept of category-wise voting for election of directors introduced:

SECP has introduced the concept of category-wise voting for the election of directors by way of amendments made mainly in the CCG Regulations through SRO 906(I)/2023 and consequential amendments made in the Companies (Postal Ballot) Regulations, 2018 (the “PB Regulations”) through SRO 905(I)/2023 which were notified on July 7, 2023.

Under the aforesaid amendments, three tier voting structure is specified and voting is to be done in three categories, i.e. female, independent and other director categories. In order to avoid legal complications, maximum number of seats in the female category is fixed as one and for independent director two or one third of the Board (which ever is higher). However, there will be no restriction on the total number of female or independent directors that can be elected on the board of a company in all categories combined.

The member on his/her discretion may cast their votes to any candidate in each category of directors contesting the election. For voting in categories, the division of votes available to each member shall be on category-wise basis in proportion to the number of seats of directors under such category. The number of votes for each category shall be counted separately after the completion of voting process.

Protection of Minority shareholders Rights:

In order to safeguard the interest of the minority shareholders and for transparency, any member can also send his/her nomination for contesting the election in any category including independent director or female director category and file with the company not later than fourteen days before the date of the meeting, a notice of intention and select any one category under Regulation-7A(8) of CCG Regulations and

FAQs - CATEGORY-WISE VOTING AT THE ELECTION OF DIRECTORS

Section 159(3) of the Act. All the notices received for the category of independent director, shall be subject to due diligence by the company as prescribed under section 166 of the Act and Regulation-7A(9) of CCG Regulations read with the ID Regulations.

Publication of notice of Intention :

All accepted notices of intention shall be transmitted to all members not later than seven days before the date of meeting, in the same manner in which the notice of meeting is circulated under the Act (refer to Regulation-7A(10) of CCG Regulations and Section 159(4) of the Act) and such notice shall also be published in newspapers along with the following information for the independent and female members contesting for the election of director:

- Names along with the profile and the category for which he/she is contesting for the election of director, and
- Justification for selecting the candidate for the appointment of independent director.

Disclosure on Company's website:

The Company also has to fulfil the requirements of SRO 1196(I)/2019 dated October 03, 2019 regarding placement of information about election of directors on its website as follows:

- i) All notices relating to election of directors along with statement of material facts;
- ii) Names and profiles of persons chosen from the databank for electing them as independent directors, in terms of section 166 of the Act;
- iii) Following information with respect to election of Directors, as per the time line given below:
 - a) Proxies, in number and value, deposited by each candidate, as and when submitted;
 - b) Detailed profile of candidates contesting the elections along with their office address shall be available on website, seven days prior to the date of election till the date of election; and
 - c) 21 days prior to the date of election till the date of election:
 - i. Proxy forms to be placed on website; and
 - ii. List of shareholders and their addresses accessible by candidate intending to contest elections (protected by password issued by Company or personalized login mechanism)

FAQs - CATEGORY-WISE VOTING AT THE ELECTION OF DIRECTORS

Question 1: What is the purpose/ rationale behind the introduction of category-wise voting for election of directors?

Response: Companies were facing difficulty in complying with the mandatory requirements of the CCG Regulations regarding appointment of female and independent directors as they do not get the sufficient number of votes to be elected on the board.

Question 2: What will be the benefit of the amendments for companies and the shareholders?

Response: Companies can ensure compliance with the mandatory requirements of the CCG Regulations for the appointment of independent directors and female director as well as for protection of the rights of the minority shareholders which may also enable them to have their candidate on the Board. The shareholders can allocate and cast their vote in a particular category without the fear of diluting their voting power in other categories.

Question 3: How many votes a member will have for election of directors? Will it be based on director-wise category?

Response: For the voting in categories, the division of votes available to each member shall be on category-wise basis in proportion to the number of seats of directors under such category.
For example, where directors have fixed a board of nine directors, a member holding 100 shares will have a total 900 votes (i.e. 100 x 9), which he/ she may cast in following categories:

Category	No. of directors to be elected	No. of available votes for the category	Remarks
Female director	1	1*100 = 100	If only one female contesting the election then she will be elected unopposed. Otherwise the member may cast 100 votes available in this category. The member may give all his/her votes to a single candidate in this category or divide them between more than one candidates in this category in such a manner as he/she may choose.
Independent directors	3	3*100 = 300	Similar to the female category, the member may cast total 300 available votes.

FAQs - CATEGORY-WISE VOTING AT THE ELECTION OF DIRECTORS

			The member may give all his/her votes to a single candidate in this category or divide them between more than one candidates in this category in such a manner as he/she may choose.
Other directors	5	5*100 = 500	The member may cast total 500 available votes. The member may give all his/her votes to a single candidate in this category or divide them between more than one candidates in this category in such a manner as he/she may choose.
Total	9	900	

In view of the above, total available votes to a member for a category is dependent upon the number of directors fixed by the board in each category i.e maximum number of seat in the female category shall be one and in case of independent director category shall be 2 or 1/3 of the board size whichever is higher.

Question 4: Is the board required to fix category-wise number of directors at least 35 days before holding of the general meeting in terms of section 159(1) of the Act? At what stage the category-wise number of directors has to be disclosed in light of notices required to be issued under sections 159 (2) and 159 (4) of the Act?

