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## Investment Policies in Pakistan: A Critical Analysis of Investor Protection under Securities and Exchange Commission of Pakistan

Noor-ul-ain Shabbir  
(Corresponding Author)

Research Associate,

Department of Law, University of Azad Jammu and Kashmir, Muzaffarabad.

Email: [noorulain.ajku@gmail.com](mailto:noorulain.ajku@gmail.com)

Samia Maqbool Niazi

Assistant Professor,

Department of Law, International Islamic University, Islamabad.

Email: [samia.maqbool@iiu.edu.pk](mailto:samia.maqbool@iiu.edu.pk)

### Abstract

*This article's main objective is to critically assess Pakistan's investment policies and investor protection strategies under SECP. The SECP's incentives for both domestic and foreign investors are included. A special focus is paid to identifying the barriers that prevent investment in Pakistan. Major obstacles include high business expenses, unpredictable politics, corruption, bureaucracy, conflicting government policies, and a lack of law and order. The investor complaints cell and the awareness-raising activities they carry out in relation to their financial market investments are also included in this study. If investors are aware of their dangers and the rules and regulations of the country, they can be appropriately protected. The comparison emphasizes how important it is for investors to be informed about the dangers involved in the investments they are making in the securities market. The paper also lists international best practice solutions, like the IOSCO Principles, designed to encourage foreign investment in the country.*

**Keywords:** Investor, Investor Protection, Securities, Securities Market, Regulators, Securities and Exchange Commission of Pakistan and IOSCO Principles.

### Introduction

Investor protection is the most crucial element of the securities industry. Making sure that investors get as much information as they can before making any kind of investment is the key to safeguarding them. (American Bar Association, 2002) Although the regulator claims that investors are safeguarded, they must make sure that these people are fully informed about their purchases, transactions, and relationships with issuers. Governmental and other authorities' laws must be both sufficient and effective in how they are carried out. (American Bar Association, 2013)

Investment has become a major strategy for promoting and maintaining economic growth on an international level. Business law is in charge of and governs all of those commercial and industrial processes. The US, UK, and even India, staying true to their image as developed countries, have a

variety of laws and standards controlling all of their corporate operations as well as the investment process. Commercial law covers both the law of contracts and the law of property. The investment of money and the application of contract law are required to enforce contractual obligations in business transactions. Commercial law is produced via state-recovering legal systems because investment activity is governed by commercial laws.(Carvajal, Ana, and Jennifer, 2007)

Investor confidence is a key component of the capital market's health. Furthermore, investor trust is promoted by a capable capital market regulator. The finest investment choice should be made by a wealthy investor on the securities market, one for whom the economy will provide adequate revenue. (Brummer and James, 1989) As a result, the goal of the capital market regulator is to foster greater investor confidence through a range of laws, rules, market awareness campaigns, and educational activities. (Bodellini & Marco, 2017)

It is crucial to protect investors and, in particular, to stop unscrupulous trading strategies in order to maintain the fairness of the markets. On the other hand, the IOSCO Regulations should work to guarantee that investors have equal access to market infrastructure, all data, and pricing information. In this way, the IOSCO Principles' goals would be successfully achieved. It is important to encourage the market's behavior, which is supported by law and regulation, to employ a standardized methodology for generating prices and processing orders fairly. (Corcoran, 2010)

All across the globe, securities supervisors and controllers are connected and united by the Worldwide Organization of Securities Commissions (IOSCO), a multinational organization. The IOSCO develops and executes all investment policies for the regulation of securities as well as generally acknowledged standards for investor protection

Strong domestic markets are becoming more and more integrated into the global securities market today since they are necessary for the growth of investors in both the private sector as a whole and foreign investment as well. The IOSCO principles can be applied to build robust domestic markets. In accordance with the IOSCO principles, securities regulators at both the national and international levels ought to be motivated by a steadfast desire to safeguard investors' interests, and in some cases, they are. After concluding that the only way to help the domestic economy is to control thriving local markets, IOSCO offers the regulator crucial advice. The IOSCO Principles' Part II, Paragraph 6, lists the requirements for a regulator.(Karmel, 2011)

The Securities and Exchange Commission of Pakistan plays a vital role in securities regulation in Pakistan. However, it struggles to fulfill its objectives, highlighting the need for an adequate mechanism based on IOSCO's principles. This paper analyzes deficiencies in Pakistan's law, including silence on intermediary misconduct and lack of penalties for law breaches.(Carvajal, Ana, and Jennifer, 2007)

## Literature Review

The study explores the legal aspects of regulating securities markets for investor protection under SECP based on a comprehensive literature review of relevant books, research papers, policy summaries, and reports, providing a comprehensive understanding.

