REPORT OF THE COMMITTEE ON CORPORATE GOVERNANCE- IN BRIEF

SEBI formed a committee on corporate governance in June 2017 under the Chairmanship of Mr. Uday Kotak with a view to enhancing the standards of corporate governance of *listed* entities in India. The committee was requested to submit its report within four months.

The committee has submitted its report on October 5, 2017 and the same is uploaded on the website of SEBI for public comments. The Report sets out the recommendations of the Committee along with the rationale and the expected timeline for implementation of such recommendations.

In this article an attempt has been made to cover some of the key recommendations briefly and accurately to the extent possible along with their expected implementation timeline:

RECOMMENDATIONS:

- The Board of a listed entity shall comprise of *not less than six directors*. *(w.e.f. October 1, 2018)*
- Every listed entity shall have at least one *independent* woman director on its Board. *(w.e.f. October 1, 2018)*
- If a director does not attend *at least half* of the total number of board meetings *over two financial years on a rolling basis*, his/her continuance on the board should be ratified by the shareholders at the next annual general meeting. *(w.e.f. April 1, 2018)*
- The Board of every listed entity should be required to list the *competencies/expertise* that it believes its directors should possess. It

should also be required to disclose the *list of competencies/expertise* that its board members actually possess.

- Initially, a listed entity should be required to disclose competencies of its board members against every identified competency/expertise *without disclosing names* in the *annual report* for financial year ending March 31, 2019. However, detailed disclosures of competencies of every board member, along with their names, should be required w.e.f. March 31, 2020.

- For the *appointment/continuation* of Non Executive Directors on attaining the age of *75 years* approval of shareholders by way of *special resolution* shall be required. *(w.e.f. October 1, 2019)*

- The minimum number of meetings of Board of Directors should be increased to *five* every year. *(w.e.f. April 1, 2018)*

- At least *once* every year, the Board should be updated on regulatory and compliance changes. *(w.e.f. April 1, 2018)*

- At least *once* every year, an interaction should be required between the NEDs and senior management. *(w.e.f. April 1, 2018)*

- The quorum for *every* board meeting of the listed entity should be a *minimum of three directors or one-third of the total strength* of the board of directors, whichever is higher, *including at least one independent director*. *(w.e.f. October 1, 2018)*

- Listed entities *with more than 40% public shareholding* should separate the roles of *Chairperson and MD/CEO* with effect from April 1, 2020. After 2020, SEBI may examine extending the requirement to all listed entities with effect from April 1, 2022.

- The *maximum* number of directorships in listed entities *should be reduced to seven* (irrespective of whether the person is appointed as an *independent director* or not). However, in the interest of providing adequate transition time, the Committee recommends that the maximum number of listed entity directorships held by a person be brought down to *eight by April 1, 2019 and to seven by April 1, 2020*.

- Every listed entity, irrespective of whether the *Chairperson is executive or non-executive*, may be required to have *at least half* its total number of directors as *Independent Directors*. This shall be applicable to top 500 listed companies by market capitalization by April 1, 2019 and to the rest of listed companies by April 1, 2020.

- A revision of eligibility criteria for a director to be an *"independent director"* and continuous assessment of the independence criteria is also recommended. ***(w.e.f. April 1, 2018)***

- The minimum total remuneration for an *Independent Director* per year shall be *Rs. 5 lakhs* for top 500 companies by market capitalisation (subject to approvals as required under Companies Act). In case of inadequacy of profits, the minimum requirement of Rs. 5 lakhs shall not apply. *(w.e.f. April 1, 2018)*

- The minimum *sitting fees* to be paid to *Independent Director* for every *board meeting* shall be Rs. 50,000 for top 100 companies by market capitalization and Rs. 25,000 for next 400 companies by market capitalisation. *(w.e.f. April 1, 2018)*

- The minimum *sitting fees* to be paid to *Independent Director* for every *audit committee* meeting shall be Rs. 40,000 for top 100 companies by market capitalization and Rs. 20,000 for next 400 companies by market capitalisation. *(w.e.f. April 1, 2018)*

- The minimum *sitting fees* to be paid to *Independent Director* for every *other* board committee meeting *(only for those committees which are mandatory under SEBI LODR Regulations)* shall be Rs. 20,000 for top 100 companies by market capitalization and Rs. 10,000 for next 400 companies by market capitalisation. ***(w.e.f. April 1, 2018)***

