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Centre for Management  
and Economic Research

## Regulatory Impact Assessment of SECP's Corporate Governance Code in Pakistan

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LAHORE UNIVERSITY OF  
MANAGEMENT SCIENCES

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# Regulatory Impact Assessment of SECP's Corporate Governance Code in Pakistan

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Rasul Bakhsh Rais and Asif Saeed

## 1. Introduction

Corporate governance is a worldwide phenomenon. It has received wide attention of policy makers in the developed and developing countries in recent years. It assumes a more significant dimension in a developing country like Pakistan, given the underdeveloped nature of corporate culture and the fact that vast numbers of companies are held and controlled by family networks. Minorities' interests don't find a reasonable representation in corporate decision-making process. The behavioral patterns, i.e., the actual conduct of corporations in terms of performance, efficiency, growth, financial structure, and treatment of shareholders etc. are not yet well established. The laws and regulations under which firms are operating, the functioning of the board of directors in relation to ownership structures, the responsibility of executive dispensation in determining and deciding firm performance, the relationships between labor policies and firm productivity, the role of multiple shareholders, and lack of transparent and accountable corporate and financial reporting frameworks are some of the issues confronting the corporate sector in Pakistan.

The government of Pakistan has set up Securities and Exchange Commission of Pakistan (SECP) in 1997 to lay down the foundation of good corporate governance by building institutional, legal and regulatory framework for the better management of the corporate sector entities. The SECP in pursuance of its policy of regulation has enacted and enforced various laws and regulations in order to create an "enabling business environment" to overcome the constraints confronted by the corporate companies for smooth and sustained economic development. In addition to many laws in place, it adopted the Code of Corporate Governance in March 2002 in order to further strengthen the regulatory mechanism.

The method of framing this Code and its timely enforcement and application in letter and spirit is very important for effective corporate governance. More often than not, it is the weak implementation and enforcement of the rules rather than their formulation that creates problems for the government. The weaknesses and imperfections of the regulatory practices can have an important impact on capital markets, ownership and control patterns, and productivity of firms leading to poor development of economic institutions. The poor compliance may reflect the fact that the regulatory instruments are not only inappropriate for many firms but also raises questions about the general applicability of the regulatory principles themselves and reinforces the need to analyze and examine the costs and benefits linked with a particular regulation. This calls for a systematic appraisal of the possible impacts –social, economic and environmental; positive and negative – of the Code of Corporate Governance adopted by the SECP to make listed companies comply with the principles of corporate governance mechanisms.

A selected number of developing countries have already realized the need to improve regulatory governance and introduced RIA in order to strengthen regulatory practices. For instance, Mexico, South Korea and the Philippines have used this approach in the light of the OECD guidelines for improving regulatory quality<sup>1</sup>. The evidence gathered from Malaysia and the Philippines in a study conducted recently suggests that though the extent and use of RIA in these counties has been partial and limited, it is increasingly being adopted to ensure regulatory transparency<sup>2</sup>. The findings of this study suggest that the governments of the developing countries should build the capacity of their regulatory agencies for systematic, effective and orderly application of RIA in their regulatory framework.

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<sup>1</sup> See Annex 1 for OECD checklist on RIA.

<sup>2</sup> Cariño (2002) and Lee (2002)

The experience of these countries underlines the need to adopt coherent regulatory policies with strategic and systemic approaches to build regulatory tools like RIA in Pakistan.

This study explores the potential of RIA of the Corporate Governance Code and its application in Pakistan in order to understand the dynamics and dimensions of regulatory decision-making and analyze its impact on the corporate sector. RIA is being widely used to describe the process of systematically assessing the benefits and costs of a new regulation or an existing regulation. It identifies the objectives of a regulatory proposal, assesses the risks that the proposed regulations aim to address, and identifies the options for action and benefits of each option, including the “do nothing” option. It examines all costs including indirect costs and paves the way for establishing criteria for monitoring and evaluation. It is a process, which is intended to enhance the quality of regulatory governance. RIA is not meant to be interpreted as a tool, which can replace institutional structures; rather it should be seen as an integral part of the policy making, which seeks to enhance the quality of decision-making process in the area of corporate governance. It is against this background that the objectives of this study have been framed, which are as follows:

1. To study and review the Code of Corporate Governance adopted by SECP for developing corporate governance mechanisms and the rationale behind its formulation in the light of key characteristics of the modern regulatory systems which include security, transparency, legitimacy, efficiency and expertise.
2. To assess the impact and effectiveness of the Code of Corporate Governance and its compatibility with international norms and guidelines.
3. To analyze how the Code of Corporate Governance can help in the development of overall corporate strategy by addressing significant issues like annual business plans, cash flow projections, forecasts and long term plans in the light of the changed and changing roles and responsibilities of the stakeholders particularly the board of directors and minorities shareholders.
4. Suggest suitable policy recommendations for building an effective regulatory management system in order to further strengthen and formalize corporate decision-making process.

We present brief literature review in section two that is based on studies that were conducted in some of the developed and developing countries. In section three, we explain theoretical framework used for the RIA of the Corporate Governance Code. The results of the questionnaire and the structured interviews conducted for this purpose are discussed at length in section 4. We have made an attempt to underline limitations of the study due to problems confronted in the collection of necessary information. The final section concludes with the policy recommendations in the light of data.

## **2. Review of Literature**

The RIA is one of the many policy instruments that help the policymakers to weigh costs and benefits of an existing or proposed regulation. These costs and benefits relate to the businesses, economy, governmental institutions, environment and society at large. The objective of RIA is to assess systematically the new as well existing regulations in order to ensure that these are directed at the right sector of the economy, and have some sense of proportionality in relations to the issue that they intend to handle.

The practice of applying RIA in the regulatory systems started in the United States. Anderson (1998) and Morrall (2001) explain how it took a more formal shape during the Ford administration and how was it further refined and improved in the subsequent years. The argument behind this approach was that increased in regulation had produced a burden

on the economy and had contributed to inflation in mid -1960s in the US. This regulatory burden adversely affected the performance of small businesses in particular.

Later on, the extent and scope of RIA was widened to assess the regulation in terms of costs and benefits that were not only confined to business but to other sectors of the economy. The Carter administration underscored the need to adopt this approach and issued instructions that all alternative rules should be thoroughly examined before the selection of the most effective regulatory option. The Reagan administration required that each RIA should perform the cost -benefit analysis and regulatory authorities should decide about the most cost effective intervention in the light of this analysis. The Clinton and Bush administrations have introduced further changes in the RIA approach in order to strengthen its quality<sup>3</sup>.

