



Securities and Exchange Commission of Pakistan  
Securities Market Division  
Policy, Regulation and Development Department

Consultation Paper

on

**Introduction of Voting in Separate Categories for Election of  
Female and Independent Directors on the Board of a Listed  
Company**

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## **1. Objective**

The objective of this consultation paper is to seek feedback on proposed regulatory reforms to address the problems being faced by the listed companies in the election of independent directors and female director.

## **2. Background**

Listed Companies (Code of Corporate Governance) Regulations, 2019 (the “CCG Regulations”) require listed companies to appoint at least two or one third members of the Board, whichever is higher, as independent directors while Section 166 of the Act requires selection of independent director from a data bank, maintained by SECP notified institute (PICG). Further, in terms of Section 159 of the Act, the election of independent director is to be held in the same manner as other directors. Furthermore, ‘justification’ for selection of candidate for appointment as independent director is to be provided in the statement of material fact attached with the notice of meeting wherein the election of directors is to be held.

As per the Companies (Manner and Selection of Independent Directors) Regulations, 2018 the directors should exercise their own due diligence before selecting an individual from data bank and require such individual to submit an undertaking on a non-judicial stamp paper that he/she meets the eligibility criteria along with relevant information supporting the same.

Additionally, for female directors, Section 154 of the Act and the CCG Regulations require the Board of a listed company to have at least one female director.

It has been highlighted by companies that there exist practical difficulties with respect to the election of female directors and independent directors in case they do not get sufficient number of votes to be elected on the Board.

## **3. Proposal**

In order to overcome the above-mentioned problem, to strengthen corporate governance framework and to protect minority interest, it is proposed to introduce the concept of voting in separate categories for the election of independent directors and female directors on the Board of a listed company by making amendments in the Listed Companies (Code of Corporate Governance) Regulations, 2019 and Companies (Postal Ballot) Regulations, 2018. Under the proposed model, separate voting sessions shall be held for each category i.e. Female Directors (1<sup>st</sup> Category), Independent Directors (2<sup>nd</sup> category) and Other Directors (3<sup>rd</sup> Category).

### **3.1 Key Considerations and procedures for having voting in separate category for the election of female and independent directors:**

While prescribing separate voting for each category, following need to be taken into account:



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- i. The election of directors is held through e-voting and balloting. Hence, the shareholders need to know in advance regarding the number of directors contesting in each category (female, independent and other directors).
- ii. There may be overlapping between the different categories of directors. E.g. a female director can also be a contestant for independent director seat. Hence, a scenario may emerge where a director may get elected on two seats. This may create legal complication and render the election of director as incomplete. In order to avoid this, it is envisaged that intention of directors for contesting in a particular category may be obtained in advance for transparent voting process and be intimated to the shareholders in advance to enable e-voting and voting through ballot papers. The director will have the option to contest/give consent for any category and can only contest for one seat. This does not restrict the right of a female director to be appointed on the dedicated Female Director seat while being an independent director, as explained below. In order to ensure this, depending on the status of subject director, the number of seats in other categories will be reduced. i.e. if a female director is also an independent director, the number of seats in Independent Director category will be reduced by one if she opts to contest for the special seat of Female Director.

In order to explain the concept, following scenarios are explained. It is assumed that there is a board of seven directors which implies a minimum of 2 seats of independent directors. Further, 1 seat has been fixed by the directors for the female director category. Remaining seats are for other directors. It is also assumed that 10 nominations are received for contesting elections:

- a) **1 female director is contesting election. She is not an independent director.** This means that the subject director will contest alone for the female director category and will win even if one vote is cast as there is no other candidate in that category. For Independent Director category, 2 directors will be elected and for Other Directors category, 4 directors will be elected who get the highest votes.
- b) **2 female directors are contesting election. Both are not independent directors.** If only 1 director is contesting for Female Director category then the above scenario will emerge. The second female director will contest for a seat in the Other Director category.

If both directors are contesting for Female Director Category then 1 female director will be elected, 2 Independent Directors in Independent Directors category and 4 directors will be elected in the Other Directors category.

- c) **1 female director is contesting election. She is also an independent director. Number of candidates for independent directors is 2.** This means that 1 female director (who is also an independent director) will be elected in Female Director category even if she gets 1 vote. Seats available for election in the Independent Director Category will be reduced to one, therefore 1 independent director will be elected in Independent Director category even if he gets 1 vote. Hence, voting will be for 5 candidates in the Other Director category out of remaining 8 candidates.
- d) **1 female director is contesting election. She is also an independent director. Number of candidates for independent directors is 3.** This means that 1 female director (who is also an independent director) will be elected in Female Director category even if she gets 1 vote. 1 independent director will be elected in



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Independent Director Category out of 2 remaining candidates. Now voting will be for 5 seats in the Other Director category out of remaining 7 candidates.