- Listed entities should be required to disclose ***detailed reasons for resignation*** of ***Independent Directors*** (as provided by such IDs) along with the notification of their resignation to the stock exchanges, as well as subsequently as part of the corporate governance report. The listed entity should include a confirmation as received from the director that there are no other material reasons other than those set out therein. ***(w.e.f. April 1, 2018)***

- Top 500 companies by market capitalization to undertake Directors and Officers insurance for its ***Independent Directors***, with effect from October 1, 2018, which may be subsequently extended to ***all listed entities***. ***(w.e.f. October 1, 2018)***

- A formal induction should be mandatory for every new ***Independent Directors*** appointed to the board; and Formal training, whether external/internal, especially with respect to governance aspects, should be required for every ***Independent Directors once every five years***, the onus of which shall be on the director. ***(w.e.f. April 1, 2018)***

- The appointment of an ***alternate director*** for ***Independent Directors*** should not be permitted. ***(w.e.f. April 1, 2018)***

- All listed entities where the ***Chairperson is not independent*** to designate an ***Independent Director*** as the Lead Independent Director and the Lead Independent Director should be a ***member of Nomination and Remuneration Committee***. ***(w.e.f. October 1, 2018)***

- Any appointment to ***fill a casual vacancy*** of office of any ***Independent Director*** should also be approved by the shareholders at the next general meeting. ***(w.e.f April 1, 2018)***

- The minimum number of *Audit Committee* meetings should be increased to *five every year* and all other mandatory board committees should necessarily meet *at least once in a year*. *(w.e.f. April 1, 2018)*

- The *audit committee* should be required to scrutinize the end utilization of funds where the total amount of loans/advances/investment from the holding company to the subsidiary exceeds Rs. 100 crore or 10% of the asset size of the subsidiary, whichever is lower. *(w.e.f. April 1, 2018)*

- The *Nomination and Remuneration* Committee shall have at least two thirds of its members as Independent Directors. *(w.e.f. April 1, 2019)*

- All payments made to senior management, in whatever form, shall be recommended by the *Nomination and Remuneration* Committee to the board of the listed entity. *(w.e.f. April 1, 2018)*

- The *Stakeholder's Relationship Committee* shall have at least three directors as its members with at least one being and *Independent Director* and the Chairperson of the *Stakeholder's Relationship Committee* shall be present in the annual general meeting to answer queries of the security holders. *(w.e.f. April 1, 2018)*

- For meetings of each such committee of the board, the composition of which statutorily requires at least one Independent Director, the presence of *at least one Independent Director* may be made mandatory for attaining quorum for such meetings *(apart from the audit committee where the quorum requirement remains unchanged)*. *(w.e.f. April 1, 2018)*

- It is recommended to extend the requirement of a *Risk Management Committee* to the top 500 listed entities by market capitalization as against current applicability to top 100 listed entities. *(w.e.f. April 1, 2018)*

- In determining the maximum number of committees of which a director can be a member/Chairperson, *Nomination and Remuneration Committee* should also be included and thereby treated at par with the Audit Committee and Stakeholders Relationship Committee. ***(w.e.f. April 1, 2018)***

- Listed entities may constitute an *information technology committee* which will focus on digital and other technological aspects.

- The definition of the term *"material subsidiary"* should be revised to mean a subsidiary whose income or net worth exceeds 10% (from the current 20%) of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year, other than for requirement of appointment of independent directors on the boards of material subsidiaries (where the threshold of 20% continues). ***(w.e.f. April 1, 2018)***

- *Secretarial audit* may be made compulsory for all listed entities under the SEBI LODR Regulations in line with the provisions of Companies Act. *Secretarial audit* may also be extended to all material unlisted Indian subsidiaries. ***(w.e.f. April 1, 2018)***

- Half yearly disclosure of *RPTs* on a consolidated basis on the website of the listed entity *within 30 days of publication* of the half yearly financial results. Copy of the same to also be submitted to the stock exchanges. Strict penalties may be imposed by SEBI for failing to make requisite disclosures of RPTs. ***(w.e.f. April 1, 2018)***

- Committee observed that that certain *promoters/promoter group entities* were not getting categorised as related parties under SEBI LODR Regulations on account of not strictly falling under the definition of "related parties" under the relevant accounting standards and thereby transactions with such persons were not getting categorised as RPTs under the SEBI LODR Regulations. The Committee recommends that all promoters/promoter group entities that hold *20% or above* in a listed company to be considered "related parties" for the purposes of the SEBI LODR Regulations. In addition, the Committee recommends that disclosures of transactions with promoters/promoter group entities holding *10% or more shareholding* be made annually and on a half yearly basis (even if not classified as related parties). *(w.e.f. April 1, 2018)*