Wilkinson (2002) stated that the Gothenburg European Council urged 'mechanisms to ensure that all major policy proposals at the European Union (EU) level include a sustainability impact assessment (SIA) covering their potential economic, social and environmental consequences for better regulatory policies in the EU countries.

Parker (2002) highlighted that while the economies in the developed world have gone through a series of transformations by putting in place anti-trust laws and regulatory capacity of the government is great in maintaining an environment of free competition in the market place. The case of developing and transition economies is very different. There are market failures, abuse of monopolies, underdeveloped market systems, external intervention and qualitatively poor information.

That is why the use of RIA methodology in low and middle-income countries has not yet achieved the size and scale compared with other developed countries. Some developing countries have recently adopted this strategy for regulatory reform<sup>4</sup>, and a few of them embracing this experience, belong to OECD group. Korea took this course in 1993 and Mexico in 1996. However, Sri Lanka and Philippines are recent additions.

The central goal of the developing societies, like all other societies, has been how to promote economic growth and sustainable development. Creating a suitable regulatory regime to this end has been at the centre of economic planning. The regulatory regimes and their tools have changed with the changes in the development strategies. The most fundamental change during the past one and half decade has been a shift from direct investment of the government in agriculture and industry to liberalization of economies.

The failures of state-run industries and public utilities in providing efficient and quality service at lower costs have resulted in re-evaluation of the role of the state in economy. The situation calls for the regulation of different sectors of the economy compatible with international norms and trends after thoroughly identifying the costs and benefits of all types of regulations.

It is generally agreed that privatization is the new mantra of economic development, but the question is how governments in the transition and beyond can avoid the structural asymmetries that special or privileged interests in the economies tend to create to benefit themselves at the expense of rest of the society. This question is addressed by regulatory regimes by creating conditions for fair competition and maintaining them and preventing the abuses and failures that we have mentioned above.

Parker and Kirkpatrick (2003) describes that the states in the developing world going through economic transition will have to establish a linkage between privatization process

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<sup>3</sup> See Morrall (2001) and OMB (2001)

<sup>4</sup> See Lee (2002)

that many of them are now shifting to and creating a fair competitive market. Without effective state regulation, fair competition will be hard to achieve. The shift in state strategy from heavy public sector to privatization, downsizing of governments and removing of subsidies had left poor sections of the society without safety nets.

Jalilian et al. (2003) observed that regulation may help remove poverty by creating better job opportunities if the conduct of the corporations is regulated keeping in view the interests of the consumers. Without this mechanism, monopolies causing economic inefficiencies would emerge, putting burden on the consumers. Evidence from the experience of many countries suggests that there is a correlation between good regulatory regime and better economic performance of a country. Some scholars have also argued that in addition to furthering the cause of economic and social welfare, regulation is also meant to attract more investment for the reasons of certainty and rule-bound economic atmosphere<sup>5</sup>.

While accepting regulation as potentially effective and efficient tool of pro-poor and pro-growth economic strategy, one however has to weigh the costs and benefits of any regulation when it is introduced. No regulation comes without some impact; it can be positive in terms of helping achieve economic goals of growth, investment and strengthening market, and it can also have negative effects in terms of raising costs for the business, government as well as the consumers. The RIA is about how to assess relative costs and benefits in a systematic fashion. OECD countries have almost institutionalized this practice. In the developing and transition economies the RIA has not been fully embraced. Even in some of the countries where RIA has been introduced it has many problems. Kirkpatrick et al (2003) have highlighted some of them: There is “implementation gap”, the quality of RIA is very low, and more importantly the quality of data is very poor that cannot support any meaningful analysis. In developing and transition economies the application of RIA remains partial (to limited sectors of the economy, industry) and unsystematic. In the same study, a distinction has been drawn between a good and a bad regulation. A good regulation or regulatory system may be seen as having two aspects. First is about the nature of legal instruments that it has evolved or developed to achieve the policy goals that the policymakers have set for themselves. Second relates to the process how the legal instrument took the shape it did and how it is applied in market place.

Radaelli (2002) found that while there is lot of variation in the nature of regulatory regimes from country to country and region-to-region owing to how societies and economies have evolved over time, there has now emerged a set of universal principles that may be viewed more as a guideline than a benchmark applicable to countries. Kirkpatrick et al. (2003) has outlined these principles. First, development and implementation of RIA will require skills and capacity within the government bureaucracies to objectively assess costs and benefits. Without these skills the optimal goals of RIA may not be realized. Second important principle is consultation. This would help gather information and feedback in order to overcome legal and procedural difficulties. Third, RIA process in order to be effective and efficient must evolve over time preferably in stages according to the priorities. Fourth, RIA must be adopted as one of the values of the government and must have political support. Fifth, those evolving RIA prepare themselves to face the challenge of “regulatory capture”. By this Kirkpatrick et al., mean the risk of special interests inventing to get the support of the regulatory mechanism at the expense of their competitors. Two elements that are built into the system of RIA—accountability and transparency may help defeat the regulatory capture.

The above analysis shows that there is a dearth of studies that have reviewed the regulatory policies of the developing countries in the light of RIA methodology. The present

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<sup>5</sup> See Lamech and Saeed (2003)



study aims to use this approach for studying the Corporate Governance Code and how it has been applied in Pakistan since 2002. It also examines the issue whether or not the listed companies consulted on the formulation of the Code and how they have implemented it.

### **3. Theoretical Framework**

This section presents the theoretical framework used for the RIA of the Corporate Governance Code. RIA is a major tool used to improve the efficiency and effectiveness of the regulatory policies. It is used to assess the possible consequences of proposed and planned future regulations, and the actual consequences of existing regulations. It is a helpful and convenient instrument for those entrusted with the task of planning, approving and implementing regulatory policies and systems.

The methodology developed for this study rests on two questionnaires designed to study the underlying principles of the Corporate Governance Code, assessing its impact and effectiveness, and its compatibility with international standards and guidelines.

The first type of questionnaire was designed to study the method of framing the Corporate Governance Code, its application and enforcement mechanisms. The questions were framed in the light of the format used in some OECD countries<sup>6</sup>. It takes into account the following main areas:

1. Description: to give details about the extent, scope and scale of RIA in the formulation of the Corporate Governance Code and describe the rationale behind its formulation.
2. Alternatives: to show that the regulation adopted is superior and viable over other alternatives (such as voluntary programs, market-based instruments and other types of existing regulations) to accomplish the stated objectives.
3. Benefits and Costs: to identify the benefits and costs from the proposed regulation and make qualitative assessments of benefits and costs, where it is impossible to figure out quantitative analysis.
4. Consultation: to sum up the consultation among all stakeholders during the process of regulation development, for the identification of the real problem, and making systematic appraisal of costs and benefits in the light of the findings of this consultation process.
5. Compliance and Enforcement: to explain the implementation strategy to achieve compliance and apparatus at hand to enforce it.
6. Contact: to identify who can be contacted for more information.
7. Overall strategy: the overall objective and role of the decision making body.

