SEBI implements Kotak Committee recommendations

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Welcome

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02 Recommendations approved by SEBI

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04 Applicability and impact of the amendments
Speakers for the call

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SEBI implements Kotak Committee recommendations
Recent developments - Quick recap

The committee on corporate governance was formed under the chairpersonship of Uday Kotak.

The committee released its recommendations for public comments.

The SEBI approved certain recommendations:
- With modifications
- Without modifications
- Referred to certain agencies.

Amendments issued to the SEBI Listing Regulations based on the approved recommendations.
Broad categories of amendments

- Composition and role of the board of directors
- Institution of independent directors
- Board Committees
- Investor participation
- Disclosures and transparency
- Monitoring group entities and related parties
- Accounting and audit-related matters

Strong foundation of monitoring and enforcement mechanism
Composition and role of the board of directors

Minimum six directors on board
- 1 April 2019: Applicable to top 1,000 listed entities
- 1 April 2020: Applicable to top 2,000 listed entities

At least one independent woman director
- 1 April 2019: Applicable to top 500 listed entities
- 1 April 2020: Applicable to top 1,000 listed entities

Maximum number of directorships
- 1 April 2019: Reduce to eight
- 1 April 2020: Reduce to seven
Composition and role of the board of directors (cont.)

**Chairperson** to be a non-executive director and not related to MD or CEO as per the definition of ‘relative’ under the Companies Act, 2013.

**Quorum for board meeting** - Higher of:
- One-third of its total strength or
- Three directors.
  (*Including at least one independent director.*)

**Disclosure of expertise/skills of directors**

- Applicable to top 500 listed entities
  - 1 April 2020
- Applicable to top 1,000 listed entities
  - 1 April 2019
- Applicable to top 2,000 listed entities
  - 1 April 2020
- List of core skills/expertise/competencies identified by the BoD
  - FY ending 31 March 2019
- Names of directors who have such skills/expertise/competence
  - FY ending 31 March 2020
Institution of independent directors

Amendments applicable from 1 October 2018

Revised eligibility criteria

- Specifically exclude persons who constitute the ‘promoter group’ of a listed entity
- Exclude 'board inter-locks' i.e. a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.

Appointment of an alternate director for an independent director would not be permitted.

Mandatory Directors and Officers (D&O) insurance for independent directors of top 500 listed entities.
Institution of independent directors (cont.)

Amendments applicable from 1 April 2019

An independent director would provide a **declaration** that he/she is not aware **of any circumstance/situation**, that could impair or **impact his/her ability to discharge his/her duties**.

**Performance evaluation criteria** should include:
- Performance of the directors
- Fulfilment of the independence criteria
- Independence from the management.

Disclose detailed **reasons for resignation** of an independent director before the expiry of his/her tenure **within seven days of resignation** to the stock exchange.
Board Committees

Amendments applicable from 1 April 2019

Enhanced role of an audit committee

Review the utilisation of loans and/or advances from/investment by the holding company in the subsidiary exceeding INR100 crore or 10 per cent of the asset size of the subsidiary, whichever is lower.

Risk Management Committee (RMC)

• Extend the requirement of a RMC to the top 500 listed entities (currently 100)
• Specifically cover cyber security in its role.

Enhanced role of Nomination and Remuneration Committee (NRC)

• Recommend all payments made to senior management to the BoD
• Senior management would include all members one level below the CEO/MD/WTD/manager (including CEO/manager, in case not part of the board) and specifically include the company secretary and the CFO.

Stakeholders’ Relationship Committee (SRC)

• Members to include minimum three directors with at least one independent director
• Chairperson to be present at the AGM to answer queries of security holders
• Enhanced role to, inter alia, include review of measures taken for:
  – Effective exercise of voting rights by shareholders
  – Reducing the quantum of unclaimed dividends.

Members of NRC, RMC and SRC to meet at least once a year.
Monitoring group entities and related parties

Mechanisms to monitor multiple unlisted subsidiaries

- Dedicated group governance unit or Governance Committee comprising the members of its BoD
- Strong and effective group governance policy to be formulated.

Applicable from 10 May 2018
Monitoring group entities and related parties (cont.)

Related Party Transactions (RPTs)

- Disclose transactions with promoters/promoter group entities holding **10 per cent or more** shareholding annually
- Half yearly disclosure of RPTs on a **consolidated basis**.

- Consider **promoters/promoter group entities** that hold **20 per cent or above** in a listed entity as related parties
- **Shareholders’ approval** (majority of minority) for **royalty and brand payments** to related parties exceeding **two per cent** of consolidated turnover
- Materiality policy to include **clear threshold limits** duly approved by BoD; to be reviewed at least once in three years and updated
- Related parties permitted to **cast a negative vote** and **not to vote to approve**.

