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MESSAGE

from Muhammad Ali
Chairman, Securities and Exchange Commission of Pakistan

Good governance instills investor confidence. The investment decisions taken by the local and international investors are impacted by the governance practices. As markets compete to attract the capital from world over, companies are gauged by the investors using various factors that demonstrate sustainable track record. In order for our companies to compete globally, they have to follow enhanced corporate governance standards. This is a major factor towards making capital markets transparent, protecting rights of minority shareholders and attracting and retaining foreign investment.

The importance of corporate governance lies in its contribution both to business prosperity and to accountability. The Securities and Exchange Commission of Pakistan (SECP) thus endeavors to raise the corporate governance standards in the country. The first major effort was made in March 2002, when the Code of Corporate Governance (Code) was issued by SECP. It was subsequently made part of the listing regulations of the three stock exchanges and became applicable to all public listed companies.

The revisions in the Code are indicative of the fact that governance standards are dynamic and need to be reviewed to keep the governance framework relevant and effective. Therefore, in order to keep pace with the constantly evolving corporate sector and financial markets and the resultant governance benchmarks, the process of revising the Code was initiated. The objective was to further improve and raise the standards of corporate governance in the country while at the same time taking into consideration the global developments in corporate governance.

Key to corporate governance lies in the change in mindset. It is the joint responsibility of all concerned and not just the regulators prerogative. It should be viewed as a means towards achieving value creation and sustainability and only then can one reap the benefits of sustained economic growth and development at a macro level.

A comparison of the 2002 and 2012 Codes is placed at Annexure-C. I am grateful to the members of the Pakistan Institute of Corporate Governance (PICG) Task Force as well as market participants who eagerly participated in the roundtables and assisted us in finalizing the Code 2012. I would also like to acknowledge with gratitude the contribution of all the stakeholders for their invaluable comments and suggestions on the revisions proposed in the Code. While all suggestions were taken into consideration, the Code has been finalized keeping in view the global developments in corporate governance and the overall objective of raising the standards of corporate governance in the country.

I am confident that with commitment from all concerned, the corporate compliance, transparency, disclosure and accountability standards will improve significantly in the capital markets and I am certain that together we will attain excellence in corporate governance standards.

NOTE:

The Code of Corporate Governance (Code) is the part of Listing Regulations of the Stock Exchanges; the numbering of clauses has therefore been kept accordingly.

For any queries on the Code please refer to ccg@secp.gov.pk

XI. Code of Corporate Governance 2012

35. All listed companies shall ensure compliance with the following Code of Corporate Governance (CCG). All provisions except where explicitly stated otherwise are mandatory.

Composition of the Board

- i. The board of directors is encouraged to have a balance of executive and non-executive directors, including independent directors and those representing minority interests with the requisite skills, competence, knowledge and experience so that the board as a group includes core competencies and diversity, including gender, considered relevant in the context of the company's operations.

For this purpose listed companies shall take the following steps:

- (a) the minority shareholders as a class are facilitated to contest election of directors by proxy solicitation, for which purpose the listed companies shall:
 - annex with the notice issued under Section 178 (4) of the Ordinance, a statement by a candidate from among the minority shareholders who seeks to contest election to the board of directors, such statement shall include a profile of the candidate(s);
 - provide information regarding members and shareholding structure to the candidate(s) representing minority shareholders; and
 - on a request by the candidate(s) representing minority shareholders and at the cost of the company, annex to the notice issued under Section 178 (4) of the Ordinance an additional copy of proxy form duly filled in by such candidate(s);
- (b) the board of directors of each listed company shall have at least one and preferably one third of the total members of the board as independent directors. The board shall state in the annual report the names of the non-executive, executive and independent director(s).

Explanation: For the purpose of this clause, the expression "independent director" means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the listed company, its associated companies, subsidiaries, holding company or directors. The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest.

Provided that without prejudice to the generality of this explanation no director shall be considered independent if one or more of the following circumstances exist:

- He/she has been an employee of the company, any of its subsidiaries or holding company within the last three years;

- He/she is or has been the CEO of subsidiaries, associated company, associated undertaking or holding company in the last three years;
- He/she 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;

- He/she has received remuneration in the three years preceding his/her appointment as a director or receives additional remuneration, excluding retirement benefits from the company apart from a director's fee or has participated in the company's share option or a performance-related pay scheme;
- He/she is a close relative of the company's promoters, directors or major shareholders:

Explanation: close relative means spouse(s), lineal ascendants and descendants and siblings;

- He/she holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- He/she has served on the board for more than three consecutive terms from the date of his first appointment provided that such person shall be deemed "independent director" after a lapse of one term.

Any person nominated as a director under Sections 182 and 183 of the Ordinance, shall not be taken to be an "independent director" for the above-mentioned purposes.

The director representing an institutional investor shall be selected by such investor through a resolution of its board of directors, either specifically or generally, and the policy with regard to selection of such person for election on the board of directors of the investee company shall be annexed to the Directors' Report of the investor company.

- (c) professional indemnity insurance cover in respect of independent directors shall be encouraged.
- (d) executive directors, i.e., paid executives of the company from among senior management, shall not be more than one third of the elected directors, including the Chief Executive:

Provided that nothing contained in this clause shall supersede any law for the time being in force or regulation made by any regulator regarding the composition of the board.

Maximum number of directorships to be held by a director

- ii. No person shall be elected or nominated as a director of more than seven listed companies simultaneously:

Provided that this limit shall not include the directorships in the listed subsidiaries of a listed holding company¹.

Filling up a casual vacancy

- iii. Any casual vacancy on the board of directors of a listed company shall be filled up by the directors at the earliest but not later than 90 days thereof.

Responsibilities, powers and functions of board of directors

- iv. The board of directors of a listed company shall exercise its powers and carry out its fiduciary duties with a sense of objective judgment and independence in the best interests of the listed company.

- v. The board of directors of a listed company shall ensure that:

- (a) professional standards and corporate values are put in place that promote integrity for the board, senior management and other employees in the form of a Code of Conduct, defining therein acceptable and unacceptable behaviors. The board shall take appropriate steps to disseminate Code of Conduct throughout the company along with supporting policies and procedures and these shall be put on the company's website;
- (b) adequate systems and controls are in place for identification and redress of grievances arising from unethical practices.
- (c) a vision and/or mission statement and overall corporate strategy for the listed company is prepared and adopted. It shall further ensure that significant policies have been formulated;

Explanation:

The significant policies for this purpose may include:

- governance, risk management and compliance issues;
- human resource management including preparation of a succession plan;
- procurement of goods and services;
- investors' relations including but not limited to general investor awareness,

¹ "Holding company" means a holding company as defined in Section 3 of the Companies Ordinance, 1984.

- complaints and communication, etc.;
- marketing;
- determination of terms of credit and discount to customers;
- write-off of bad/doubtful debts, advances and receivables;
- capital expenditure, planning and control;
- investments and disinvestment of funds;
- borrowing of moneys;
- determination and delegation of financial powers;
- transactions or contracts with associated companies and related parties;
- the corporate social responsibility (CSR) initiatives and other philanthropic activities including donations, charities, contributions and other payments of a similar nature;
- health, safety and environment; and
- the whistleblower policy.

A complete record of particulars of the significant policies along with the dates on which they were approved or amended by the board of directors shall be maintained.

- (d) a system of sound internal control is established, which is effectively implemented and maintained at all levels within the company;
 - (e) within two years of coming into force of this Code, a mechanism is put in place for an annual evaluation of the board's own performance;
 - (f) the decisions on the following material transactions or significant matters are documented by a resolution passed at a meeting of the board:
 - investment and disinvestment of funds where the maturity period of such investments is six months or more, except in the case of banking companies, non-banking finance companies and insurance companies;
 - determination of the nature of loans and advances made by the listed company and fixing a monetary limit thereof.
 - (g) the board of directors shall define the level of materiality, keeping in view the specific circumstances of the company and the recommendations of any technical or executive subcommittee of the board that may be set up for the purpose.
- vi. The Chairman and the Chief Executive Officer (CEO), by whatever name called, shall not be the same person except where provided for under any other law. The Chairman shall be elected from among the non-executive directors of the listed company. The Chairman shall be responsible for leadership of the board and shall ensure that the board plays an effective role in fulfilling all its responsibilities. The Board of Directors shall clearly define the respective roles and responsibilities of the Chairman and CEO.