- e) **2 female directors are contesting election. Both are independent directors. The number of candidates for independent directors are these two.** This means that 1 female director will be elected in Female Director category even if she gets 1 vote. Second female director will be elected in Independent Director Category even if she gets 1 vote. Company will have to develop a mechanism for identifying which director to be placed in Female Director category and which in Independent Director Category. Alternatively, only 1 joint session should be held in this case of female and independent directors. In Other Directors category, election will be for 5 seats out of 8 candidates.
- f) **2 female directors are contesting election. Both are independent directors. The number of candidates for independent directors is three.** If only 1 director has indicated to contest in Female Director category then she will be elected even if she gets 1 vote. In Independent Director Category the voting will be among remaining 2 candidates for independent directors for 1 seat. In Other Directors category, election will be among remaining 7 directors for 5 seats.

If both female directors indicate to contest for female director category then 1 director will be elected in Female Director category depending on the result of voting. For Independent Director Category there is only 1 candidate who will be elected even if he gets 1 vote. In Other Directors category election will be among remaining 7 candidates for 5 seats.

### **3.2 Procedural requirements to be fulfilled prior to the election date**

The directors of the listed company shall fix the number of board of directors and comply with the requirements of Section 154, 159 and 166 of the Act and related regulations for the voting of female and independent directors category in the election of directors in the manner provided as under:

#### **3.2.1 For Independent Director:**

- (i) The directors are to select candidates for the election of independent director from the databank maintained by SECP authorized institute. The number of candidates shall not be less than the minimum number of independent directors required as per CCG regulations.
- (ii) The Company shall receive the consent/notice of intention from the member contesting for the category of independent director.
- (iii) The consent/notice of intention is required to be provided to the company not later than fourteen days before the date of the meeting at which elections are to be held.
- (iv) The notices/consent received by the Company from the candidates contesting for the category of independent director in the elections, 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 and such notice shall be published at least in one issue each of daily newspaper having worldwide circulation in English and Urdu languages with the following information:
  - a) Names along with the profile and the category for which he/she is contesting for the election of director.



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- b) Justification for selecting the candidate for the appointment of independent director.

**3.2.2 For female director:**

- (i) It will be the responsibility of the directors to ensure that at least 1 female director is contesting elections.
- (ii) Any female member who seeks to contest an election to the office of the director shall comply with the requirements of Section 159 of the Act. The candidate shall submit her consent/ notice of intention for contesting election in the category of female director within fourteen days before the date of the meeting at which elections are to be held. The company shall circulate and publish the aforesaid notice to all members in the same manner as the independent director mentioned above along with the names, profile and the category for which she is contesting in the election of the director.

In case of voting to take place through ballot papers also, the Company shall also upload the ballot paper on its website and publish/circulate the same with the aforesaid notice.

**3.3 Requirements to be fulfilled on the election date:**

For voting in separate categories to take place following procedure is to be followed:

- (i) Voting is to take place through e-voting/ balloting for three categories i.e.:
- a) appointment of female directors;
  - b) appointment of independent directors,
  - c) appointment of other directors.

Discretion to cast the vote to any candidate in each category of female, independent and other directors would be available to the member.

- (ii) Shareholder can therefore distribute his/ her votes among candidates for aforementioned categories through e-voting portal or balloting.
- (iii) The number of votes for each category shall be counted separately after the completion of voting process by the Chairman.
- (iv) Where there is a single contestant for election in the category of female director, she will be elected if at least one vote is cast. In case of multiple contestants, voting shall take place as per procedures given in Section 159 of the Act for this category and appointment will be made accordingly.

**4. Comparative Statement**

The existing requirements under the CCG Regulations and the Companies (Postal Ballot) Regulations, 2018 and the proposed amendments are tabulated in Annexures attached. The notifications for the aforesaid proposed amendments issued vide SRO 227 (I)/2023 dated February 24, 2023 and SRO 228 (I)/2023 dated February 24, 2023 are also placed on SECP's Website.



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## 5. Feedback

The feedback/comments on the proposed changes may be shared with the Commission as per the below format.