Securities laws are essential for functioning markets, guaranteeing firms, and providing a legal framework for capital production. Investor protection is a goal of IOSCO principles, which also promote justice, efficiency, and openness. Additionally crucial is systematic risk, a type of market risk. Since more than 90% of security regulators are IOSCO members, accountability and fairness are guaranteed. In order to evaluate circumstances that can impact regulators' activities, information on financial markets, especially securities financing markets, should be accessible. In the financial markets, systematic risk is foreseen but unseen. (Shabbir, 2022)

Market fairness and investor protection are two principles that go hand in hand. The rules set out by Pakistan's Securities and Exchange Commission for the protection of investors in the securities markets fall short of what they were meant to achieve. It is essential to adhere to the doctrines given under IOSCO in order to maintain the integrity as well as reliability of the financial system, improve the legal as well as monitoring environment, and improve capital markets as a ideal investment choice for both local as well as foreign investors. (Shabbir, 2018)

In addition to outlining the advantages of IOSCO Standards, Cally Jordan says that IOSCO is no longer in command of its own standard-setting agenda and offers some history on the organization's standard-setting process. New regulatory objectives that may be difficult to reconcile with long-standing regulatory objectives of investor protection were integrated into international standards. (Jordan, 2018)

According to the organization's rules and regulations, IOSCO's goal is to "cooperate in establishing, enforcing, and encouraging compliance with internationally acknowledged and constant norms of regulation, monitoring, and execution in order to defend the rights of investors; continue objective, well-organized, and obvious markets; and further strive to discourse complete concerns about active and unbiased marketing in regulations." By collaborating to eradicate misbehavior, increasing data sharing, and conducting market surveillance with market intermediaries, IOSCO not only improves investor protection but also increases investor trust and integrity in the securities markets. (Defond and Hung, 2004).

Marco Bodellini argues in his paper that those who are permitted to invest in hedge funds are smart, affluent, and powerful individuals who do not require legal protection. Bodellini asserts that it is not usually seen as a high priority to consider whether the current legislative framework is acceptable and, at the very least, sufficient for commentators to debate the difficulties that hedge funds might provide to investors and markets. Therefore, regulators should be motivated by crucially essential legal goals like investor protection and systemic risk mitigation. (Bodellini, 2013)

It is the responsibility of the regulator to regulate the market in such an effective way that investors' protection is not compromised at any cost and consider their protection to be a top priority, and for that reason, the International Organization of Securities Commissions (IOSCO) should be adopted, according to an excellent work by Abraham M. Stanger in which he provides its strategy for the enforcement of fair investment policies. (Stranger, 2002)

## **Material and Methods**

The researcher uses doctrinal legal research methodology. This study will include both a descriptive technique and an analytical approach. Systematization will be utilized in this study to evaluate the laws and rules currently in place to control the securities markets for the protection of investors under SECP.

## **Results and Discussion**

Pakistan has made significant advancements in both the design and implementation of regulations, according to IOSCO principles. Pakistan adopted the published recommendations from the 2015 Report in the form of new legislation that covers a variety of unique facets of capital market regulation. (Daniela and Russo, 2013) Only two of the laws that have been introduced or altered to implement legislative and regulatory reforms under SECP's worldwide leadership are the 2015 Securities Act and the 2016 Futures Market Act. (Deterrence and Credible, 2015)

The SECP Amendment Act of 2016 and the Companies Act of 2017 are also mentioned. Changes have been made to the Pakistan Stock Exchange, Central Depository Company of Pakistan, and

National Clearing Company of Pakistan, in addition to non-bank financing companies and self-regulatory bodies. (Godwin, Andrew, Kourabas, and Ian-Ramsay2016) Additionally, the SRO had major control changes, issuers and investment market mediators received organizational changes, the Pakistan Audit Oversight Board was created, and enhancements were made to investor communication, responsiveness, defense, and support. The rules for investor facilitation and the supervisory architecture also underwent adjustments. (Hellwig and Martin, 2010)

In order to protect investors, maintain impartial, well-organized, transparent markets, and make an effort to discuss systemic risks, the members of IOSCO decided that they would work together in the first place to increase, apply, and endorse observance of internationally recognized principles and constant principles and benchmarks of regulation, oversight, and enforcement. Additionally, they have decided to work together to achieve appropriate regulation, monitoring, and enforcement tools in order to improve and modernize investor protection and promote investor trust and integrity in the securities markets. In order to promote and stimulate market expansion, build economic institutions, and enact suitable laws, it is thirdly important to communicate all information and data at both the global and local levels on their diverse experiences.(IOSCO Emerging Markets Committee, 1999)