Provided that this clause shall take effect upon the reconstitution of the board of

directors after December 31, 2015.

Provided further that the provisions of clauses (i)(b), (i)(d) and (ii) shall take effect when the board is reconstituted on the expiry of its current term after coming into force of this Code.

Meetings of the board

- vii. All written notices, including the agenda, of meetings shall be circulated at least seven days prior to the meetings, except in the case of emergency meetings, where the notice period may be reduced or waived.
- viii. The Chairman shall ensure that the minutes of meetings of the board of directors are appropriately recorded. The Company Secretary shall be secretary to the board.

In the event that a director of a listed company is of the view that his dissenting note has not been satisfactorily recorded in the minutes of a meeting of the Board of Directors, he may refer the matter to the Company Secretary. The director may require the note to be appended to the minutes, failing which he may file an objection with the Securities and Exchange Commission of Pakistan (SECP) in the form of a statement to that effect. The objection may be filed with the SECP within 30 days of the date of confirmation of the minutes of the meeting.

Significant issues to be placed for decision of Board of Directors

- ix. In order to strengthen and formalize corporate decision-making process, significant issues shall be placed for the information, consideration and decision of the board of directors of listed companies and/or its committees.

The significant issues for this purpose may include:

- the CEO shall immediately bring before the board, as soon as it is foreseen that the company will not be in a position of meeting its obligations on any loans (including penalties on late payments and other dues, to a creditor, bank or financial institution or default in payment of public deposit), TFCs, Sukuks or any other debt instrument. Full details of the company's failure to meet obligations shall be provided in the company's quarterly and annual financial statements.
- annual business plan, cash flow projections, forecasts and strategic plan;
- budgets including capital, manpower and overhead budgets, along with variance analyses;
- matters recommended and/or reported by the committees of the board;
- quarterly operating results of the listed company as a whole and in terms of its operating divisions or business segments;
- internal audit reports, including cases of fraud, bribery, corruption, or irregularities of a material nature;
- management letter issued by the external auditors;
- details of joint venture or collaboration agreements or agreements with distributors, agents, etc.;

- promulgation or amendment to a law, rule or regulation, enforcement of an accounting standard and such other matters as may affect the listed company;
- status and implications of any law suit or proceedings of material nature, filed by or against the listed company;
- any show cause, demand or prosecution notice received from revenue or regulatory authorities;
- failure to recover material amounts of loans, advances, and deposits made by the listed company, including trade debts and inter-corporate finances;
- any significant accidents, dangerous occurrences and instances of pollution and environmental problems involving the listed company;
- significant public or product liability claims made or likely to be made against the listed company, including any adverse judgment or order made on the conduct of the listed company or of another company that may bear negatively on the listed company;
- report on governance, risk management and compliance issues. Risks considered shall include reputational risk and shall address risk analysis, risk management and risk communication;
- disputes with labor and their proposed solutions, any agreement with the labor union or collective bargaining agent and any charter of demands on the listed company;
- whistleblower protection mechanism;
- report on CSR activities; and
- payment for goodwill, brand equity or intellectual property.

(x) **Related party transactions**

- a) The details of all related party transactions shall be placed before the Audit Committee of the company and upon recommendations of the Audit Committee the same shall be placed before the board for review and approval.
- b) The related party transactions which are not executed at arm's length price shall also be placed separately at each board meeting along with necessary justification for consideration and approval of the board on recommendation of the Audit Committee of the listed company.
- c) The board of directors of a company shall approve the pricing methods for related party transactions that were made on the terms equivalent to those that prevail in arm's length transaction, only if such terms can be substantiated.
- d) Every company shall maintain a party wise record of transactions, in each financial year, entered into with related parties in that year along with all relevant documents and explanations. The record of related party transactions shall include the following particulars in respect of each transaction:
 - i) Name of related party;
 - ii) Nature of relationship with related party;

- iii) Nature of transaction;
- iv) Amount of transaction; and
- v) Terms and conditions of transaction, including the amount of consideration received or given.

Directors' Training Program

- (xi) All listed companies shall make appropriate arrangements to carry out orientation courses for their directors to acquaint them with this code, applicable laws, their duties and responsibilities to enable them to effectively manage the affairs of the listed companies for and on behalf of shareholders.

It shall be mandatory for all the directors of the listed companies to have certification under any directors' training program offered by institutions—local or foreign—that meet the criteria specified by the SECP:

Provided that from June 30, 2012 to June 30, 2016 every year, a minimum of one director on the board shall acquire the said certification under this program each year and thereafter all directors shall obtain it:

Provided further that individuals with a minimum of 14 years of education and 15 years of experience on the board of a listed company—local and/or foreign—shall be exempted from the directors' training program.

Chief Financial Officer (CFO), Company Secretary and Head of Internal Audit

Appointment and removal

- (xii) The appointment, remuneration and terms and conditions of employment of the Chief Financial Officer (CFO), the Company Secretary and the Head of Internal Audit of listed companies shall be determined by the board of directors.

The removal of the CFO and Company Secretary of listed companies shall be made with the approval of the board of directors.

The removal of Head of Internal Audit shall be made with the approval of the board only upon recommendation of the Chairman of the Audit Committee:

Explanation: For this purpose the term removal shall include non renewal of contracts of the CFO, Company Secretary and Head of Internal Audit.

Qualifications of CFO and Head of Internal Audit

- (xiii) No person shall be appointed as the CFO of a listed company unless he/she has at least three (3) years of experience of being engaged in or employed in a public practice

(audit/accounting) firm, or in managing financial or corporate affairs functions of a company, and is:

- (a) a member of a recognized body of professional accountants; or
- (b) has a postgraduate degree in finance from a recognized university or equivalent.

Provided that individuals serving as CFO of a listed company for the last five years at the time of coming into effect of this Code shall be exempted from the above qualification requirement.

(xiv) No person shall be appointed as the Head of Internal Audit of a listed company unless he/she has three (3) years of relevant experience in audit or finance or compliance function, and is:

- (a) a member of a recognized body of professional accountants; or
- (b) a Certified Internal Auditor; or
- (c) a Certified Fraud Examiner; or
- (d) a Certified Internal Control Auditor

Provided that individuals serving as Head of Internal Audit of a listed company for the last five years at the time of coming into effect of this Code shall be exempted from the above qualification requirement.

Requirement to attend board meetings

(xv) The CFO and Company Secretary of a listed company or in their absence, the nominee, appointed by the board, shall attend all meetings of the Board of Directors. Provided that the CFO and Company Secretary shall not attend such part of a meeting of the Board of Directors, which involves consideration of an agenda item relating to the CFO and Company Secretary respectively.