This questionnaire was used for structured interviews and is laid out in Annex 2. Based on this questionnaire a series of interviews were conducted with the key individuals of regulatory commission (SECP), stock exchanges, chambers, as well as other stakeholders directly linked with the development and regulation of the corporate sector.

The second type of questionnaire was prepared for evaluating the extent and degree of implementation of the Code on the listed companies since its enforcement in the year 2002. It takes into considerations OECD guidelines for undertaking RIA, as well as the key features of the regulatory policy on corporate governance.

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<sup>6</sup> See Treasury Board of Canada Secretariat publication "Regulatory reform through impact analysis: The Canadian Experience"

The main characteristics highlighted in the questionnaire from the Code include composition of the board of directors, their qualification and eligibility criteria, powers and responsibilities, significant issues discussed in the board of directors meetings, protection of minorities shareholders interests, corporate and financial reporting framework, auditing procedures and frequency of reporting. Since the requirement for stakeholder consultation is a very important dimension of the RIA programme, this aspect was also incorporated. Consultation with all the relevant stakeholders has become very vital and is being increasingly used in different countries as a means of producing objective data to support RIA<sup>7</sup>.

The questionnaire developed for the listed companies is attached as Annex 3. The questionnaire was sent to around 100 listed companies of the country. However the response to the questionnaire was not very encouraging. Despite many reminders, we were able to get the response from only 21 listed companies in the beginning. Later on, 8 more listed companies responded bringing the total number of listed companies responding to the questionnaire to 29. Due to the poor response rate, the authors decided to obtain the relevant information about the questionnaire from the annual reports of the listed companies. Since most of the questions put in the questionnaire, were also found in the annual reports, it was considered appropriate to expand the sample size and include the information from the annual reports in the analysis. For this purpose, 40 annual reports of the listed companies were evaluated in order get the necessary information<sup>8</sup>. The next section presents the analysis in the light of the information obtained through structured interviews and responses of the questionnaires.

#### **4. Analysis of Questionnaires**

##### **4.1 Analysis of the Interviews**

###### *The Regulator's View*

Before the SECP framed the Code, good governance practices existed in certain sectors of the economy; it thought some had internal capacity and could comply with the code; a very large number of companies, family owned, were close-netted and hardly transparent. They would be largely the targets of the Corporate Governance Code. But the larger question it faced was how to bring them under the framework of the Code without creating a scare of another regulatory regime.

The SECP had many models before itself from different countries both developed and developing. But it had to assess carefully the history of business operations in Pakistan, the way companies have been structured, their ownership pattern and the existing economic environment of the country. It had two choices—should the implementation of the Code be left to the companies on voluntary basis or its enforcement be mandatory across the board. It rather decided to strike a middle ground that can be viewed flexible and feasible. It chose to provide a legal framework that would create an enabling environment for the companies, which in turn, would view Code as being in their own interest.

This course of action was taken in order to remove doubts of the companies, provide more information to the business community to assess their needs and requirements, and engage them in a dialogue over its visions of Code in the larger corporate and business interest. In a political environment where distrust of governments is pervasive and the state-run bureaucracies are widely seen corrupt, inefficient and proven to use any regulation for extortion, the Code could be seen (as it seems to have been) as a hard sell.

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<sup>7</sup> See OECD report on the “Regulatory policies in the OECD countries”

<sup>8</sup> The authors are grateful to Kashif, Ayesha, Bazgha, Ambreen and Sana, MSc Economics Students of the GC University for their research assistance in conducting the questionnaire.

Keeping perhaps that feeling in view, the SECP avoided the temptation of making it a part of Companies Ordinance. That would have created such a wedge between the companies and the SECP, and running the risk of making the entire exercise, if not futile, very costly in terms of its economic impact. Rather, it decided to make it part of listing requirements for the companies. Even this relatively softer approach has not convinced the family-owned businesses to accept the principle of openness because for too long they have run themselves in opaqueness. The SECP believes that it that would require a change in the culture of business, which is the ultimate long-term objective of the Code.

In the initial stage, (even in some quarters today), there was reluctance among the companies to accept the Code as a legal requirement for registration. To meet this challenge, the SECP held number of seminars and workshops in different cities of the country to educate the business community about the benefits of Code. Training workshops were also held to address questions and concerns of the business community. An effort was made to convey the true meaning and spirit of the Code and its legal requirements. The SECP has prepared a manual that explains the Code in detail and has distributed it widely among the businesses<sup>9</sup>. The officials at the SECP believe that the corporate sector understands the legal requirements of the code, and through training workshops they think they have succeeded in removing most of the perceptual gap that existed. Attitudes toward the Code are changing. The corporations and the SECP by working together have evolved a shared vision and both of them seem to be gaining as a result of that strategy.

From SECP's point of view, the Code evolved as a result of consultation with all the stakeholders. It entered into a dialogue with sectoral organizations, like APTMA, professional associations and representatives of the corporations. It placed the first draft on its websites as well as other organizations, advertised it in the print media inviting comments on its different aspects and provisions. It amended the first draft after getting comments and circulated the second draft for further input from the corporate sector. The final or third version was formulated in the light of earlier discussions. It issued the Code to the stock exchanges after this extensive consultation.

Since the SECP didn't want to put much burden on the corporations or cause unnecessary anxiety among them, it has simplified the Code and its requirements are not too strict at this stage. The Code requires the directors of a company to issue a statement of its accounts and operations that is sent to external auditors for comments. The two statements are examined by the SECP. If there is a discrepancy that requires an action, the enforcement and monitoring department of the SECP refers cases of serious violation to the stock exchanges for an action. The purpose is not to penalize but to bring the corporations under the legal framework of the code.

The Code comprehensively addressed all the corporate issues, but since it is a first document of its kind in the country, it may not be the best one. It will further evolve as more companies come under its purview and the implementation process is enlarged. Insisting that the corporation will have to have non-executive directors on the boards is quite a radical change that has come about both as a result of SECP's own brainstorming as well as consultative process? It may evolve further and the Code may be refined and improved in the interest of good business practices and regulatory regime shares that objective.