- Shareholder approval by *special resolution* should be required if the total remuneration paid to a *single executive promoter-director* exceeds Rs. 5 crore or 2.5% of the net profit, whichever is higher; or to *all executive promoter-directors* exceeds 5% of the net profits. *(w.e.f. April 1, 2018)*

- In case the remuneration of a *single non-executive director* exceeds 50% of the pool being distributed to the non-executive directors as a whole, shareholder approval should be required. *(w.e.f. April 1, 2018)*

- Policy on *materiality of related party transactions* and on dealing with related party transactions should be *reviewed and updated* at least once every three years. *(w.e.f. April 1, 2018)*

- Copy of the *annual report* sent to the shareholders along with the notice of the AGM to be disclosed to the Stock Exchange not later than the day as dispatched to the shareholders. In the event shareholders approve any amendments to any portion of the annual report, then the *revised copy* (with details of and explanation for the changes so approved) is to be sent no later than 48 hours after the AGM. *(w.e.f. April 1, 2018)*

- Listed entity may be required to disclose *all credit ratings* obtained by the entity for all its outstanding instruments *annually* to stock exchanges and also on its website which shall be updated on a regular basis as and when there is any change. *(w.e.f. April 1, 2018)*

- All the disclosures made by the listed entity on its website and submitted to the stock exchanges should be in a *searchable format* that allows users to find relevant information easily. Specifically, the Committee recommends that all disclosures made to the stock exchanges by listed entities should be in *XBRL format*. *(w.e.f. April 1, 2018)*

- For better transparency, appropriate disclosures may be required on utilisation of proceeds of *preferential issues* and QIPs till the time such proceeds are utilised. ***(w.e.f. April 1, 2018)***

- Disclosures on *details of directorships of a director* as included in the Corporate Governance section of the Annual Report may additionally include details of directorships (e.g. Independent/executive) in other listed entities. ***(w.e.f. April 1, 2018)***

- A certificate from a *company secretary in practice* that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the SEBI/MCA or any such statutory authority be included in the Annual Report. ***(w.e.f. April 1, 2018)***

- Companies shall maintain a *separate section for investors* on its website and provide all the information mandated under LODR. ***(w.e.f. April 1, 2018)***

- A listed entity be required to have *audited financial statements* for the relevant financial year of each of its subsidiaries available on its website at least 21 days before the date of the annual general meeting. ***(w.e.f. April 1, 2018)***

- Disclosure of *consolidated financial statements* should be made mandatory for all listed entities on a quarterly basis. ***(w.e.f. April 1, 2018)***

- Publishing a *cash flow statement* on a half-yearly basis should be made mandatory for all listed entities. ***(w.e.f. April 1, 2018)***

- Companies to disclose the *reasons for the resignation* of its audit firm. ***(w.e.f. April 1, 2018)***

- *Total fee paid* to auditor and all entities on the network firms/network entity of which the auditor is a part shall be disclosed by the listed entity in its annual report on a consolidated basis (i.e. paid by the listed entity and its subsidiaries). *(w.e.f. April 1, 2018)*

- The notice being sent to shareholders for an annual general meeting where the *statutory auditor(s)* is/are proposed to be appointed/re-appointed shall include certain prescribed disclosures as a part of the explanatory statement to the notice. *(w.e.f. April 1, 2018)*

- Initially, the top 100 listed entities by market capitalization (as at the end of the previous financial year) may be required to hold AGMs by August 31, 2018, i.e. *within five months* from the end of the next financial year. The same may be extended to other entities in a phased manner based on the experience gained. Over time, the target may be to reduce the timeline to four months from the end of the financial year. *(w.e.f. April 1, 2018)*

- *Live one-way webcasts* of all shareholder meetings may be introduced for top 100 listed entities on a trial basis. Based on the feedback and the experience, the same may subsequently be extended to other listed entities. *(w.e.f. April 1, 2018)*

- E-voting should be kept *open till midnight* (i.e. 11:59 p.m.) on the day of the general meeting. The current requirement of not permitting modification of votes cast through e-voting may continue. *(w.e.f. April 1, 2018)*

- The resolution placed before the shareholders should be *recommended* by the board of directors. Placing a resolution before the shareholders without a board recommendation should be used sparingly and on rare occasions. *(w.e.f. April 1, 2018)*

Note:

These recommendations are for listed entities only. The full text of the report can be accessed at http://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance-for-public-comments_36178.html

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