Regulatory Insights

from India Tax & Regulatory Services

Committee submits report for overhaul of corporate governance norms to SEBI

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In brief

In order to enhance the standards of corporate governance of listed companies in India, Securities and Exchange Board of India (SEBI) had formed a Committee under the Chairmanship of Mr. Uday Kotak in June 2017. The 25 member Committee comprising of officials from the government, industry, professional bodies, stock exchanges, academicians, lawyers, etc., has now submitted its report to SEBI on 5 October, 2017 and invited comments from the public. The last date for the receipt of comments by SEBI is 4 November, 2017.

The Committee report recommends a host of changes in the SEBI regulations, majorly to boost corporate governance through enhanced disclosures and safeguards, ensuring independence in spirit of independent directors, improving accounting and auditing practices and addressing issues faced by investors.

In detail

Key recommendations from the committee report

Corporate governance

- In order to bring in sufficient number of directors with diverse backgrounds and skills sets, it is recommended that there should be a minimum of six directors on the board of a listed entity. Currently, there is no provision for this in the SEBI listing regulations.
- To reduce excessive concentration of powers in the hands of a single individual, it is suggested that the roles of a chairperson and managing director/ CEO be separated. Considering this, it is recommended that all listed entities with effect from 1 April, 2020, having public shareholding of 40% or more at the beginning of a financial year (FY) shall ensure that the chairperson is a non-executive director (NED).
- Minimum number of meetings of the board of directors be increased to five every year and in one such meeting, the board shall specifically discuss aspects such as strategy, succession planning, budgets, board evaluation, risk management, environment, sustainability and governance.
- Listed entities, once in a year shall undertake a formal program to update the Board of Directors on changes in applicable laws, regulations and compliance requirements.
- It is recommended that secretarial audit be made mandatory for every listed entity and its material subsidiaries incorporated in India.

Independent directors

- With effect from 1 April, 2019, the boards of the top 500 listed entities (determined on the basis of market capitalisation), shall have at least half the board of directors comprising of ID’s. In case of the other listed entities, the requirement shall be applicable with effect from 1 April, 2020.
- To promote gender diversity in the board of

a listed entity, it is suggested that the board of directors shall have at least one woman as an independent director (ID). Currently, the regulations prescribe appointment of a woman director (not necessarily being an ID).

- To bring about a risk-reward balance in the compensation payable to ID's, it is recommended that a listed entity may be required to pay certain minimum compensation to ID's as specified. It is suggested that in case of top 500 listed entities, the minimum remuneration for an ID per year shall be INR 0.5 million.
- The top 500 listed entities (determined on the basis of market capitalisation) to undertake directors and officers insurance for its ID's with effect from 1 October, 2018. The board needs to determine the quantum and type of risks covered under such insurance.
- ID's to comprise two-thirds of the members of the Nomination and Remuneration Committee (NRC).
- ID's to undergo formal training once every five years on their roles and responsibilities with particular emphasis on governance aspects and shall certify compliance with the same to the listed entities every year. Existing ID's currently on board of listed entities would be given two years to comply.

Remuneration aspects

Shareholders' approval to be obtained if the remuneration of a single NED exceeds 50% of the pool being distributed to all the NED's. This recommendation is made to bring in check excess remuneration being paid to NED's who are generally promoter directors.

Enhanced responsibility for audit committee

- Role of audit committee to include review of the utilisation of loans and/ or advances from/ investment by the holding company in the subsidiary exceeding INR 1 billion or 10% of the asset size of the subsidiary (whichever is lower).
- Minimum number of meetings for audit committee proposed to be increased to five every year.

Related party transactions

- It is recommended that listed entities must submit half-yearly disclosures of related party transactions on a consolidated basis, within 30 days from the publication of its standalone and consolidated financial results.
- Related party definition in the regulations to be amended. As per the recommendation, any person or entity belonging to the promoter group of the listed entity and holding 20% or more of the shareholding in the listed entity shall also be a related party.
- Transactions involving payments made to a related party with respect to brand usage or royalty shall be considered material, if such transaction to be entered into (individually or taken together with previous transactions), exceed 5% of the annual consolidated turnover of the listed entity.

Enhanced disclosures and transparency

- It is recommended that every listed entity must disclose to the stock exchange, details of holders of global depository receipts, who hold more than 1% shareholding of the entity.
- Where the board have not accepted the recommendations of any mandatory committee, the same shall be disclosed along with the reasons thereof, in the corporate governance report (which falls part of the annual report).
- In the notices sent for an annual general meeting (AGM), where statutory auditors are proposed to be appointed or re-appointed, the explanatory statement to include, a) disclosure on the fees payable to the auditors along with the terms of appointment, b) any material change in fee (in case a new auditor is appointed) along with the rationale for such change, and c) basis for recommendation of the auditor and credentials of the auditor proposed to be appointed.

Accounting and audit

- Listed entity shall submit as part of its standalone and the half-yearly consolidated financial results, a note on the statement of cash flows for the half-year.
- If an auditor is not satisfied with the views/ opinions of the management or of an expert whose services have been availed by the management, the auditors can independently obtain external opinions from experts appointed by the auditors themselves. The listed entity shall bear the cost for the same.
- Listed entity to disclose the total fees for all services paid by the listed entity and its subsidiaries (i.e. on a consolidated basis) to the statutory auditor and all

entities in the network firm/ network entity of which the auditor is a part.

Investor participation

Top 100 listed entities (determined on the basis of market capitalisation as on 31 March every FY), with effect from 1 April, 2018, shall hold their AGM within a period of five months from the close of the FY. Further, such entities shall provide one-way live webcast of the proceedings of all shareholder meetings held on or after 1 April, 2018.

The takeaways

The committee report is a welcome step towards enhancing investor confidence by focusing on reforms to the composition of the board, its independence and functioning, the role of auditors, shareholder participation and the enhancement of corporate disclosures.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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