The SECP perceives that code offers one of the best strategies to regulate corporations in public interest but that is not the only one. This has to be supported by other initiatives. A proposed institute of corporate governance would be such an initiative that will provide

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<sup>9</sup> See SECP's two documents published for this purpose. One is Manual of Corporate Governance and the other is the Frequently Asked Questions (FAQs) about the Corporate Governance Code .

a regular forum for dialogue with the corporations, offer training and educational facilities and disseminate information to the corporations.

SECP's officials argue costs of complying with the code are being exaggerated. The assumed costs include hiring secretary, maintaining internal audit procedures, engaging external auditors and holding meetings of the board of directors four times a year. They assert that these are essential costs for a company taking public money and must be incurred in order to be transparent. SECP as the regulator in this respect is the custodian and defender of public interest and in order to safeguard that, it must establish a legal regime to oversee how the corporations operate in the market place.

The economic costs to the corporations for implementing the Code are negligible. Impact on profitability may be there in the short run, but in the long run the benefits of observing the Code outweigh the perceived costs. The real issue for corporations could be credibility, transparency and accountability. As they improve upon these qualities that the Code envisages to help, the corporations will see greater flow of funds, more share in the market and better image in the public eyes and credibility with international corporations.

One cannot identify the overall benefits of the Code to the society at large. Although some of the operational costs occurring due to the implementation of the Code might be transferred to the consumers, the long-term benefits to them will come in the form of economic certainty, better stock exchange indexes, more congenial atmosphere for business both domestic and foreign and economic development. The SECP has very optimistic outlook about the Code and believe it is one of the must-do aspect of the ongoing economic reforms in the country.

The SECP considers the Code as a part of general economic reform process required for free market economy. There is almost a universal shift in the role of governments the world over. There is no alternative to the Code because without it the overall economic reform process and its objective wouldn't be realized. It was therefore essential to codify best practices in the light of experience of other countries and implement them in Pakistan. This is precisely what the SECP is trying to do.

The preceding analysis conducted from the regulator's point of view clearly confirms the need for regulation for restructuring the corporate sector and development of the capital markets in Pakistan. This calls for the development of regulatory capacity of the government institutions in this new situation. Has the SECP acquired that capacity? It is a difficult question to answer, as the Code and the SECP are both young and nascent trying to find wider acceptance. The SECP feels the need for building its own capacity and its effectiveness in handling regulation under the Code would very much depend on its institutional strength, commitment of its functionaries and the skills that they acquire. It has been sending its officials abroad to study the RIA and corporate governance that may help them equip with the administrative and legal tools and familiarize with the best practices of similar institutions elsewhere.

The above argument suggest that what is more important for the success of regulatory policy is the regulator's own learning process, its openness to criticism from all stakeholders, flexibility, ability to address concerns of the corporations and accommodation of their views. This learning process would strengthen both the SECP as a regulatory institution as well as the Code. With that focused approach, it may change the culture, the attitudes and the mindset of the corporations from secretive to open and tightly controlled oligarchies to progressive ones.

### **The Corporate View: Stock Exchange Perspective**

The Code of Corporate Governance was incorporated in the listing regulations of the

stock exchanges in 2002. This was an SECP requirement and was adopted by all the stock exchanges of the country. According to the information gathered, the enforcement of the Code in the stock exchanges has improved the market discipline, risk management and the investor's perceptions about the outlook of the market.

The investors were generally ignorant in the absence of the reliable data on prices and disclosure of material information. They were prone to base their decisions on inaccurate and unpredictable estimates due to lack of standard information on share prices of the listed companies. The Code requires proper and standard book keeping, and enjoins all listed companies that the accounts be made public on a quarterly basis. Previously, approval of accounts required annually, used to get delayed for two to three years due to inability of the board of directors to meet. Now as soon as the error in accounts is detected in the stock exchange, it is immediately made public for the information of the investors. As the result the publication of the quarterly results by the firms, the investors are able to have better price information leading to better investment decisions.

However, despite these encouraging and promising results, the representatives of a few large companies, having many subsidiaries have expressed reservations about the publication of quarterly results considering it tedious, and time consuming adversely affecting their performance, and productivity. Secondly they were of the view that the costs involved for the management of these accounts are very high. They call for the revision of for these audit and account clauses particularly the quarterly unaudited financial accounts. The improvement in the market discipline and benefits of better access to information, however, will tend to allay the fears of these corporations, and publication of the quarter results would appear more as a norm rather than a mere legal obligation.

The Code requires that each listed company shall circulate to SECP and 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 disclosure of material information has benefited the stock exchanges to achieve transparent trading in share business.

Again, on the other hand, whereas some companies have followed disclosure regulation, others company managements are still violating this vital rule by not disclosing the material information in a proper way as required under the Code. The lack of transparency in the announcement of the results causes serious losses to the small shareholders and big gains for the insiders. The recent announcements made by some of the companies and the manner in which it were made caste doubt on the credibility and capacity of both the regulators and stock exchanges to enforce regulations in letter and spirit<sup>10</sup>.

Consultation constitutes an important element of RIA process, which not only ensures credibility, but also equips the decision makers with better information. During the process of the consultation, the opinion of the stock exchange was sought, but the size and scale of participation was limited. A leading stock investor echoes similar concerns. He criticized the process of formulation of the Code owing to restricted consultation with the companies. He asserted that there must be some mechanism for the accountability of the regulators themselves to ascertain whether the regulation introduced is justified and fully defines the nature and content of the problem. The elements required under the RIA mechanism for the consultation process were found missing. The stock exchanges were consulted by inviting comments, which were furnished to the regulators following traditional orthodox official style. The process lacked the spirit and substance. The result was the reservations and fears

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<sup>10</sup> It has been found that while one company has submitted expression of interests for the cellular license auction in the Pakistan Telecommunication Authority (PTA) and disclosed all the material information, the other vying for the bidding did not.

expressed by investors and companies regarding disclosure and publication of quarterly results and their resistance to abide these regulations, their benefits notwithstanding<sup>11</sup>.

The capacity of the regulators to ensure compliance and monitoring of the Code is limited. It was found that there is no method or system by which to oversee its implementation, monitoring and evaluation. Though the stock exchanges have been able to put in practice the rules and regulations on corporate governance, there is a lot to be covered in terms of accountability and transparency. At present, the stock exchange is not in a position to check the degree of compliance of the Code and therefore no authentic information is available to check its efficacy and efficiency. According to one former President of the Lahore Stock Exchange, “ *Had capacity building for the enforcement and monitoring of the Code preceded the introduction of the reforms, the results would have been far more promising and consequently the resistance and reservations of the companies would have been insignificant*”.