### Comparison between IOSCO Principles and Objectives of SECP regarding Investor Protection.

IOSCO PRINCIPLES	SECP'S ACT
<p><b>Principle 6:</b> The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate</p>	<p>There is no regulatory procedure in place to monitor, reduce, and manage systemic risk. Changes to the SECP Act that might affect the SECP's responsibilities and power were being considered at the time of the study. The SECP now has more capacity to recognize and respond to systemic risk issues. The SECP Act modifications and SECP plan for systemic risk reduction must thus be implemented as soon as possible. Only the Risk Management Department has been formed by SECP; the Act has not been amended or added to.</p>
<p><b>Principle 12:</b> The regulatory system should ensure and effective and credible use of inspection, investigation, surveillance and enforcement power and implementation of an effective compliance program.</p>	<p>The SECP's on-site inspection program and risk-based assessment methodology are currently neither rigorous nor organized. Most businesses are only permitted to undergo inspections once every 10 years. However, the main barriers to efficient compliance are the backlog and delays in the courts. The SECP's "International Inspection" strategy should be prioritized and put into action with the intention of fully covering brokers. The joint inspection initiative should also continue in 2016–17, and the entire brokerage</p>

	community should be made aware of the Joint Examination Regulations program so they can be ready for and anticipate such an inspection.
<p><b>Principle 15:</b> The regulatory system should allow for assistance to be provided to foreign Regulators who need to make inquiries in the discharge of their functions and exercise of their power.</p>	<p>The SECP became a signatory to the IOSCO MMoU on March 10, 2011. Before publishing financial papers, the Central Bank must provide its approval. As a result of errors in procedures made by the SECP under Section 42C of the SECP Act and the Central Bank, a request for MMoU clearance was turned down. The SECP would be able to access and share bank records without the Central Bank's permission under the SECP Act's proposed Section 42C, which is now being considered in Parliament. The SECP is essential to Pakistan's stock market regulation. Despite this, it falls short of its objectives, highlighting the need for an appropriate system based on IOSCO's principles.</p>
<p><b>Principle 16:</b> There should be full, accurate and timely disclosure of financial results, risk and other information that is material to investor's decisions.</p>	<p>According to Sub-section 1 of Section 88 of the Securities Act of 2015, the requirement for prospectus publishing in Urdu has been in effect since that year. Prospectuses are also offered in Urdu in addition to English. On December 31, 2015, the SECP issued a guideline mandating all businesses to disclose the circular's language, along with an announcement promoting new shares in both Urdu and English. Prospectuses are also accessible in Urdu. The websites for SECP and SRO are bilingual in Urdu and English for the benefit of investors.</p>
<p><b>Principle 23:</b> Other entities that offer investor analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.</p>	<p>The research analyst regulations, which established the fundamental training, real-world experience, and certification requirements for research analysts, including those for independent research, were passed by Pakistan in 2015. The SECP analyzes these standards often to make sure they are being followed. These research analysts do</p>

	<p>their own, independent research to create their research reports. The rules for research analysts specifically highlight and encourage morality and honesty, among other things.</p>
<p><b>Principle 24:</b> The regulatory system should set standards for eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme</p>	<p>The Securities and Futures Advisors (Licensing and Operations) Regulations of 2017 require mutual fund distributors, who are regarded as securities advisors under the Securities Act of 2015, to submit an application for a license to the SECP. The provisions of the Act and the Regulations provide substantial jurisdiction to the SECP with respect to distributor licensing, regulation, supervision, and monitoring.</p> <p>The SECP's regulatory framework requirements have significantly strengthened in terms of eligibility, governance, organizational design, and operational conduct for anybody wishing to provide or manage a collective investment plan. Changes that will prove necessary over time to protect investor rights and establish an operational rule to enable a thriving CIS business environment in the jurisdiction of Pakistan will play a significant role in improving and guaranteeing a high level of investor protection, which in turn may lead to a developed rating. The assessor cannot foresee how these modifications would affect investor protection, particularly for the less experienced investors who form the basis of Principle 24, because they are still being developed.</p>
<p><b>Principle 30:</b> There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.</p>	<p>The SECP is empowered by Section 81(4) of the Securities Act of 2015 to issue directives or impose sanctions, such as suspension, on intermediaries who are unable to meet their capital or financial resource requirements or who are in violation of any provisions of the Act and the rules and regulations adopted there under. According to Article 70, SECP may impose any restrictions or conditions it thinks fit on a licensing subject and may</p>