Corporate and financial reporting framework

(xvi) The directors of listed companies shall annex statements to the following effect with the Directors' Report, prepared under Section 236 of the Ordinance:

- (a) The financial statements, prepared by the management of the listed company, present its state of affairs fairly, the result of its operations, cash flows and changes in equity;
- (b) Proper books of account of the listed company have been maintained;
- (c) Appropriate accounting policies have been consistently applied in preparation of financial statements and accounting estimates are based on reasonable and prudent judgment;
- (d) International Financial Reporting Standards, as applicable in Pakistan, have been followed in preparation of financial statements and any departures

therefrom has been adequately disclosed and explained;

- (e) The system of internal control is sound in design and has been effectively implemented and monitored; and
- (f) There are no significant doubts upon the listed company's ability to continue as a going concern:

Provided that where necessary the following information shall also be annexed to the Directors' Reports of listed companies:

- a) If the listed company is not considered to be a going concern, the fact along with the reasons shall be disclosed;
- b) Significant deviations from last year in operating results of the listed company shall be highlighted and reasons thereof shall be explained;
- c) Key operating and financial data of last six years shall be summarized;
- d) If the listed company has neither declared dividend nor issued bonus shares for any year, the reasons thereof shall be given;
- e) Where any statutory payment on account of taxes, duties, levies and charges is outstanding, the amount together with a brief description and reasons for the same shall be disclosed;
- f) Significant plans and decisions, such as corporate restructuring, business expansion and discontinuance of operations, shall be outlined along with future prospects, risks and uncertainties surrounding the listed company;
- g) A statement as to the value of investments of provident, gratuity and pension funds, based on their respective audited accounts, shall be included;
- h) The number of board and committees' meetings held during the year and attendance by each director shall be disclosed;
- i) The details of training programs attended by directors;
- j) The pattern of shareholding shall be reported to disclose the aggregate number of shares (along with name wise details where stated below) held by:
 - I. associated companies, undertakings and related parties (name wise details);
 - II. mutual funds (name wise details);
 - III. directors and their spouse(s) and minor children (name wise details);
 - IV. executives;
 - V. public sector companies and corporations;
 - VI. banks, development finance institutions, non-banking finance

- companies, insurance companies, takaful, modarabas and pension funds; and
- VII. shareholders holding five percent or more voting rights in the *listed* company (name wise details).

Explanation: For the purpose of this sub-clause, the expression “executive” means an employee of a listed company other than the CEO and directors.

- k) The directors’ report shall cover, loans, TFCs, sukuks or any other debt instruments in which the company is in default or likely to default. There shall be a clear presentation with details as to the aggregate amount of the debt overdue or likely to become overdue and the reasons for the default/emerging default situation and the measures taken by the company to address and settle such default situation.
- l) All trades in the shares of the listed company, carried out by its directors, executives and their spouses and minor children shall also be disclosed.

Explanation: For the purpose of this sub-clause and clause xxiii the expression “executive” means the CEO, COO, CFO, Head of Internal Audit and Company Secretary by whatever name called, and other employees of the company for whom the board of directors will set the threshold to be reviewed on an annual basis and disclosed in the annual report.

Directors’ remuneration

(xvii) There shall be a formal and transparent procedure for fixing the remuneration packages of individual directors. No director shall be involved in deciding his/her own remuneration.

- a) Directors’ remuneration packages shall encourage value creation within the company. These shall be subject to prior approval of shareholders/board as required by company’s Articles of Association. Levels of remuneration shall be appropriate to attract and retain the directors needed to govern the company successfully.

Subject to the provisions of the Ordinance and the company’s Articles of Association, the shareholders/board shall determine the remuneration for non-executive directors. However, it shall not be at a level that could be perceived to compromise their independence.

- (b) The company’s Annual Report shall contain details of the aggregate remuneration separately of executive and non-executive directors, including salary/fee, benefits and performance-linked incentives etc.

Frequency of financial reporting

(xviii) The quarterly unaudited financial statements of listed companies shall be published and

circulated along with directors' review on the affairs of the listed company.

- (xix) All listed companies shall ensure that second quarterly financial statements are subjected to a limited scope review by the statutory auditors in such manner and according to such terms and conditions as may be determined by the Institute of Chartered Accountants of Pakistan (ICAP) and approved by the SECP.
- (xx) Every listed company shall immediately disseminate to the SECP and the stock exchange on which its shares are listed all material information relating to the business and other affairs of the listed company that will affect the market price of its shares. The mode of dissemination of information shall be prescribed by the stock exchange on which shares of the company are listed.

This information may include but shall not be restricted to any material change in the nature of business of the company; information regarding any joint ventures, merger or acquisition or any material contract entered into or lost; purchase or sale of significant assets; franchise, brand name, goodwill, royalty, financial plan, etc.; any unforeseen or undisclosed impairment of assets due to technological obsolescence, etc; delay or loss of production due to strike, fire, natural calamities, major breakdown, etc; issue or redemption of any securities; a major change in borrowings including projected gains to accrue to the company; any default in repayment or rescheduling of loans; and change in directors, Chairman or CEO of the listed company:

Explanation:

Such information shall be disseminated to the above-mentioned entities as soon as any decision about above referred matters or any other significant issue is taken by the board or a significant matter requiring disclosure has come into the knowledge of company's management.

Responsibility for financial reporting and corporate compliance

- (xxi) No listed company shall circulate its financial statements unless the CEO and the CFO present the financial statements, duly endorsed under their respective signatures, for consideration and approval of the Board of Directors.

It shall be mandatory for the CEO and CFO to have the second quarterly and annual accounts (both separate and consolidated where applicable) initialed by the external auditors before presenting it to the audit committee and the Board of Directors for approval.

- (xxii) The Company Secretary of a listed company shall furnish a Secretarial Compliance Certificate, on the prescribed form (Appendix A), along with annual return filed with the registrar concerned certifying that the secretarial and corporate requirements of the Ordinance have been complied with.

Disclosure of interest by a director holding company's shares

- (xxiii) Where any director, CEO or executive of a listed company or their spouses sell, buy or

transact, whether directly or indirectly, in shares of the listed company of which he is a director, CEO or executive, as the case may be, he shall immediately notify in writing to the Company Secretary of such transaction. Such director, CEO or executive, as the case may be, shall also deliver a written record of the price, number of shares, form of share certificates, i.e., whether physical or electronic within the Central Depository System, and nature of transaction to the Company Secretary within two days of effecting the transaction. The Company Secretary shall immediately forward the same to the Exchange for its dissemination to all concerned. The notice of the director, CEO or executive, as the case may be, shall also be presented by the Company Secretary at the meeting of the board of directors immediately subsequent to such transaction. In the event of default by a director, CEO or executive to give a written notice or deliver a written record, the Company Secretary shall place the matter before the board of directors in its immediate next meeting:

Provided that each listed company shall determine a closed period prior to the announcement of interim/ final results and any business decision, which may materially affect the market price of its shares. No director, CEO or executive shall, directly or indirectly, deal in the shares of the listed company in any manner during the closed period.

The closed period shall start from the day when any document/statement, which forms the basis of price sensitive information, is sent to the board of directors and terminate after the information is made public.

Every listed company shall advise its directors about the closed period at the time of circulating agenda and working papers for the board meetings, along with sending intimation of the same to the stock exchanges.

Committees of the board

Composition

(xxiv) The board of directors of every listed company shall establish an Audit Committee, at least of three members comprising of non-executive directors and at least one independent director. The chairman of the committee shall preferably be an independent director, who shall not be the chairman of the board. The board shall satisfy itself such that at least one member of the audit committee has relevant financial skills/expertise and experience.

(xxv) There shall also be a Human Resource and Remuneration (HR&R) Committee at least of three members comprising a majority of non-executive directors, including preferably an independent director. The CEO may be included as a member of the committee but not as the chairman of committee. The CEO if member of HR&R Committee shall not participate in the proceedings of the committee on matters that directly relate to his performance and compensation.

The committee shall be responsible for:

- i) recommending human resource management policies to the board;

- ii) recommending to the board the selection, evaluation, compensation (including retirement benefits) and succession planning of the CEO;
- iii) recommending to the board the selection, evaluation, compensation (including retirement benefits) of COO, CFO, Company Secretary and Head of Internal Audit; and
- iv) consideration and approval on recommendations of CEO on such matters for key management positions who report directly to CEO or COO.

(xxvi) The names of members of the committees of the board shall be disclosed in each Annual Report of the listed company.

Audit Committee

Frequency of meetings, attendance, terms of reference and reporting procedures

(xxvii) The Audit Committee of a listed company shall meet at least once every quarter of the financial year. These meetings shall be held prior to the approval of interim results of the listed company by its Board of Directors and before and after completion of external audit. A meeting of the Audit Committee shall also be held, if requested by the external auditors or the Head of Internal Audit.