Some companies’ representatives were also critical about the process of seeking relaxation from the SECP. The Code does require that the companies can approach the SECP if they are not in a position to carry out some of the provisions of the Code. They are of the view that the regulators should neither have discretionary powers nor judicial powers. The judicial functions should be sole performed by the superior courts or in a court like environment to avoid the threat of exploitation by the regulators.

The officials working in the stock exchange are well versed with the international best practices on corporate governance. But the investors are neither well acquainted with the dynamics of the RIA and nor of the corporate governance. Perhaps this is one main reason that they don’t have deep understanding of the Code nor of the RIA approach. The SECP and stock exchanges are planning to organize the seminars for the listed companies in order to enhance their awareness and improve their perceptions about the Corporate Governance Code.

#### **4.2 Analysis of the Listed Companies Questionnaire:**

##### **View from the Business: The Corporations Perspective**

The responses received from the questionnaires suggest that listed companies recognize the importance of the corporate governance for better company performance, risk management, higher profits, good working relations between the management and owners and above all the growth of the economy. However their perceptions about the RIA and its principles are not very profound and extensive. It is reflected in their response in which they have highlighted that it is either concerned with the assessment of the new regulation only whereas the RIA takes into account the evaluation both the new as well as existing regulations. Only two companies came up with the answer that it is concerned with the costs and benefits of the existing as well as new regulation.

The stakeholders consulted before the promulgation of the Corporate Governance Code mainly included regulators themselves, concerned policy makers, stock exchanges management, auditing and accountancy firms and trade associations representing different interests. However, the results of the questionnaire highlight that the representatives of the listed companies were ignored in the consultation process. None of the listed companies responded that it were included in the formulation of the Corporate Governance Code. They were critical of the process of consultation, which is undertaken after the rules are framed or enforced. Furthermore, they also expressed doubts that their views would be made public or incorporated fully into any regulatory proposal.

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<sup>11</sup> Interview with the stock investor of the Lahore Stock Exchange



This might be attributed due to the inactive role of the company management. The regulators on its part did disseminate the requisite information calling for comments from the public and listed companies. Despite repeated prodding, they did not receive encouraging response from them. When the regulation is enforced and implemented, it is criticized on the ground that it did not enjoy the backing of the stakeholders. This factor underlines the need to change our corporate culture and mindset by emphasizing more on proactive participation of the stakeholders. The sectoral organizations, which represent the interests of these companies, should come forward and engage these companies in the process of consultation with the collaboration of the regulators. It is incumbent on them to explain to the listed companies the advantages of being a part of it while the costs of disassociating the company from this process are heavy.

Table 1 critically evaluates the responses received from the 29 listed companies by ranking the response in terms of good, bad and poor. The good response characterizes favorable opinion of more than 50% companies, bad less than 50%, and poor less than 25%. The main issues concerning RIA were discussed in the first nine questions and were grouped in three main categories namely understanding of corporate governance, RIA and role of consultation process in the framing of the Code.

As regards the adoption of the various provisions of the Code, the results are very encouraging. This analysis is based on the information received from 69 companies. According to the information collected, 65 out of 69 companies surveyed have included independent directors in the companies' board of directors. It means 94% companies have adopted this clause of the Code in order to ensure fairness in their operations.

The share of the executive directors in 34 companies out of the total of 69 reviewed is not more than 75%. This low proportion is due to the reason that many companies are bringing this share to the required level while some companies have not reported the exact information in their annual reports.

According to the Code, the directors are neither allowed to engage in stock brokerage nor serve in more than 10 listed companies. The results of the questionnaire show that almost all the companies are observing this rule as most of the reports and responses reveal they are not permitted to do so, this information was not found in only two annual reports.

Eighty percent of the listed companies report that their directors are tax payers as they have been allotted national tax numbers for paying taxes. Since the other responses in this category were majority of the directors or few of them, the remaining companies gave their response in these categories. Taking all this into account, it can be safely assumed that all the directors are national taxpayers.

As stated earlier, the Code does not allow the directors to serve in more than 10 listed companies. Forty percent of the companies analyzed have reported that this violation never took place, whereas in 4% cases the directors who violated it were exempted by SECP under special consideration. One company, however, has taken punitive action by suspending its directors for violating this rule. Forty seven percent have neither responded nor described the type of action taken against the directors.

The board of directors of the companies now meets once in every quarter as required under the Code. The frequency of the meetings has definitely gone up as some board of directors meet more than once in a quarter in order to discuss the problems and decide on the issues confronting the company. The board meetings also discuss annual business plans, budget, and audit reports etc. These policies are also discussed in the committees of the board of directors. 38% of the companies reported that their board of directors meets on the need basis.

The minutes of the meetings are always circulated to the board of directors and officers

for recording comments and seeking approval of the decisions agreed during the board meetings. However 5% of the companies don't circulate these minutes to the officers of the company.

One good development that was noticed is that 58 out of 69 listed companies reported in the sample are preparing statement of the ethics and business practices in order to establish a standard code of conduct for the directors and employees. 6 companies expressed they have not yet published and 5 companies are in the process of implementing this clause. Putting it percentage terms, the figures are 84%, 8% and 7% respectively. Before the introduction of the Code, only 35% companies were following this practice.

The adoption of the mission statement by the Board of Directors reflects the company's commitment to overall strategy and helps in the formulation of the significant policies on risk management, human resource management, investments and determination of the terms of credit and discount to customers, acquisition/ disposal of fixed assets, and procurement of the goods and services. 97% of the companies are preparing the mission statement after introduction of the CG code whereas 30 or 44% companies were preparing it even before its introduction. The mission statement helps the companies to visualize their goals and objectives. With the strategic vision the companies can improve on contemporary measures such as cost, quality, service and speed of delivery. In addition, 96% companies are now preparing record of policies on risk management, human resource management and procurement.

The Code calls upon the listed companies to organize training courses for enhancing the capacity of its staff about their duties and responsibilities. More than 93% companies have started organizing such courses for the training of its staff, employees and management. However the number of courses conducted are very few and insufficient. The arrangement of small number of courses is attributable to high costs incurred for the organization of the training courses. 75% companies reported in the sample have organized less than 5 courses for such purpose, 14% have organized more than 5, and only 10% have organized more than 10.