	<p>change, revoke, or add additional restrictions or requirements with written notification to the license holder.</p> <p>The Broker Regulations' Regulation 33 outlines the standards for keeping books of accounts and other documents. Securities brokers are required by Regulation 33(1) to maintain accounting and other records that, at all times, accurately reflect their financial situation, enable them to prepare financial statements as required, and establish that they have the resources necessary to carry out their contractual obligations.</p>
<p><b>Principle 32:</b> There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investor and contain systemic risk.</p>	<p>The default management system has significantly improved as a consequence of the Securities Act of 2015 and the Clearing House (Licensing and Operations) Regulations of 2016, with the NCCPL highlighting the following important achievements: The NCCPL has taken on the role of a central counterparty, ensuring Novation's settlement of all permissible trades in line with Clause 3.16 of Chapter 3 of the NCCPL Regulations, 2015. The proceeds from the sale of shares or Modaraba certificates may also be used as collateral to facilitate the establishment of credit to NCCPL at the direction of the Minister-in-Charge, lower than the new Companies Act, 2017, Section 244(12), in addition to the bank account held for unclaimed or unpaid dividends.</p> <p>NCCPL would then have more resources at their disposal to combat brokers' settlement failures and deal with a systemic risk to the investing industry. Only when it deems that the reimbursement house's resources are insufficient or are likely to be insufficient for the fast clearing of transactions performed at securities and futures exchanges may the Commission exercise the authority provided to it by this paragraph.</p>

The current discussions highlight the significance of strengthening the securities legislation. For securities markets to be successful, we need institutions and a regulatory framework designed for capital production. The securities markets must be home to businesses and have a regulatory environment that supports them. There are three objectives that must be accomplished. The IOSCO

principles' primary objectives are investor protection and the development of logical, informed, organized, and transparent markets. A risk that impacts the entire market is referred to as "systematic risk," a term that is usually used to refer to the market as a whole. (Newman, Patterson and J. Reed Smith, 2005)

## Conclusion

Traders, investors, and hedgers are the three main stakeholders in any futures market. They put aside cash for trading, hedging, or investing, which has an impact on the number of transactions and market activity. Therefore, ensuring the safety of market participants is crucial for the growth, profitability, and expansion of Pakistan's derivatives market.

The stock market and SECP are essential for the regulation of stocks in Pakistan. Despite this, it falls short of its objectives, highlighting the need for an appropriate system based on IOSCO's principles. This article looks at Pakistan's legal problems, including the lack of penalties for breaching the law and the lack of awareness of intermediary misbehavior. The SECP in Pakistan faces a lack of effective regulation of investment and, highlighting the need for a more comprehensive system based on IOSCO's principles.

Securities and investment markets like the stock exchange heavily rely on investing. They make decisions based on the level of market activity. The protection of stakeholders and shareholders is viewed in modern times as an essential and motivating step in the development and growth of businesses and organizations. Investors' safety was prioritized for their protection. If we look at the improvements made by these industrialized countries, we can see that they still put a lot of attention on safeguarding investors; however, in Pakistan, this problem is constantly disregarded by everyone.

On the other hand, the IOSCO principles demonstrate that they succeed in achieving this objective. The process of setting prices is a representation of the thorough and timely transmission of relevant information that distinguishes a successful market. As a result, it is crucial for the effectiveness of the market. In order to safeguard the legitimacy and integrity of the financial system, enhance the legal and regulatory environment, and advance capital markets, the IOSCO guidelines must be followed. Only then will both domestic and international investors view market investment as the preferred course of action. They are selling shares to lessen the risk. However, they don't appear to be in equilibrium between supply and demand. The decrease in share values hurts businesses as well as investors as a whole.

Applying IOSCO principles is a crucial strategy for accomplishing these goals. Consequently, they make a big difference in the growth of the economy and the creation of capital. Although there have been a number of changes to Pakistan's legal and regulatory framework, it is anticipated that the majority of these changes will still be carried out in compliance with the IOSCO Objectives and Principles. The SECP developed and vigorously carried out a comprehensive strategy to meet IOSCO's evaluation criteria in order to bring Pakistan's securities regulatory system into compliance with international standards.

The study discovered that discussions on the endorsements that were desired in lieu of noteworthy legal processes, monitoring changes, and market actors' buy-in to be ready for advanced concepts and practices were successfully conducted. A number of legislative and regulatory amendments have been put into place, including the 2015 Securities Act, the 2016 SECP Amendment Act, a new system for regulating securities brokers, an investor education campaign, adjustments to the supervisory architecture, and risk-based supervision and enforcement. The research concluded that

the implementation of the suggested changes improved market efficiency, investor protection, fair and well-organized markets, and a reduction in systemic risk in Pakistan's securities markets.