Response: The existing directors of the company will fix the total number of directors to be elected not later than 35 days before convening of general meeting, in terms of section 159(1) of the Act. For the independent director category, the number fixed will be 1/3rd or 2 of the board whichever is higher and for the female director category will be one as per the requirements of CCG regulations. . The notice required to be circulated under Section 159(2) of the Act shall also provide information regarding the number of directors in each category for which election is to be conducted.-

If the number of director seats in a particular category has to be revised due to unopposed election in any other category, this fact shall be intimated to the members at least seven days before the general meeting while circulating the profiles and notices received by the company for the election of directors as per Section 159(4) of the Act.

Question 5: What happens if a member does not cast his/her vote for a particular category of directors?

Response: The number of uncast votes of that category will not be available for any other category. Therefore, members are encouraged to cast all of his/her available votes in each of the categories where the voting is being held.

Question 6: What do you mean by unopposed election in a category?

FAQs - CATEGORY-WISE VOTING AT THE ELECTION OF DIRECTORS

Response: If the number of persons who offer themselves to be elected in a category is not more than the number of directors to be elected in that category, then such persons will be elected unopposed. For example, if only one female candidate files a notice of her intention with the company to contest the election in the female category, then she will be elected unopposed if there is no other female candidate willing to contesting the election in the said category.

Question 7: **Can a candidate from outside give his nomination for the category of independent directors or it is only the directors who select the independent directors candidate and make them contest the elections?**

Response: Yes, any member who fulfils the criteria for independent director can send his/her nomination for contesting the election in the independent director category but it will be subject to due diligence by the company as prescribed under section 166 of the Act and the Companies (Manner and Selection of Independent Directors) Regulations, 2018.

Question 8: **Can a member contest in multiple categories?**

Response: No. A member can only contest the election in any one category.

Question 9: **How is the category-wise voting in the interest of minority shareholder to get his member elected on the Board of the Company?**

Response: With the introduction of the category voting, the minority shareholder are been further facilitated in having representation on the company's board. The minority shareholders can nominate their candidate in any category for which election is being held which includes the independent director category and female director category.

Question 10: **What if a member sends multiple conflicting consents/ select two categories for the election of directors?**

Response: The notice/ consent will be considered as invalid. The company may ask the member to select only one category.

Question 11: **Whether the highest number of votes will be considered category-wise for election of the directors?**

Response: Yes. Candidates who get the highest number of votes in the respective category in which he/ she was contesting shall be considered as an elected director in that category.

Question 12: **Can a member cast all of his/ her votes to a single candidate?**

Response: Member may cast all of his/ her votes category-wise i.e. he/ she may cast all of the votes available for that category to a person contesting in the category or divide the votes among the contestants in that category as he/ she may choose.

Question 13: **Is the company required to inform the members about the candidates contesting the election in the category of female and independent directors?**

Response : Yes. All the notices received by the company, subject to due-diligence, shall be transmitted to members not later than seven days before the date of the meeting. And

FAQs - CATEGORY-WISE VOTING AT THE ELECTION OF DIRECTORS

such notice shall also be published in newspapers along with the following information for the independent and female members contesting for the election of director:

- a) Names along with the profile and the category for which he/she is contesting the election, and
- b) Justification for selecting the candidate for the appointment of independent director.

Question 14: For complying with the requirements of section 159(4) of the Act, is the company required to give complete profile of female and independent directors in newspaper? or a company can share weblink for their profile as well as for justification for selecting the candidate for the appointment of independent director.

Response: In the notice published in newspaper, category has to be mentioned after name of persons contesting the election. For profile of directors, the company may provide link of website of the company in the said notice. Similarly, link of the website for providing justification for selecting the candidate for the appointment of independent director may also be given in the newspaper.

Question 15: Whether the votes of the unopposed category will be available in other categories?

Response: No. Votes of one category will not be available in the other category, irrespective of the fact that whether there was any election in the category or not.

Question 16: Under what scenario will the election in female director category not be required?

Response: If the candidates in any other categories include a female director which is being elected unopposed, and no nomination is received in the female director category, then voting in the female director category will not be mandatory.

Question 17: A member contesting for election in the category of independent director or a female director has to inform the company about the particular category?

Response: Yes. Any member who seeks to contest for election in the category of independent director or female director is required to file a notice of his/ her intention with the company and select any one category in which he/she intends to contest for the election of director. The notice is required to be filed not later than fourteen days before the date of the meeting at which the elections are to be held.

Question 18: Can a company place female director for the election in both the categories, i.e. independent and female director categories?

Response: No. The female candidate cannot contest for election in both categories if she also meets the criteria of independence. It is on the discretion of the female candidate to select which category she wishes to contest for election and has to inform the company while sending the nomination papers.

Question 19: Can a female director on the Board, who also fulfils the criteria of Independent Director, meet the requirements of both the female and independent director at the same time?

FAQs - CATEGORY-WISE VOTING AT THE ELECTION OF DIRECTORS

Response: Yes, a female director on the board who is also meets the criteria of Independent Director and the Company has performed due diligence as per section 166 of the Act, can fulfil the requirements of both the female and independent director at the same time.

Question 20: **What will be the responsibility of the Company in cases where the nomination received for contesting the category of independent director is rejected?**

Response: Notice from a member for contesting in the category of independent director, shall be subject to due diligence as prescribed under section 166 of the Act and ID Regulations by the company. If after due diligence under section 166 of the Act, a person is not selected, the reasons for not selecting the person shall be clearly communicated to the individual in writing along with the legal requirement which has not been met by such person. The aforesaid communication shall be made at least seven days before the meeting in which elections are to be held.