As regards audit and accounts, the information obtained reveals that all the listed companies are now publishing and circulating the quarterly unaudited financial statements, along with directors' review on the affairs of the listed company for the quarter, six monthly and annual audited financial statements. The financial statements of the companies are provided to the shareholders in various sources like the annual report, director's report to the shareholders, through mail and the newspapers.

Forty three percent of the listed companies inform their shareholders about the reasons for not declaring dividend in the annual reports to the shareholders whereas 55% held they do it in the annual general meetings. The rest of the companies reported that they did not feel the need for it as they are announcing dividend for the last many years.

The external auditors of the company are appointed for a period of one year on the recommendation of the board of directors. All listed companies are required to change their external auditors every five years. If for any reason this is impractical, a listed company may at a minimum, rotate the partner in charge of its audit engagement after obtaining the consent of the SECP. The findings of the questionnaire demonstrate that 80% of the listed companies don't change their external auditors after the lapse of five years. They feel that there is no need to change the external auditors as long as their performance is satisfactory. Moreover it is difficult for a country like Pakistan, which had four proper audit firms with hardly 10-15 partners, to impose this regulation.

Fifty seven percent of the companies held they always value the shares of the minority and majority shareholders equally, at the time of the divestiture of the shares, while remaining



companies occasionally value the shares of the majority and minority shareholders equally or have not disclosed this information in the annual reports. All the listed companies reported in the sample, have published and circulated a statement of compliance along with the annual report to the SECP.

65% of listed companies have responded in favor of the SECP with regard to its capacity and ability to enforce the key provisions of the Corporate Governance Code. They were of the view that the enforcement of the Code should be strictly adhered to in order to promote good corporate governance and safeguard the interests of the stakeholders. It is important to have regulatory framework like this to have better management of the listed companies. However, 35% companies believe that the corporate governance must not be mandatory at least for the next three or four years. This period can be utilized for creating awareness and enhancing the capacity of the companies' management and staff about the Code. They also held that the regulator must adopt a transparent and fair approach and should be accountable to some authority not to let use regulation for favoring some and punishing others. Moreover, the companies must also be engaged to a greater degree in the process of consultation to enable the corporate sector to have a sense of ownership of the Code.

Table 2 summarizes the responses of the main questions by expressing it in terms of the compliance rate. It clearly shows that the listed companies are moving forward for the adoption of the Code despite strong reservations expressed in the first part of the questionnaire concerned with the RIA. It calls for greater and more meaningful participation of the listed companies in the implementation of the Code, for creating an enabling business environment in the country.

Figure 1 presents the compliance rate of the major corporate governance issues addressed in the Code. It shows that there is 100% compliance by the listed companies on provisions like frequency of board meetings and statement of ethics and business practices. However, they still need to do a lot more in the field auditing and directors independence. In addition, regulators ability to enforce the Code also needs to be enhanced for its effective implementation.

## **5. Conclusions**

The analysis of the interviews suggests that adoption of the Corporate Governance Code has improved the overall corporate structure and business environment by making the companies more responsible, and by ensuring transparency and accountability in the corporate and financial reporting framework. The inclusion of non-executive directors on the board is a big step forward as it will discourage the tendency of protecting personnel interests and motives at the expense of the minority shareholders. Moreover, the addition of the non-executive members has improved decision-making process, which was not only slow previously, but also opaque due to the lack of interest of the board of directors to meet as and when required.

The publication of the quarterly results and better disclosure of material information has resulted in best price discovery of shares, which is a vital requirement for the investors operating in the modern corporate environment. However, these findings must be viewed with caution. It has been observed that some of the companies are still violating the laws for disclosing the material information and are manipulating the announcements of the results for the benefits of the insiders. This calls for the regulators to improve the enforcement mechanisms across the board in an efficient and effective manner. The requirement for the publication of the quarterly results must continue to be adhered to as it has improved the overall business environment dispelling the impression that publication of quarterly results resulted in the wastage of resources.

The analysis of the questionnaire for the listed companies shows that most of the listed companies have started implementing the provisions of the Corporate Governance Code.

They have restructured their board of directors, improved frequency of holding annual general meetings for better decision making, enhanced transparency in the financial reporting framework and auditing procedures, and adopted the mission statement and statement of ethics and best practices. However, their capacity to fully comply with the Code is limited. Though they have organized some training courses, they are still not in position to put it into effect completely. The policy makers should look into this problem and provide them with the means to enhance their capacity and understanding about best practices on corporate governance. The findings of this study seem to be consistent with Qureshi and Iqbal (2003) that the Code, though it has made the corporate managements quite conscious of their corporate and fiduciary responsibilities has been accepted only in form and not in substance<sup>12</sup>.

It has also been found that the use of RIA has not been fully applied in the framing of Corporate Governance Code. Whereas SECP is of the view that it followed all the necessary steps required for the formulation of a good regulation, response of the stakeholders and the listed companies does not corroborate this view. Nevertheless the process of consultation undertaken during the formulation of the Code reflects that it was applied for ex ante appraisal, but its application for monitoring or ex post evaluation purposes is weak. The establishment of Institute of Corporate Governance recently by the SECP is a step in the right direction. It should not only help enhance the capacity of the regulators and other stakeholders on corporate governance but also promote RIA principles being applied in the rest of the world for regulatory transparency.

Though the study has expanded the number of listed companies reported in the analysis by examining their annual reports, the size and scope of this research can still be widened as a future line of research. The information on some of the questions was not available from the annual reports like relative shares of the minority and majority shareholders at the time of the divesture, and percentage of the share capital offered in the stock exchanges. Moreover, seeking more information directly from the companies' directors and managers can expand the analysis of the opening questions, which are concerned with the RIA process. Apart from that, at present there is a dearth of data in the country on the effects of the Code of Corporate Governance. These are some of the limitations of this study. This future research may review the Code, by look into its extent and degree of implementation in the light of the information given in the annual reports on the one hand, and seeking more information on the RIA features from the company management and directors by conducting personal interviews. This will not only improve the quality and contents of information required for the RIA, but would set the stage for the adoption of the RIA as regular feature of the regulation policy.

There is no denying the fact that regulation matters for good corporate governance. The experience of several developed and developing countries clearly reflect that RIA is a sine quo non for better regulatory systems. RIA is a major contributory factor for the establishment of transparent and accountable systems of public policy and governance, which in turn matter for achieving the objective of sustainable development. It is the task of the men at the helm to introduce relevant changes in our regulatory structures to make them more compatible with international norms and standards. There has already been a sea change in the regulatory apparatus of the country. The adoption of RIA methodology in letter and spirit will further strengthen it and should go a long way toward ensuring accountability of the regulators for their regulatory actions and subsequent consequences.

