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Mainstreaming Lawyers and Judges to Improve the Corporate Governance Regime: The Pakistan Example

Characteristically, corporate governance projects have focused on directors and senior managers. However, since 2007, the IFC Pakistan Corporate Governance Project has hosted a seminar series for judges and lawyers with the goal of inspiring and equipping young legal talent with the necessary skills to play an instrumental role in improving the corporate governance regime in Pakistan. The seminar series, which included two seminars directed at lawyers and three seminars for judges, with 134 participants overall, signified a strategic realignment in bringing the legal fraternity into the fold of the project's activities. This SmartLesson demonstrates how the legal community can be used as a vehicle for corporate governance reform in a country.

BACKGROUND

There is strong evidence that lawyers and judges can be instrumental in improving the corporate governance regime in a country. First, most countries have a mandatory corporate governance code, and corporate lawyers are regularly consulted by companies seeking compliance with these regulations. Second, they have access to a company's higher echelon, whose commitment to good corporate governance is a decisive factor. Third, once sold on the business case for corporate governance, lawyers are able to influence a meaningful change in owners' behavior and help them improve their corporate governance. Fourth, lawyers' input in drafting relevant corporate governance regulations brings them to the forefront of corporate governance reform.

Lastly—and this is the central point of this SmartLesson—minority shareholders' rights are traditionally protected through a court-driven process. However, given the uncertain outcome and expense incurred in pursuing court proceedings, minority shareholders can benefit enormously from out-of-court settlement of their disputes. In fact, due to scant shareholder activism, coupled with cumbersome court procedures, lawyers and judges in Pakistan may be your best chance to ensure that corporate governance disputes are resolved outside the courtroom, with them as mediators.

LESSONS LEARNED

1) Get early input to identify the prime constituency to work with.

From the start, we engaged with lawyers. Following a consultative process that comprised one-on-one meetings with various lawyers, we decided to target young talent. The benefits of this approach were obvious. Young lawyers tend to be more receptive than their senior colleagues in approaching a subject. Without having already developed professional bias regarding most corporate governance issues, they are more likely to approach any training with an open mind. In the formative stages of their careers, they are also more flexible in pursuing higher education or independent research in the corporate governance area.

Although the idea of targeting judges seemed straightforward on paper, we soon realized the first challenge we faced in organizing a seminar for

judges—how to access this group who preferred to remain out of the public eye except when presiding over trials? After some thought, we decided to establish contact with a training institute. We thought this would ensure that judges turned out en masse to participate in trainings, and hence we would have more impact in delivering the corporate governance message designed for them. A training institute's involvement, we calculated, would, by default, be an endorsement of the value of corporate governance training for judges (which at this stage was going to be first of its kind).

We approached the Federal Judicial Academy, a government-run training institute. The Academy, established in 1988, is the oldest judicial training institute in Pakistan and provides training for judges nationwide, unlike its provincial counterparts. However, as the Academy focuses mainly on delivering hard-core judicial training, we had to convince them of the rationale for supplementary training on corporate governance. Over multiple meetings, we explained that such training would emphasize the court's role in addressing minority shareholders' concerns. The emphasis on alternative methods for the resolution of corporate governance disputes, we pointed out, was also essential for reducing court burden and efficient settlement of such disputes. As a result of these discussions—which centered on the rationale for and the basic outline of the seminar series—the Academy was able to recognize the value of conducting these seminars.

2) Tailor the presentations to your audience's needs.

The consultative process with the law firms and the Academy also helped us develop training material that was audience-focused. Based on the feedback received from lawyers, the training material on the one hand highlighted the role of lawyers in improving the corporate governance of their client companies. On the other hand, the seminars emphasized the need for effective resolution of disputes involving boards, senior management, and shareholders through the use of alternative dispute resolution measures, including mediation and other statutory mechanisms for protecting minority shareholders against majority oppression and mismanagement. In addition, court decisions were used as case studies to highlight the nature of corporate governance disputes in Pakistan. One example is a recent ruling of the High Court that put the corporate governance of one of the bidders in a high-profile privatization transaction right in the middle of a controversy regarding the eligibility for such sale.

In working closely with the Academy and directly with judges, we received invaluable input for developing group exercises for workshops with young lawyers. For example, each individual judge was asked to write a judgment in favor of good corporate governance practices in a fictitious corporate governance dispute. We also developed a group exercise in which lawyers would put themselves in the shoes of an advisor to the securities regulator and propose changes they would like to see made to the corporate governance code. Research conducted on corporate governance–related disputes and their out-of-court settlement by the Global Corporate Governance Forum, an IFC multidonor trust fund facility mandated to improve corporate governance policy standards and practices in developing countries, provided more in-depth insight to the training.

3) Sell the business case for corporate governance.

According to a survey of corporate governance practices in Pakistan, commissioned by the project in 2007, an overwhelming 89 percent of respondents stated that a mandatory corporate governance code was the main reason for their compliance with good corporate governance practices. Given that many nonlisted companies are not obliged to comply with the corporate governance code, tackling this narrow view was a tough challenge. We focused on training

Khawar Ansari, a member of the Pakistan Corporate Governance Project, addresses a group of mediators during a training workshop at the Karachi Centre for Dispute Resolution.

to help both lawyers and judges fully understand the underlying economic rationale for good corporate governance practices—such as increased efficiency, lower cost of capital, and increased access to capital—in order to put them on the same page with enlightened managers and directors. During presentations, we shared with participants various findings from research conducted by leading resources that linked good corporate governance practices with the building of more efficient organizations—a characteristic valued highly by investors. This provided a potent redress, because we felt that any change in the perception of lawyers would trickle down to their clients. One clear proof of this was that many participants highlighted the economic rationale for good corporate governance in both the discussions and the group activities during the seminars.

4) Exploit synergies to enhance the benefits of the intervention.

The seminar series led to other opportunities for working with lawyers with other IFC programs and units, thus helping to avoid duplication and enhance the overall impact of the Corporate Governance Project's activities. Through close cooperation with its staff, the project helped the Global Corporate Governance Forum to reach out to local lawyers and relevant institutes and solicit their input to help with developing a toolkit for resolving corporate governance–related disputes. We also reviewed the Forum's toolkit and provided our input to its contents. Further, in association with IFC's Alternative Dispute Resolution Project in Pakistan, we designed a half-day workshop for mediators trained by the Karachi Centre for Dispute Resolution on their role in mediating corporate governance disputes. Consequently, the two projects were able to join forces for a common agenda. The project team also made best use of the diverse skills in law, management, and corporate governance at its disposal. For example, a team member with legal qualifications took the lead role in designing and undertaking these activities.

CONCLUSION

Some key outcomes illustrate the project's success in training lawyers and judges in corporate governance. We received subsequent requests from the Academy to make the seminar available again. We also plan to engage them for a follow-up seminar. But, the most interesting outcome is that, by focusing on lawyers as a new target group, we were able to find creative ways of supporting other programs and units within IFC that paved the way for future interaction with these programs and units to support a better corporate governance regime. For the project, such close cooperation with these programs and units within IFC is aimed at increasing our corporate governance footprint in Pakistan.

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