Name of the Commenter			
Name of the related Entity			
Sr. No.	Regulation/ Section No.	Proposed Changes	Rationale
<b>Confidentiality</b>			
I wish to keep the following confidential:	<i>(Please indicate any parts of your submission you would like to be kept confidential, or if you would like your identity to be kept confidential. Your contact information will not be published.)</i>		



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**Annexures**

**Comparative of Current and Amended Companies (Postal Ballot) Regulations, 2018**

<b>Current Regulation</b>	<b>Proposed Amendment in Regulation</b>
<b>CHAPTER II</b> <b>ELECTRONIC VOTING</b>	<b>CHAPTER II</b> <b>ELECTRONIC VOTING</b>
<p><b>4. Responsibility of company.</b></p> <p>(1) ...</p> <p>(2) ...</p> <p>(3) ...</p> <p>(4) In case of election of directors and transactions specified as special business under the Act, a listed company shall send information to members as provided in sub-regulations (2) and (3) along with the information about scrutinizer, where required under Regulation 11, including but not limited to,-</p> <p>(a) his /her name,</p> <p>(b) qualification and experience; and</p> <p>(c) the purpose of his/her appointment,</p> <p>not later than seven days before the date of general meeting and the provisions of regulation 7 shall apply.</p>	<p><b>4. Responsibility of company.</b></p> <p>(1) ...</p> <p>(2) ...</p> <p>(3)...</p> <p>(4) In case of election of directors and transactions specified as special business under the Act, a listed company shall send <b><u>the required</u></b> information to members as provided in sub-regulations (2) and (3) along with the information about scrutinizer, where required under Regulation 11, including but not limited to,-</p> <p>(a) his /her name,</p> <p>(b) qualification and experience; and</p> <p>(c) the purpose of his/her appointment,</p> <p>not later than seven days before the date of general meeting and the provisions of regulation 7 shall apply.</p>
<b>CHAPTER IV</b> <b>RESULT OF POLL</b>	<b>CHAPTER IV</b> <b>RESULT OF POLL</b>
<p><b>10. Responsibility of Chairman of meeting.</b></p> <p>(1) ...</p> <p>(2) ...</p> <p>(3) The chairman of the meeting shall, immediately after the conclusion of poll, count votes cast during time of poll in person, through proxy, video-link and post and, in case of e-voting, unblock result of e-voting in the presence of a representative of the members demanding the poll and two witnesses not in employment of the Company. The Chairman of the meeting shall ensure completeness and accuracy of the results of the voting.</p> <p>(4) ...</p>	<p><b>10. Responsibility of Chairman of meeting.</b></p> <p>(1) ...</p> <p>(2) ...</p> <p>(3) ...</p> <p><b><u>Provided that in the case of election of directors, votes shall be counted or unblocked, as the case may be, separately for each category of female director, independent director and other non-independent directors</u></b></p> <p>(4) ...</p> <p>(5) ....</p>



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<p>(5) ....</p> <p style="text-align: center;"><b>CHAPTER VI MISCELLANEOUS</b></p> <p>Does not exist.</p>	<p style="text-align: center;"><b>CHAPTER VI MISCELLANEOUS</b></p> <p><b><u>11AA. Separate voting for election of directors. - Listed companies shall hold separate voting for the election of female director, independent director and other directors and it shall be the discretion of the members to cast their votes to any candidate in each category of female, independent and other directors contesting the election of directors.</u></b></p>
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**Comparative of Current and Amended Listed Companies (Code of Corporate Governance) Regulations, 2019**

Current Regulation	Proposed amendment in Regulation
<b>CHAPTER II NUMBER OF DIRECTORSHIP AND COMPOSITION OF BOARD</b>	<b>CHAPTER II NUMBER OF DIRECTORSHIP AND COMPOSITION OF BOARD</b>
<p>No requirement</p>	<p><b>7A. Voting in separate categories for female and independent directors in the election of directors.</b></p> <p>(1) Subject to section 154 and section 159 of the Act and for the purpose of compliance with the requirements of regulation 6 and regulation 7 of these regulations, it is <b>mandatory</b> that voting for the election of directors of the listed company shall be held separately for three categories, i.e. for the election of female directors, for independent directors and for other directors.</p> <p>(2) The member on his/her discretion may cast the vote to any candidate in each category of female, independent and other directors contesting the election of directors.</p>





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	<p>(3) The number of votes for each category of female, independent and other directors shall be counted separately after the completion of voting process.</p> <p>(4) For the purposes of sub-regulation (1), any member who seeks to contest for election in the category of independent director or a female director, as the case may be whether retiring or otherwise, file with the company not later than fourteen days before the date of the meeting at which the elections are to be held, a notice of intention and select any one category in which he/she intends to contest for the election of director.</p> <p>(5) All notices received by the Company under sub-regulation (4) 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 and such notice shall be published at least in one issue each of daily newspaper having worldwide circulation in English and Urdu languages with the following information for the independent and female members contesting for the election of director:</p> <ul style="list-style-type: none"><li>(i) Names along with the profile and the category for which he/she is contesting for the election of director.</li><li>(ii) Justification for selecting the candidate for the appointment of independent director.</li></ul>
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