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<sup>12</sup> See Qureshi and Iqbal (2003)

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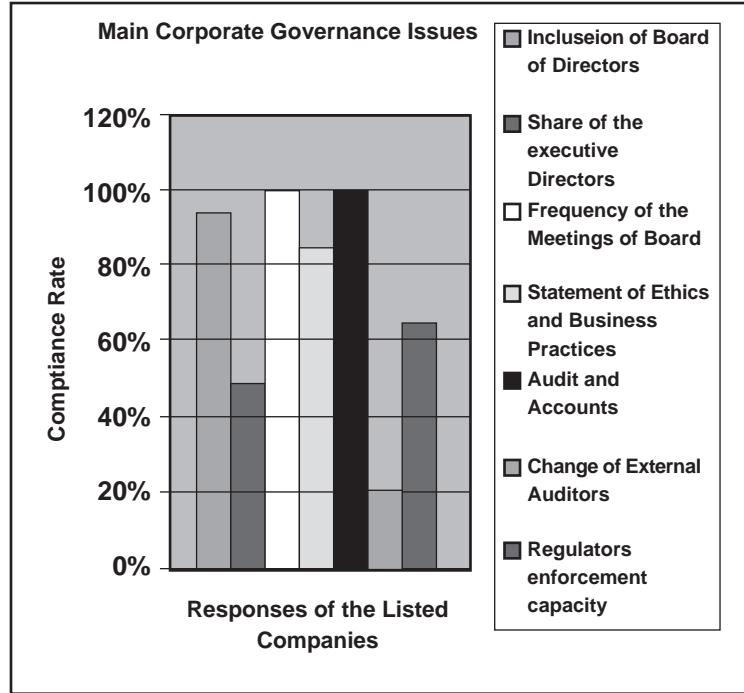
Table 1: Critical evaluation of the responses of the main Issues concerned with RIA

<b>Issue</b>	<b>Response</b>
Understanding the role of Corporate Governance	Good
Understanding of RIA	Bad
Consultation with the listed companies	Poor

Table 2: Compliance Rate of the Main Provision of the Code

<b>Issue</b>	<b>Compliance Rate</b>
Inclusion of Board of Directors	94%
Share of the executive Directors	49%
Directors to be national tax payers	100%
Frequency of the Meetings of Board	100%
Circulation of the Minutes of the Meeting	100%
Statement of Ethics and Business Practices	84%
Mission Statement	97%
Orientation Courses	100%
Audit and Accounts	100%
Appointment of External Auditors	100%
Change of External Auditors	20%
Valuing of Shares at divestiture	57%
Regulators enforcement capacity	65%

Figure 1



**Annex 1**

**OECD RIA Checklist**

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible, and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

**Source: OECD (1995)**

## **Annex 2**

### **Questions for the Interviews**

#### **I. Description**

1. How does Securities and Exchange Commission of Pakistan (SECP) perceive the concept of the regulatory impact assessment (RIA)?
2. Is (RIA) undertaken before a new regulation on corporate governance adopted? If yes, is it undertaken for all cases or some cases of corporate governance?
3. If it is undertaken for all cases or some cases, is it required by law before the enforcement of regulation by Securities and Exchange Commission of Pakistan (SECP)?
4. Was (RIA) undertaken before the Corporate Governance Code adopted? If yes, how it was undertaken? If not, is SECP considering plans to conduct a regulatory appraisal of the existing code?
5. To what extent is the code clear, consistent, comprehensible and accessible its users?
6. What is the extent, scope and scale of RIA in SECP? What are the prospects of expanding its coverage?
7. Are RIA documents publicly available?

#### **II. Alternatives**

1. Does Corporate Governance Code correctly define the problem of corporate governance in Pakistan? If so, is this the most effective and efficient means of government intervention?
2. Was SECP fully aware of the costs of introducing the Corporate Governance Code on those who have to comply with them and on the general cost consequences for the wider community?
3. What are the alternatives of Corporate Governance Code ?

#### **III. Benefits and Costs**

1. Has SECP assessed the benefits of Corporate Governance Code which might accrue to different segments of society?
2. Where benefits or costs are assessed are they quantified?
3. Do the benefits of Corporate Governance Code justify the costs?
4. Is the distribution of effects across society transparent?

#### **IV. Consultation**

1. Was public consultation a part of the process of formulating Corporate Governance Code?
2. How far the regulatory reform program on corporate governance is linked to linked to public consultation?
3. Is consultation required by law?
4. If consultation was undertaken, what forms of public consultation were used?

informal consultation public notice and invitation to comment public meeting

5. Have all interested parties the opportunity to present their views? What are those interested parties?
6. At what stage in the regulatory process was consultation undertaken?
7. Prior to outline proposals being made, prior to detailed proposals being made,
8. After detailed proposals are made?
9. Are the views of participants in the consultation process made public?
10. How do the stakeholders think about the Corporate Governance Code and its likely impacts?
11. What is the effectiveness of the consultation process?

**V. Compliance and Enforcement**

1. How will compliance with the Corporate Governance Code be monitored and enforced?
2. How will compliance of the Corporate Governance Code be achieved?
3. What is the degree of compliance of code of corporate governance so far?
4. What is the capacity of the regulators in enforcing the code of corporate governance?

**VI. Overall Corporate Strategy**

1. Is there an explicit, published policy promoting government-wide regulatory reform or regulatory quality improvement on corporate governance?
2. Is there a dedicated body (or bodies) responsible for encouraging and monitoring regulatory reform or regulatory quality on corporate governance?
3. Is there a specific Minister/Ministry responsible for regulatory reform on corporate governance?
4. Are you familiar with the OECD guidelines on RIA?
5. Is your country's approach to regulatory impact assessment modeled on the approach recommended by the OECD?
6. What is the impact of the Corporate Governance Code on the competition?