Attendance at meetings

(xxviii) The CFO, the Head of Internal Audit and external auditors represented by engagement partner or in his absence any other partner designated by the audit firm shall attend meetings of the Audit Committee at which issues relating to accounts and audit are discussed:

Provided that at least once a year, the Audit Committee shall meet the external auditors without the CFO and the Head of Internal Audit being present:

Provided further that at least once a year, the Audit Committee shall meet the head of internal audit and other members of the internal audit function without the CFO and the external auditors being present:

Provided further that the chairman of the Audit Committee and engagement partner of external auditor or in his absence any other partner designated by the audit firm shall be present at the AGM for necessary feedback to the shareholders.

Terms of reference

(xxix) The Board of Directors of every listed company shall determine the terms of reference of the Audit Committee. The Board shall provide adequate resources and authority to enable the Audit Committee carry out its responsibilities effectively. The Audit Committee shall, inter alia, recommend to the Board of Directors the appointment of external auditors, their removal, audit fees, the provision by the external auditors of any service to the listed company in addition to audit of its financial statements. The Board of Directors shall give due consideration to the recommendations of the Audit Committee in all these matters and where it acts otherwise, it shall record the reasons thereof.

The terms of reference of the Audit Committee shall also include the following:

- (a) determination of appropriate measures to safeguard the listed company's assets;
- (b) review of quarterly, half-yearly and annual financial statements of the listed company, prior to their approval by the Board of Directors, focusing on:
 - major judgmental areas;
 - significant adjustments resulting from the audit;
 - the going concern assumption;
 - any changes in accounting policies and practices;
 - compliance with applicable accounting standards;
 - compliance with listing regulations and other statutory and regulatory requirements; and
 - significant related party transactions.
- (c) review of preliminary announcements of results prior to publication;
- (d) facilitating the external audit and discussion with external auditors of major observations arising from interim and final audits and any matter that the auditors may wish to highlight (in the absence of management, where necessary);
- (e) review of management letter issued by external auditors and management's response thereto;
- (f) ensuring coordination between the internal and external auditors of the listed company;
- (g) review of the scope and extent of internal audit and ensuring that the internal audit function has adequate resources and is appropriately placed within the listed company;
- (h) consideration of major findings of internal investigations of activities characterized by fraud, corruption and abuse of power and management's response thereto;
- (i) ascertaining that the internal control systems including financial and operational controls, accounting systems for timely and appropriate recording of purchases and sales, receipts and payments, assets and liabilities and the reporting structure are adequate and effective;
- (j) review of the listed company's statement on internal control systems prior to endorsement by the Board of Directors and internal audit reports;
- (k) instituting special projects, value for money studies or other investigations on any matter specified by the Board of Directors, in consultation with the CEO and to consider remittance of any matter to the external auditors or to any other external body;
- (l) determination of compliance with relevant statutory requirements;
- (m) monitoring compliance with the best practices of corporate governance and identification of significant violations thereof; and
- (n) consideration of any other issue or matter as may be assigned by the Board of Directors.

Reporting procedure

(xxx) The Audit Committee of a listed company shall appoint a secretary of the committee who shall either be the Company Secretary or Head of Internal Audit. However, CFO shall not be appointed as the secretary to the Audit Committee. The secretary shall circulate minutes of meetings of the Audit Committee to all members, directors, Head of internal Audit and the CFO prior to the next meeting of the board and where this is not practicable, the Chairman of the Audit Committee shall communicate a synopsis of the proceedings to the board and the minutes shall be circulated immediately after the meeting of the board.

Internal audit

(xxxi) There shall be an internal audit function in every listed company. The Head of internal Audit shall functionally report to the Audit Committee and administratively to the CEO.

A director cannot be appointed, in any capacity, in the internal audit function, to ensure independence of the internal audit function.

The internal audit function may be outsourced by a listed company to a professional services firm or be performed by the internal audit staff of holding company. However, due care shall be exercised to ensure that suitably qualified and experienced persons, who are conversant with the company's policies and procedures, are engaged in the internal audit. In the event of outsourcing the internal audit function, company shall appoint or designate a fulltime employee other than CFO, as Head of Internal Audit, to act as coordinator between firm providing internal audit services and the board:

Provided that while outsourcing the function, the company must not appoint its existing external auditors as internal auditors.

(xxxii) All listed companies shall ensure that internal audit reports are provided for the review of external auditors. The auditors shall discuss any major findings in relation to the reports with the Audit Committee, which shall report matters of significance to the Board of Directors.

External auditors

(xxxiii) No listed company shall appoint as external auditors a firm of auditors which has not been given a satisfactory rating under the Quality Control Review program of the Institute of Chartered Accountants of Pakistan.

(xxxiv) No listed company shall appoint as external auditors a firm of auditors which or a partner of which is non-compliant with the International Federation of Accountants' (IFAC) Guidelines on Code of Ethics, as adopted by the Institute of Chartered Accountants of Pakistan.

(xxxv) The Board of Directors of a listed company shall recommend appointment of external auditors for a year, as suggested by the Audit Committee. The recommendations of the Audit Committee for appointment of an auditor or otherwise shall be included in

the Directors' Report. In case of a recommendation for appointment of an auditor other than the retiring auditor the reasons for the same shall be included in the Directors' Report.

- (xxxvi) No listed company shall appoint its auditors to provide services in addition to audit except in accordance with the regulations and shall require the auditors to observe applicable IFAC guidelines in this regard and shall ensure that the auditors do not perform management functions or make management decisions, responsibility for which remains with the Board of Directors and management of the listed company.
- (xxxvii) (a) All listed companies in the financial sector shall change their external auditors every five years. Financial sector, for this purpose, means banks, non-banking financial companies (NBFC's), modarabas and insurance/takaful companies; provided that all inter related companies/ institutions, engaged in business of providing financial services shall appoint the same firm of auditors to conduct the audit of their accounts² and
- (b) All listed companies other than those in the financial sector shall, at a minimum, rotate the engagement partner after every five years.
- (xxxviii) No listed company shall appoint a person as an external auditor or a person involved in the audit of a listed company who is a close relative, i.e., spouse, parents, dependents and non-dependent children, of the CEO, the CFO, an internal auditor or a director of the listed company.
- (xxxix) Every listed company shall require external auditors to furnish a Management Letter to its board of directors within 45 days of the date of audit report:

Provided that any matter deemed significant by the external auditor shall be communicated in writing to the board prior to the approval of the audited accounts by the board.

COMPLIANCE WITH THE CODE OF CORPORATE GOVERNANCE

- (xi) All listed companies shall publish and circulate a statement (in the form as specified in Appendix "B") along with their annual reports to set out the status of their compliance with the requirements set out above. The statement shall be specific and deemed to be supported by the necessary evidence held by the company making the said statement.
- (xli) All listed companies shall ensure that the statement of compliance with the best practices of corporate governance is reviewed and certified by statutory auditors, where such compliance can be objectively verified, before its publication. Statutory auditors of listed company shall ensure that any non-compliance with the CCG requirements is highlighted in their review report.
- (xlii) Where the SECP is satisfied that it is not practicable to comply with any of the best

² Joint Notification by SBP & SECP dated February 25, 2004

practices of corporate governance in a particular case, it may, for reasons to be recorded, relax the same subject to such conditions as it may deem fit.

Criteria for Institutions desirous of offering Directors' Training Program

Background

The Code of Corporate Governance (Code) 2002, required all listed companies to make appropriate arrangements to conduct orientation and training courses for their directors to acquaint them with their duties and responsibilities and enable them to effectively manage the affairs of listed companies on behalf of the shareholders.

Clause (xiv) of the Code 2002 (clause xi of the Code 2012) requires the directors of the listed companies to have certification under directors' training program offered by any institution – local and/or foreign– that meet the criteria specified by the SECP.