Secretarial audit

Mandatory for all listed entities and their **material unlisted subsidiaries** incorporated in India.

**1 April 2019**

- FY ending 31 March 2019

- Half-year ending 31 March 2019
Amendments applicable from 1 April 2019

Obligations on the board with respect to subsidiaries

- Definition of a ‘material subsidiary’ revised to mean a subsidiary whose income or net worth exceeds 10 per cent of the consolidated income or net worth.
- At least one independent director on the BoD of a listed entity to be a director on the BoD of an unlisted foreign material subsidiary.

Remuneration to directors

- Executive promoter directors: Shareholders’ approval by a special resolution, if remuneration paid to a single executive promoter director and to all executive promoter directors exceeds specified limits.
- Non-executive directors: Shareholders’ approval by a special resolution is required every year, in which the annual remuneration to a single non-executive director exceeds 50 per cent of the total remuneration payable to all non-executive directors.
Amendments applicable from 1 April 2019

Quarterly financial disclosures

- **Mandatory** disclosure of **consolidated financial results** on a quarterly basis
- Limited review/audit of at least **80 per cent** of the financial information of the group i.e. consolidated revenue, assets and profits
- **Mandatory** disclosure of **cash flow statement** on a half-yearly basis
- Financial results in respect of **last quarter** could be audited/ limited reviewed
- Disclose by way of note aggregate effect of **material adjustments** made in the results of the **last quarter** pertaining to earlier periods.
Amendments applicable from 1 April 2019

Other significant matters

• **Mandatory quantification of audit qualifications** – exception for matters like going concern or sub-judice matters

• **Statutory auditor** of the listed entity shall undertake a **limited review of the financial results** of all the entities/companies whose accounts are to be **consolidated** with the listed entity

• Disclose:
  – **Basis of recommendation** for appointment of an auditor
  – Total **fees** paid to the **statutory auditor (including entities in the network firm/entity)**
  – **Reasons for resignation** of an auditor/audit firm.
Disclosures and transparency

**Searchable formats of disclosures**

- **Disclosures on entity’s website:** In a user friendly searchable format.
- **Disclosures to stock exchange:** In XBRL format.

**Additional disclosures on board evaluation**

- **Observations** of board evaluation carried out for the year
- Previous year's observations and **actions taken**
- **Proposed actions** based on current year observations.

**Additional disclosure in the management discussion and analysis section of the annual report**

- Entity’s **medium-term and long-term strategy** based on a time frame as determined by its BoD.

Amendments applicable from

9 May 2018

10 May 2018
Amendments applicable from 1 October 2018

Disclosures on an entity’s website:
• Disclose credit ratings obtained for all its outstanding instruments
• Immediately update any revision in such credit ratings.

Submit **advance notice** for consideration of **bonus issue** by the board to the stock exchanges.
Key additional disclosures in the annual report

Amendments applicable from FY ending 31 March 2019

- List of core skills/expertise/competencies identified by the BoD for it to function effectively and those actually available with the board
- For each director, disclose the names of the listed entities where he/she is a director and the category of directorships
- Significant changes in key financial ratios (i.e. 25 per cent or more as compared to previous FY); any change in net worth
- Utilisation of proceeds of preferential issues and qualified institutional placement till the time such proceeds are utilised
- Recommendations of any committee of the board mandatorily required in a financial year not accepted by the board along with reasons.

Year ended 31 March 2019

Applicable from FY ending 31 March 2020

Names of directors who have such skills/expertise/competence
Amendments applicable from 1 April 2019

Timeline for AGMs

- **Hold AGMs by 31 August 2019** i.e. within five months from the end of the FY2018-19.
- **One-way live webcast** of the proceedings of the AGMs.

Resolution to shareholders without board’s recommendation

For any resolution placed before the shareholders, the BoD should clearly indicate their recommendations.
1. Report submitted by the SEBI Committee on Corporate Governance dated 5 October 2017.


• Listing Regulations - SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
• SEBI - The Securities and Exchange Board of India
• BoD - Board of Directors
• RPTs - Related Party Transactions
• MD - Managing Director
• WTD - Whole Time Director
• CEO - Chief Executive Officer
• CFO - Chief Financial Officer
• FY - Financial Year
• RMC - Risk Management Committee
• SRC - Stakeholders’ Relationship Committee
• NRC - Nomination and Remuneration Committee
• XBRL - Extensible Business Reporting Language
• AGM – Annual General Meeting
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KPMG Board Leadership Center (formerly known as Governance Institute in India) champions outstanding governance to help drive long-term corporate value and enhance investor confidence.

Feedback/queries can be sent to aaupdate@kpmg.com/in-fmboardlscenter@kpmg.com
Thank you

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