### Annex 3

#### Questionnaire for Listed Companies

(Tick all the relevant options applied and adopted by your company)

1. How do you perceive the concept of corporate governance?
  - It improves the performance of the company ( )
  - It improves country's growth prospects. ( )
  - It aims at generating higher profits ( )
  - It ensures better relations between managers and owners. ( )
  - It ensures better risk management. ( )
2. What do you understand by the concept of regulatory impact assessment (RIA)?
  - assessment of benefits and costs of a new regulation ( )
  - assessment of benefits and costs of an existing regulation ( )
  - Others, please specify ( )
3. In your company's view the rationale behind the formulation of Corporate Governance
  - Code in Pakistan is:
    - Regulation of the listed companies ( )
    - Good corporate governance ( )
    - Adoption of best corporate governance practices ( )
    - Others, please specify ( )
4. How were your company's views incorporated in the Corporate Governance Code?
  - Informal consultation ( )
  - Invitation to comment ( )
  - Public meetings ( )
  - Others, please specify ( )
5. The stakeholders who were properly consulted before the promulgation of the Corporate Governance Code were:
  - Representatives of the listed companies ( )
  - Concerned policy maker ( )
  - Concerned policy makers ( )
  - Regulators ( )
  - Others, please specify ( )
6. The issues and concerns considered by the Corporate Governance Code are:
  - Ownership structures ( )
  - Minorities interests ( )
  - Reporting framework ( )
  - Market discipline ( )
  - Others ( )

7. At what stage in the regulatory process is consultation undertaken?
- Before the rules are designed ( )
  - After the rules are designed ( )
  - After the enforcement ( )
  - Others, please specify ( )
8. Are the views of participants in the consultation process made public?
- Completely ( )
  - To some extent ( )
  - Don't know ( )
  - Others, please specify ( )
9. Are minority shareholders facilitated to contest election for the company's board of directors?
- Yes ( )
  - No ( )
  - Don't know ( )
10. Does your company's board of directors include independent directors?
- Yes ( )
  - No ( )
  - Don't know ( )
11. What is the share of executive directors in your company?
- 50% ( )
  - 75% ( )
  - 25% ( )
  - Others, please specify. ( )
12. Has your company taken steps against directors serving in other companies?
- Yes ( )
  - If yes how often, ( )
  - Don't know. ( )
  - Under consideration ( )
13. Are directors allowed to engage in stock brokerage in your company?
- Yes ( )
  - No ( )
  - Sometimes ( )
  - Don't know ( )
14. How many directors are national tax payers in your company's board of directors?
- All ( )
  - Majority of them ( )
  - Few of them ( )
  - Others, please specify ( )

15. What type of action has been taken against the directors who have been convicted:
- Removal from the board ( )
  - Never happened ( )
  - Others, please specify ( )
16. Has your company prepared Statement of Ethics and Business Practices after the introduction of the Corporate Governance Code?
- Yes ( )
  - No ( )
  - Under consideration ( )
18. Has your company prepared Statement of Ethics and Business Practices before the introduction of the Corporate Governance Code ?
- Yes ( )
  - No ( )
  - Sometimes ( )
  - Don't know ( )
19. Has your company prepared a mission statement after the introduction of the Corporate Governance Code?
- Yes ( )
  - No ( )
  - Under consideration ( )
20. Has your company prepared a mission statement before the introduction of the Corporate Governance Code?
- Yes ( )
  - No ( )
  - Sometimes ( )
  - Don't know ( )
21. Does your company prepare record of policies on risk management, human resource management and procurement?
- Yes ( )
  - No ( )
  - Under consideration ( )
  - The meetings of the board of directors of your company are held:
    - Once in every quarter ( )
    - Once in every six months ( )
    - Once in a year ( )
    - On need basis ( )
22. Are the minutes of board of governors circulated to the directors and other officers
- Always ( )

- Sometimes ( )
  - Quite often ( )
  - Others, please specify ( )
23. How often the directors of your company file objection with the SECP?
- Sometimes ( )
  - Never ( )
  - Don't know ( )
  - Other, please specify ( )
24. How annual business plans, budgets and audit reports discussed?
- Circulated through mail ( )
  - Discussed in the board of directors meeting ( )
  - Discussed in committees ( )
  - Others, please specify ( )
25. The number of training courses conducted by your company to acquaint the staff with their duties and responsibilities of management are:
- Less than five ( )
  - More than five ( )
  - More than ten ( )
  - Others, please specify ( )
26. How are shareholders about the financial statements of your company
- In annual report ( )
  - Directors report to shareholders ( )
  - Through mail ( )
  - Others, please specify ( )
27. How the reasons for not for not declaring dividend or issuing bonus shares stated in your company?
- In annual report ( )
  - Directors report ( )
  - Through letters to shareholders ( )
  - Others, please specify ( )
28. What is the frequency of the financial reporting framework of your company?
- Quarterly unaudited financial statements ( )
  - Half- yearly financial statements ( )
  - Annual audited financial statements ( )
  - Others, please specify ( )
29. What %age of share capital is offered in the stock exchange by your company?
- 10% ( )
  - 20% ( )

- 30% ( )
  - others please specify ( )
30. The external auditors of your company are appointed for a period of
- One year ( )
  - Two years ( )
  - Three years ( )
  - Others, please specify ( )
31. How often the external auditors of your company changed
- After two years ( )
  - After five years ( )
  - After ten years ( )
  - Other, specify ( )
32. Are shares of minority and majority shareholders equally in your company at the time of divestiture?
- Sometimes ( )
  - More often ( )
  - Always ( )
  - Others, please specify ( )
33. Has your company submitted a statement of compliance along with the annual report?
- Yes ( )
  - No ( )
  - Under consideration ( )
34. Has your company approached SECP for seeking any relaxation
- Yes ( )
  - No ( )
  - If yes, please specify ( )
35. Has SECP effectively enforced key provisions of Corporate Governance Code ?
- Completely ( )
  - Greatly ( )
  - To some extent ( )
  - Others ( )
36. What is your suggestion to improve the enforcement mechanism

Name and Address:.....  
.....

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### ***Abstract***

This paper attempts to analyze the Corporate Governance Code 2002 in the light of Regulatory Impact Assessment (RIA) framework and its enforcement and application in Pakistan in order to understand the dynamics of public decision-making and assess the efficacy of the regulation policy of SECP in the arena of corporate governance. The main objective of this paper is to study the method of framing the Corporate Governance Code 2002 and assess its effectiveness as well as its compatibility with international norms and guidelines. It uses RIA approach, which is being increasingly applied in both the developed and developing countries, in order to explain the process of assessing costs and benefits of a new or an existing regulation. In doing this, we use two types of questionnaires. The first type of questionnaire was used for the structured interviews with the key stakeholders for critically reviewing the process of formulating the Code. The second type of questionnaire was used to assess the extent and degree of implementation of the Code on the listed companies. The analysis shows that though the listed companies are gearing themselves up to adopt the Code, there are some constraints, and reservations about the way it was drafted and implemented. The paper concludes that the policy makers should try to apply RIA framework more rigorously for ensuring greater accountability of the regulatory actions as well as improving regulatory transparency.



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