This document lays down the minimum criteria for the eligibility of institutions and the areas that have to be covered in the Directors' Training Program (DTP) offered by them. While the SECP will give initial approval of an institution that can offer DTP, the stock exchanges will formalize an on-going compliance mechanism to ensure that the criteria is met at all times.

This document provides a formal set of criteria to assess and evaluate the programs as well as the institutions offering these programs. The minimum eligibility criteria will help to ensure that only institutions equipped with the necessary infrastructure and resources, offer these programs. The list of areas covered in the said program shall serve to standardize the DTPs in their content and coverage of the subject.

For the aforesaid certification required under the Code, foreign directors who have already participated in a training program that broadly covers the areas listed under para 6 below shall be exempt from the requirement of DTP.

Criteria for Institutions

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

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

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

Program outline

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

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

Legal overview

- An overview of relevant laws that have to be adhered to, including the Code of Corporate Governance and the Companies Ordinance 1984;
- The key principles and elements of good corporate governance;
- Significance of director's report in the annual report;
- Directors' fiduciary duties to shareholders under the law; and
- Procedure of appointment, election, retirement and removal of directors.

Role and responsibility of the Board of Directors

- Development of code of conduct and other policies, and internal control system;
- Conduct of meetings of board of directors;
- Disclosures of shareholding and trading of securities by directors and their families;
- Ethical obligations;
- Determining closed period;
- The board's role in shaping the company's dividend policy;
- Board composition, roles and responsibilities, powers and functions, duties and liabilities & procedures and practices;
- The right mix of skills and board diversity;
- The institution and importance of independent directors;
- Executive and non-executive remuneration – how to attract, retain and motivate directors and officers;

- Board committees and their roles;
- Succession planning;
- Appointing the CEO, determining terms of appointment of the CEO and evaluating performance of the CEO;
- Defining the roles and responsibilities of the Chairman and the CEO;
- Board performance evaluation;
- Avoiding a box-ticking approach to corporate governance, and stressing the importance of substance over form; and
- Control environment.

Financial overview

- Analysis of related party transactions;
- Disclosures and financial reporting framework;
- The benefits of corporate governance including its impact on profitability and shareholder value; and
- How to read, understand and interpret financial statements.

Risk management

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

International trends and practices

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

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

Additional general requirements

1. The institutions offering DTP shall place the names of the certified directors on their websites and also disseminate their names amongst industry and business associations, chambers of commerce and industry, etc. through an appropriate mechanism, so that their names are readily available to the companies who wish to appoint trained directors on their boards. The names of certified directors shall also be sent through email to the stock exchanges and the SECP within 15 days of the conclusion of a DTP.
2. The institutions shall strive to meet or exceed all established standards, both domestically as well as internationally. The institution shall clearly lay down the objectives of the DTP.
3. The availability and proper utilization of high quality instructional material is essential for conducting effective DTP. The institutions shall ensure that adequate material including: relevant laws; case studies; syllabus; multimedia; reference texts; etc. are made available for instructional purposes. Special focus should be on developing case studies, which are relevant to the business environment of Pakistan and these should be included in the curriculum.

4. The institutions are encouraged to arrange research programs, seminars, conferences, workshops, etc. for promoting good corporate governance practices in Pakistan.
5. The potential of undertaking continuing professional development of the trainees through the institution's websites in the form of on-line, self-study courses may be considered by the institutions.

Frequently Asked Questions

General

1. What is the effective date for compliance with the Code of Corporate Governance 2012 (Code 2012)?

All provisions, unless provided otherwise in the Code 2012, shall be effective at the date of issuance.

2. Is the Code 2012 applicable to modarabas and mutual funds?

The Code 2012, being part of the listing regulations of the stock exchanges, is applicable to all entities listed on the exchanges. The listed entities include not only companies but also funds, such as modarabas and mutual funds. The requirements of the Code 2012 are, therefore, applicable to modarabas and mutual funds. Furthermore, the requirements of the Code 2012 pertaining to the Board of Directors are also applicable to management companies of such funds, even if these companies are themselves not listed on the stock exchanges.

3. Does the Code 2012 conflict with the Companies Ordinance, 1984?

The SECP considers the Code 2012 to be an extension of the requirements of the Companies Ordinance, 1984 (Ordinance) rather than being in conflict with it. A number of amendments have been made over the years to the Ordinance for greater harmonization between the provisions of the Code and the Ordinance. Furthermore, the SECP draws support from the decision of the Karachi High Court in the matter of Messrs Data Textiles Limited vs. Karachi Stock Exchange and another, 1999MLD 108. The Honorable High Court held, inter alia, that provisions contained in (Section 249) the Ordinance do not override and cannot be interpreted to be in derogation with the listing regulations framed under the Securities and Exchange Ordinance, 1969, as both the enactments cover separate and distinct spheres.

4. What are the penalties for non-compliance with the Code 2012?

Since the Code 2012 has been incorporated in the listing regulations of the stock exchanges, penalties for noncompliance of various requirements are specified in the listing regulations and will be applicable accordingly.

5. Which companies are referred to by the term "Non-Banking Financial Institutions" in the Code 2012?

For the purpose of the Code 2012, non-banking financial institutions include modarabas, leasing companies, housing finance companies, investment banks, discount houses, venture capital companies, insurance companies and mutual funds.

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

A standard format for the compliance statement to be published in the annual reports of listed companies is provided in Appendix B of the Code 2012.

Board Composition

7. What are the implications if a listed company fails to nominate an independent director on its board?

Clause (i)(b) of the Code 2012 requires at least one independent director on the board. This is now a mandatory provision and any non-compliance will be penalized under listing regulations.

8. If an independent director is serving as the chairman of the board at the time of issuance of the Code 2012, can he also act as the chairman of the audit committee as required by the Code 2012? Now the Code 2012 requires chairman of audit committee to be an independent director who is not the chairman of board. Can the existing independent chairman also act as chairman of committee till the next election of the board?

It is mandatory as per Clause (xxiv) of the Code 2012 that the independent director is the chairman of the audit committee. In order to fulfill this requirement, the board shall elect another director as the chairman of the board.

9. **What is the minimum amount of investment that would qualify a company to nominate a director for appointment on the board of its investee company?**

No minimum amount of investment has been prescribed in the Code 2012.

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

Executive directors are the working, whole-time directors of a company. Non-executive directors, on the other hand are those who are not from among the executive management team and may or may not be independent. They are expected to lend an outside viewpoint to the board of directors of a company and do not undertake to devote their whole working time to the company. The guiding factor in distinguishing between executive and non-executive directors of a company is the extent of their involvement in managing the affairs of the company.

An executive director cannot be categorically defined as a "paid director" and a non-executive director as one who is "not a paid director". While the fact that a company may not pay remuneration to its non-executive directors may facilitate their classification as such, this rule cannot be applied uniformly to all companies since payment of any remuneration to its directors is at the discretion of each company.

11. **Can a broker be appointed as a director of a listed company?**

The Code 2012 does not restrict election/nomination of brokers on the boards of listed companies. However, the Ordinance states that no person shall be appointed as a director of a listed company if he/she is engaged in the business of brokerage, or is a spouse of such person or is a sponsor, director or officer of a corporate brokerage house. Therefore a broker cannot be appointed as a director on the board of a listed company.

12. **Is professional indemnity insurance required for all board of directors?**

Professional indemnity insurance is not mandatory but is encouraged for independent directors only.

13. **In a board of seven, what will be the composition as per the criteria laid down in the Code 2012?**

If there are seven directors on the board of a listed company, the composition as per the Code 2012 will be: one independent director, two executive directors (including the CEO) and four non-executive directors.

14. **Is the 'Statement of Ethics and Business Practices' still required to be signed by all directors and employees of listed companies?**

No, the 'Statement of Ethics and Business Practices' is no longer required. However, a Code of Conduct has to be prepared and communicated throughout the company apart from placing it on the company's website.

15. Who will evaluate the performance of the board and when?

The board has to put in place a mechanism for its evaluation within two years of the introduction of Code 2012.