## References

- American Bar Association. (2002, August). Special Study on Market Structure, Listing Standards and Corporate Governance. *The Business Lawyer*, 57, 1487-1567.
- American Bar Association. (2013, April). Transparency and Accountability. *Creamer III Business Law Today*, 1-4.
- Andrea M Corcoran. (2010). Globalization Report Cards for Securities Regulators: National Enforcement of International Capital Market Standards for Information Sharing and Cooperation and the Prevention of Financial Crises. *U. Cin. L. Rev.*, 79, 651.
- Bodellini, & Marco. (2017, June). From Systemic Risk to Financial Scandals: The Shortcomings of U.S. Hedge Fund Regulation. *Brooklyn Journal of Corporate, Financial & Commercial Law*, 11(2), 2-11.
- Brummer, J., & James. (1989, April). Accountability and the Restraint of Freedom: A Deontological Case for the Stricter Standard of Corporate. *Disclosure. Journal of Business Ethics*, 5(2), 155-164.
- Carvajal, Ana, & Jennifer. (2007). Strengths and weaknesses in securities market regulation: A global analysis. *IMF Working Papers*, 1-49.
- Daniela, & Russo. (2013). CPSS-IOSCO Principles for financial market infrastructures: vectors of international convergence. *Financial Stability Review* 17, 69-78.
- Deterrence, & Credible. (2015). *In the Enforcement of Securities Regulation*. <https://www.iosco.org/news/pdf/IOSCONEWS383>. .
- D. Paul Newman, Evelyn R. Patterson & J. Reed Smith. (2005). The Role of Auditing in Investor Protection. *The Accounting Review*, 80(1), 289–313. <http://www.jstor.org/stable/4093170>
- Hellwig, & F., Martin. (2010, January). Pital Regulation after the Crisis: Business as Usual. *SSRN Electronic Journal*, 8, (13), 77.
- IOSCO Emerging Markets Committee.(November 1999). Causes, Effects and Regulatory Implications of Financial and Economic Turbulence in Emerging Markets. IOSCO Public Document No. 99, IOSCO Emerging Markets Committee,
- Jordan, & Cally. (2018, September). Beyond International Standards: Mapping the Future of Capital Markets Regulation. *Centre for international Governance innovation*.
- Karmel, & Roberta. (2011). IOSCO's Response to the Financial Crisis. *J.Corp. Law Journal*, 37, (3), 849.
- Levenson, B., Alan. (1971, November). The Role of the SEC as a Consumer Protection Agency. *The Business Lawyer*, 27(1), 61-70.
- Mark L. Defond & Mingyi Hung. (2004). Investor Protection and Corporate Governance: Evidence from Worldwide CEO Turnover. *Journal of Accounting Research*, 42(2), 269–312. <http://www.jstor.org/stable/3542362>.

- Porta, Rafael, Florencio, Lopez-de-Silanes, Andrei-Shleifer, & Robert. (2000). Investor protection and corporate governance. *Journal of financial economics*, 58(1-2), 3-27.
- Porta, Rafael, Florencio, Lopez-de-Silanes, Andrei-Shleifer, & Robert. (2000). Investor protection and corporate governance. *Journal of financial economics*, 58(1-2), 3-27.
- Karmel, Roberta. (2011). IOSCO's Response to the Financial Crisis. *J. Corp. L.*, 37,849.
- Sattar, Babar. (2011, June 25).SECP has now become a captured agency. *Securities and Exchange Commission of Pakistan: The Official letter*, p. 8.
- SECP (Amendment) Act 2013
- SECP (Amendment) Act 2016
- Securities ACT, 2015
- Securities and Exchange Commission of Pakistan Act, 1997
- Shabbir, Noor-ul-Ain. (2018).*The independence and accountability of SECP in the light of IOSCO principles*. LL.M thesis, Islamic International University, Islamabad.
- Sommer, Jr. (1996). IOSCO: its mission and achievement. *Nw. J. Int'l L. & Bus.*, 17, 15.
- Stanger, Abraham. (1973, July).Is the Securities and Exchange Commission Backing into Fair Value Accounting. *The Business Lawyer*, 28 (4), 1003-1009.
- Stock Exchange (Corporatization, demutualization and integration Act, 2012 Sub-sections (4-C) and (4-D) of section 10-E of the Companies Act, 1956