16. A director is serving on the board of 10 listed companies including three listed subsidiary companies of a holding company. Is he compliant with the requirement of maximum number of directorships of the revised code?

Yes, maximum number of directorships of seven does not include listed subsidiaries of a listed holding company.

17. Does the board of directors of a listed company need to specify by a resolution the limits of materiality for the policies to be presented to the board?

The level of materiality should be determined by a resolution in the board meeting.

18. Do the matters required to be decided by the board through a resolution under the Code 2012 have to be decided by the board in a board meeting as under Section 196 (2) of the Companies Ordinance, 1984?

Only such matters as are considered to be material/significant to a listed company should be decided by its board of directors in a meeting in a manner similar to Section 196 of the Ordinance.

Board Meetings

19. What information should be circulated among the directors of a listed company along with the notice of a board meeting?

The agenda of the board meeting and complete details of agenda items, including working papers, should be circulated among the directors of a listed company along with the notice of the board meeting. These documents should be circulated at least seven days before the meeting of the board of directors, except in case of emergency meetings, where the notice period may be reduced or waived.

Related Party Transactions

20. Does the Code 2012 apply to private/unlisted companies in addition to the listed companies? Is Clause (x) of the Code 2012 applicable to private companies and unlisted public companies?

The Code 2012 is part of the listing regulations of the stock exchanges and is applicable only to listed companies and not private/unlisted public companies. Private/unlisted

companies are thus not required to furnish Statement of Compliance with the Code, unless they have opted to adopt the Code 2012 voluntarily. However, all companies - private, listed or unlisted, must ensure compliance with all such provisions (provisions on related party transactions etc.) applicable to them under the relevant international financial reporting standards.

Directors' Training Program

21. If a foreign director on the board of a listed company has already participated in a director training program abroad, then will it still be mandatory for him to attend the orientation and director training program as required by the Code 2012?

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

Foreign directors who have received training abroad shall be exempt from Directors' Training Program (DTP) requirement of the Code 2012 if the program they attended broadly covered the areas stated in the criteria specified by the SECP for the purpose.

Chief Financial Officer (CFO), Company Secretary (CS) and Head of Internal Audit

22. Do the qualifications prescribed for the CFO and head of internal audit apply to employees who are already in service of a listed company?

The qualification criteria for the CFO and head of internal audit of a listed company shall not be applicable to individuals serving as the CFO and head of internal audit of a listed company, respectively, for the last five years at the time of coming into effect of Code 2012.

23. Would the terms of employment of existing employees of a listed company, working in the positions of the CFO, the CS and head of internal audit, need to be ratified in the manner laid down in clauses (xii) to (xiv) of the Code 2012?

The relevant clauses of the Code 2012 are applicable to the existing employees serving in the above mentioned positions. Therefore, the terms and conditions of existing employees need to be ratified in terms of the Code 2012.

24. Can the same person be appointed as the CFO and the CS of a listed company?

The terms of reference of the two positions are distinct. It is, therefore, preferred that separate persons handle the functions of the CFO and company secretary within a listed company. The SECP Circular No 15 of July 8, 2003 also requires listed companies to have full time employee designated to perform specific assignments of company secretary.

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

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

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

The Code 2012 does not restrict any full time employee in a listed company from working in a similar position in a group company. However, appropriate steps should be taken by the board of directors of the companies concerned to ensure that additional workload would not affect the quality of work performed by such employee and no conflict of interest would arise as a result of holding similar positions in two group companies.

27. Can a director of a listed company be appointed as the head of internal audit of the company?

The internal audit function of a listed company must be independent from the management/directors of a listed company. Therefore, a director cannot be appointed, in any capacity, in the internal audit function.

28. Can the offices of company secretary and legal advisor be held by one person, since both of them are required to be lawyers under the Code 2012 and the Companies (Appointment of Legal Advisors) Act, 1974, respectively?

The position of legal advisor in a company is a key appointment and is of executive nature, duties of which should not be expected to be fulfilled by a person who is also engaged in other responsibilities. As per the 1974 Rules a legal advisor must be an "Advocate" and not merely a lawyer. Therefore qualification for the two positions is not the same.

Also, the SECP vide its Circular No 15 of July 8, 2003, reinforces that companies should engage full-time employees to perform functions of a "whole time secretary".

29. Can a foreign national be appointed as the head of internal audit of a listed company in Pakistan?

There is no particular provision in the Code 2012 that restricts an individual of foreign nationality to assume the position of an officer/head of internal audit of a company listed in Pakistan.

30. (a) Can an individual who has graduated from a foreign university with an equivalent degree be considered as a postgraduate or equivalent for appointment as a CFO?

(b) If such person has experience in handling accounts and finance in a listed company outside Pakistan, would it be regarded as experience for the purposes of his qualifications to become a CFO, as laid down in the Code 2012?

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

The educational qualifications requirement for the CFO of a listed company in the Code 2012 is either postgraduate in finance from a recognized university or equivalent. The equivalence of educational qualification is granted by the Higher Education Commission ("HEC") under Section 10(1)(o) of the Higher Education Commission Ordinance, 2002, and the applicant may, therefore, be asked to provide an equivalence certificate from the HEC. The educational qualifications, once verified by the HEC, are sufficient requirement for the purposes of the Code 2012.

With regard to professional experience, the requirement is at least five years in handling financial or corporate affairs of a public listed company or a bank or a financial institution. If the applicant has served at least five years in a listed company or a bank or a financial institution and has handled financial or corporate affairs, inside or outside Pakistan, he shall be deemed as eligible for the purpose.

Foreign education and qualifications do not bar any person from pursuing his career as a CFO in Pakistan. The requirement of Sub-clause (b) of Clause (xiii) of the Code 2012 should be read as a whole and, therefore, a person cannot be appointed as a CFO unless he has both the required qualification and the experience.

Corporate and financial reporting and compliance

31. Does the directors' report, containing the information specified in clause (xvi) of the Code 2012, have to be published along with quarterly accounts?

Clause (xvi) of the Code 2012 deals with the directors' report to be attached to the annual accounts of a listed company. The quarterly accounts should be circulated along with the directors' review on the affairs of the company which need not include the information required by clause (xvi) of the Code 2012.

32. Should the disclosure in the directors' report regarding the number of board meetings held during a year include the number of resolutions passed by the board by circulation?

The number of resolutions passed by the board of directors of a listed company through circulation should not be considered in determining the number of board meetings held during a year for the purpose of the Code 2012.

33. Does the Code 2012 require quarterly accounts to be filed by listed companies for each quarter?

The listed companies are required to comply with Section 245 of the Companies Ordinance, 1984, and circulars of the SECP in determining the period for and the manner in which the quarterly accounts should be published. The only requirement

imposed by the Code 2012 is that these quarterly accounts should be circulated along with the directors' review on the affairs of the company for the relevant quarter.

34. Who can perform limited scope review of the half-yearly accounts of listed companies?

Only statutory auditors appointed to conduct the annual audit of a listed company can carry out a limited scope review of the company's half-yearly accounts.

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

The Secretarial Compliance Certificate to be filed by Company Secretary of a listed company is annexed as Appendix A of the Code 2012.

36. If the CEO and the CFO of a company are out of country/on leave, who will endorse the financial statements in their place?

In view of Sub-section (1) and (2) of Section 241 of the Companies Ordinance, 1984, depending upon the company policy, if there is an alternative executive officiating in the capacity of the CEO or the CFO, then he would be competent to endorse and present the financial statements before the board of directors of the company.

37. Should listed companies be updating their websites to disseminate financial information?

Through its directives, the SECP from time to time directs the listed companies to circulate their quarterly accounts in addition to half-yearly and annual accounts (as required in the Companies Ordinance, 1984), and in case of difficulties in circulation of the same to all shareholders, at least ensure publication of the same in two daily leading newspapers (one English, one Urdu).

Also the Corporate and Financial Reporting Framework of the Code 2012 (clause (xvi)(c)) provides for directors of listed companies to include summarized statements of key operating and financial data of last six years in the directors' report.

Further, the SECP vide SRO no. 25(I)/2012 dated 16.01.2012 has mandated the maintenance of functional websites and placement of certain material information (financial as well as non-financial) thereon.

Disclosure

38. What is meant by closed period?

The closed period is a period during which no director, CEO or executive shall, directly or indirectly, deal in the shares of the listed company in any manner.

The closed period shall start from the day when any document/statement, which forms the basis of price sensitive information, is sent to the board of directors and terminate after the information is made public. It is expected that such a restriction would help minimize the risk of insider trading by key management/directors of the company.

39. Does regulation 14(1) of the Listing Regulations of the Karachi Stock Exchange apply to closed period?

Clause (xxiii) of the Code 2012 does not require closure of share transfer books of listed companies for all shareholders in terms of regulation 14(1) of the Listing Regulations. While Clause (xxiii) seeks to reduce insider trading, regulation 14(1) provides that listed companies should give sufficient notice of closure of share transfer books to the stock exchanges so that the same can be notified to shareholders in advance.

40. Should the closed period be intimated to directors and stock exchanges?

Every listed company should advise its directors about the closed period at the time of circulating agenda and working papers for Board meetings. Furthermore, the closed period should be intimated to the stock exchanges to enable them to effectively regulate the enforcement of the Code 2012.

41. Does the signing of memorandum of understanding (MOU) by a listed company with the banks to borrow huge amounts of money, fall under the term "material information" for the purposes of disclosure?

The decision to disclose such an MOU is left to the board of directors of the company, since an MOU does not create enforceable obligations and undertakings therein might remain unfulfilled. So, no blanket ruling may be laid down in this context, and each case needs to be treated on its own merits. Also, Clause (xx) of the Code 2012 provides a suggested list of material information that also includes "a major change in borrowing", so such MOUs are covered there.

In terms of the Clause (xx) of the Code 2012, every listed company shall immediately disseminate to the stock exchange on which its shares are listed and to the SECP, all material information relating to business and other affairs of the listed company that will affect the market price of its shares, including information regarding a joint venture, merger or acquisition etc.

42. (a) What does the word "immediately" used in the abovementioned clause mean?

(b) At what point of time does a company need to disseminate information to the relevant stock exchange and the SECP in case of acquisition of shares by it of another company whether a listed or non-listed company?

The requirement of the Code 2012 to immediately disseminate any material information relating to the business and other affairs of a listed company has been laid down in the interest of the general public and to ensure that any such information is communicated to all the market participants so as to provide a level-playing field to them. A listed company is required to disseminate any material information, likely to affect the price of its shares, to the relevant stock exchanges and the SECP, as soon as any such decision is taken/finalized by its board of directors in a meeting of the board held for the purpose, immediately after such board meeting has taken place or as soon as a significant matter requiring disclosure has come to the knowledge of the company's management.

In case of any decision relating to acquisition of shares of a listed/unlisted company, the *Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance, 2002* may be referred to, for information on the timelines for dissemination of such decisions.

Board Committees

43. Can a Human Resource and Remuneration Committee of the board of directors decide the terms of employment of the CEO and executive directors of a listed company?

Human Resource and Remuneration Committee shall only 'recommend' to the board of directors the human resource management policies; succession planning of the CEO; the selection, evaluation, compensation (including retirement benefits) of the COO, the CFO, company secretary and head of internal audit.

44. Who can be members of the Audit Committee?

The Audit Committee should comprise of not less than three members from among the directors of a listed company. The Code 2012 requires that the members of the Audit Committee should be from the non-executive directors of the company. The chairman of the Audit Committee must be an independent director who is not the chairman of the board. The board shall satisfy itself that at least one member of the audit committee has relevant financial skills/expertise and experience.

45. Who can be appointed as the secretary of the Audit Committee?

The secretary of the Audit Committee shall either be the Company Secretary or Head of Internal Audit. However, the CFO shall not be appointed as the secretary to the Audit Committee.

46. (a) Are consolidated accounts for the second quarter required to be reviewed by the statutory auditors?

(b) Is the requirement for the external auditors to initial the financial statements before these are considered/approved by the Audit Committee and the board of directors, inconsistent with the provisions of the Section 233 of the Companies Ordinance, 1984, which states that responsibility for preparation of financial statements lies with the directors of the company, and that the auditors express their opinion after these have been prepared and approved by the directors?

Consolidated accounts for the second quarter are not required to be reviewed by the statutory auditors.

The requirement for the auditors to initial the financial statements has been introduced to ensure that only the accounts duly reviewed or audited are presented for the approval of the Audit Committee and the board. The CEO and the CFO are mandated to present to the Audit Committee and the board, annual accounts (both separate and consolidated) and second-quarter (only separate/stand-alone) reviewed and initialed by

external auditor, for the purposes of identification, and as such, the responsibility of preparation of financial statements rests with the management in accordance with provisions of the Companies Ordinance, 1984.

Internal Audit

47. Can the internal audit function be outsourced to a professional firm?

The internal audit function may be outsourced by a listed company to a professional services firm or can be performed by the internal audit staff of the holding company. However, it is essential that suitably qualified and experienced persons, who are conversant with the company's policies and procedures, are engaged in internal audit. In addition, these persons must be involved in the internal audit function on a full time basis so as to achieve the objectives of the Code 2012. In the event of outsourcing the internal audit function, the company shall appoint or designate a fulltime employee other than the CFO, as head of internal audit, to act as coordinator between firm providing internal audit services and the board. While outsourcing the function, the company must not appoint its statutory auditors as internal auditors.

48. Can the head of internal audit be appointed as secretary of the Audit Committee of a listed company?

Clause (xxx) of the Code 2012 states that the secretary of the Audit Committee shall either be the company secretary or head of internal audit.

49. If a company has outsourced internal audit function to an independent audit firm, does it still need to appoint the head of internal audit?

Yes. Given the crucial role of internal audit function and reporting of internal audit to the board, in the event of outsourcing the internal audit function, it is necessary that the company should appoint or designate a fulltime employee other than the CFO, as head of internal audit, to act as coordinator between firm providing internal audit services and the board. The employee appointed as head of internal audit in this case must fulfill the criteria of appointment of head of internal audit as prescribed in the Code 2012.

External Auditors

50. In case of a holding company and a subsidiary (not wholly owned), both being listed companies, can the holding company for the purpose of handling operational and financial activities, provide professional services to the subsidiary through a service contract?

The holding company may provide professional services to its subsidiary. However, due care should be exercised to comply with the directives of the SECP in appointing external auditors to provide other professional services.

51. Whether the restrictions laid down in Clause (xxxvi) of the Code 2012 are also applicable to companies applying for listing at the exchange through IPOs?

According to Section 1(2) of Listing Regulations, all listing regulations will be applicable to all companies, whether they are applying for listing or are already listed. Hence, the said restrictions also apply to companies applying for listing at the exchange through IPOs.

52. Whether the pre-audited accounts or audited accounts are required to be initialed by the external auditors before presenting to the Audit Committee?

In terms of the requirements of the Code 2012, the Audit Committee or the board of directors can only approve the duly reviewed or audited accounts in case of second quarter and annual accounts respectively. The said requirement was put in place to ensure that only accounts duly reviewed or audited, as the case may be, are presented for approval of the Audit Committee and the board of directors before circulation.

53. How can I resolve my queries pertinent to the Code 2012?

Any queries on the Code 2012 should be referred to the following email address: ccg@secp.gov.pk

Appendix A

Secretarial Compliance Certificate

[See clause (xxii)]

Name of company

To

Company Registration Office
Securities and Exchange Commission of Pakistan

I being the Secretary of [1] certify, to the best of my knowledge and belief, that I am qualified to be appointed as the Company Secretary of a listed company and that the secretarial and corporate compliance requirements of the Companies Ordinance, 1984, memorandum and articles of association of [1] and the listing regulations of [2] have been duly complied with for the year ending *, and that nothing has been concealed or withheld in this regard.

Date: Place:

Signature (s)
(Name (s) in block letters)
CNIC number

* State exceptions in case of non-compliance.

[1] Insert name of the company

[2] Insert names of the stock exchanges on which shares of the company are listed

Note: The declaration need not be –

(a) signed before a magistrate or an officer competent to administer oaths; or

(b) stamped as an affidavit

Statement of Compliance with the Code of
Corporate Governance

[See clause (x)]

Name of company Year
ending.....

This statement is being presented to comply with the Code of Corporate Governance contained in Regulation No. of listing regulations of for the purpose of establishing a framework of good governance, whereby a listed company is managed in compliance with the best practices of corporate governance.

The company has applied the principles contained in the CCG in the following manner:

1. The company encourages representation of independent non-executive directors and directors representing minority interests on its board of directors. At present the board includes:

Category	Names
Independent Directors	
Executive Directors	
Non-Executive Directors	

The independent directors meets the criteria of independence under clause i (b) of the CCG.

2. The directors have confirmed that none of them is serving as a director on more than seven listed companies, including this company (excluding the listed subsidiaries of listed holding companies where applicable).

3. All the resident directors of the company are registered as taxpayers and none of them has defaulted in payment of any loan to a banking company, a DFI or an NBFIs or, being a member of a stock exchange, has been declared as a defaulter by that stock exchange.

4. A casual vacancy occurring on the board on was filled up by the directors within days.

5. The company has prepared a "Code of Conduct" and has ensured that appropriate steps have been taken to disseminate it throughout the company along with its supporting policies and procedures.

6. The board has developed a vision/mission statement, overall corporate strategy and significant policies of the company. A complete record of particulars of significant policies along with the dates on which they were approved or amended has been maintained.

7. All the powers of the board have been duly exercised and decisions on material

transactions, including appointment and determination of remuneration and terms and conditions of employment of the CEO, other executive and non-executive directors, have been taken by the board/shareholders.

8. The meetings of the board were presided over by the Chairman and, in his absence, by a director elected by the board for this purpose and the board met at least once in every quarter. Written notices of the board meetings, along with agenda and working papers, were circulated at least seven days before the meetings. The minutes of the meetings were appropriately recorded and circulated.

9. The board arranged training programs for its directors during the year.

10. The board has approved [1] appointment of CFO, Company Secretary and Head of Internal Audit, including their remuneration and terms and conditions of employment.

11. The directors' report for this year has been prepared in compliance with the requirements of the CCG and fully describes the salient matters required to be disclosed.

12. The financial statements of the company were duly endorsed by CEO and CFO before approval of the board.

13. The directors, CEO and executives do not hold any interest in the shares of the company other than that disclosed in the pattern of shareholding.

14. The company has complied with all the corporate and financial reporting requirements of the CCG.

15. The board has formed an Audit Committee. It comprises members, of whom are non-executive directors and the chairman of the committee is an independent director.

16. The meetings of the audit committee were held at least once every quarter prior to approval of interim and final results of the company and as required by the CCG. The terms of reference of the committee have been formed and advised to the committee for compliance.

17. The board has formed an HR and Remuneration Committee. It comprises.....members, of whom.....are non-executive directors and the chairman of the committee is a/andirector.

18. The board has set up an effective internal audit function/ or has outsourced the internal audit function to who are considered suitably qualified and experienced for the purpose and are conversant with the policies and procedures of the company.

19. The statutory auditors of the company have confirmed that they have been given a satisfactory rating under the quality control review program of the ICAP, that they or any of the partners of the firm, their spouses and minor children do not hold shares of the company and that the firm and all its partners are in compliance with International Federation of Accountants (IFAC) guidelines on code of ethics as adopted by the ICAP.

20. The statutory auditors or the persons associated with them have not been appointed to provide other services except in accordance with the listing regulations and the auditors have

confirmed that they have observed IFAC guidelines in this regard.

21. The 'closed period', prior to the announcement of interim/final results, and business decisions, which may materially affect the market price of company's securities, was determined and intimated to directors, employees and stock exchange(s).

22. Material/price sensitive information has been disseminated among all market participants at once through stock exchange(s).

23. We confirm that all other material principles enshrined in the CCG have been complied with [2] except for the following, toward which reasonable progress is being made by the company to seek compliance by the end of next accounting year.

Signature (s)
(Name (s) in block letters)
Chairman /CEO

Note: Any exception to the above shall be adequately noted with reasons.

[1] in case of new appointments made after the the CCG has taken effect

[2] Delete if not applicable

Annexure C

COMPARISON OF 2002 AND 2012 CODES

S.No.	Issue	Code 2002	Code 2012
1.	Independent Director	Encouraged a minimum of one independent director on the board of a listed company.	One independent director is mandatory while preference is for 1/3rd of the total members of the board to be independent directors.
2.	Criteria for assessment of independence	Very scanty criteria provided	Criteria has been substantially expanded

3.	Executive Directors	Number of Executive Directors not to be more than 75% of elected directors including CEO	Maximum number of Executive Directors cannot be more than 1/3rd of elected directors including CEO.
4.	Number of directorships	A director can be on the board of no more than 10 listed companies at any one time.	A director can be on the board of 7 listed companies at the most at any one time. However, the limit does not include directorship in listed subsidiaries of a listed holding company.
5.	Board evaluation	-	Within two years of the implementation of the Code 2012, the Board has to put in place a mechanism for undertaking annual evaluation of the performance of the Board.
6.	Office of Chairman and CEO	The Chairman of a listed company shall preferably be elected from among the non-executive directors of the listed company.	The Chairman and CEO shall not be the same person, unless specifically provided in any other law. The Chairman shall be elected from amongst the non-executive directors of the listed company.
7.	Training of the Board of Directors	It is mandatory for directors of listed companies to attain certification. Initially, the PICG was to provide the training but later it was opened to other institutions, provided they met the criteria specified by the SECP.	It will be mandatory for directors of listed companies to attain certification under any director training program (DTP) offered by any institution (local or foreign), which meets the criteria specified by the SECP. The criteria are available at the websites of the stock exchanges and the SECP.
8.	Appointment and removal and qualification criteria for Chief Financial Officer (CFO) and Company Secretary (CS)	Appointment, remuneration and terms and conditions of employment of CFO and CS determined by CEO and approved by Board. The same mechanism followed for removal.	The appointment, remuneration and terms and conditions of employment of the CFO, CS and the Head of Internal Audit (IA) of listed companies shall be determined by the Board. The removal will also be by the Board for CS and CFO.
9.	The Head of Internal Audit (IA)	-	Qualification introduced for Head of IA. The removal of Head of IA is with the approval of the Board only upon recommendation of the Chairman of the Audit Committee.

10.	Remuneration of Directors	-	A formal and transparent procedure to be followed and disclosure of aggregate remuneration in the annual report.
11.	Board Committees	<p><u>Audit Committee:</u> The Chairman of the audit committee shall preferably be a non-executive director.</p> <p><u>Reporting Procedure:</u> The Audit Committee of a listed company shall appoint a secretary of the Committee.</p>	<p><u>Audit Committee:</u> The Chairman of the audit committee shall be an independent director, who shall not be the chairman of the board. Audit Committee shall comprise of non-executive directors.</p> <p>The secretary of Audit Committee shall either be the Company Secretary or Head of Internal Audit. However, the CFO shall not be appointed as the secretary to the Audit Committee.</p> <p>Human Resources and Remuneration Committee introduced.</p>
12.	Internal Audit	There shall be an internal audit function in every listed company. The head of internal audit shall have access to the chair of the Audit Committee	The internal audit function may be outsourced by a listed company to a professional services firm or be performed by the internal audit staff of the holding company. In the event of outsourcing the internal audit function, the company shall appoint or designate a fulltime employee other than the CFO, as Head of Internal Audit, to act as coordinator between the firm providing internal audit services and the board.