

SEBI's amendments to corporate governance norms

14 February 2014



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- All**
- Audit committee
- CFO
- Others

Transition:

- Immediately
- Within the next 3 months
- Post 3 months but within 6 months
- Post 6 months**

Introduction

In January 2013, the Securities and Exchange Board of India (SEBI) had released its 'Consultative Paper on Review of Corporate Governance Norms in India' to align the existing corporate governance norms in India with the then existing Companies Bill, 2012 and other international practices. Consequent to the enactment of the Companies Act, 2013 ('the Act'), the SEBI Board has on 13 February 2014, approved the proposals to amend the corporate governance norms for listed companies in India. The amendments shall be applicable to all listed companies with effect from 1 October 2014.

We list in the following table, the proposals approved by the SEBI and our comments thereon:

Sr No	Proposals approved by the SEBI Board	Our comments
Independent Directors related proposals		
1	Exclusion of nominee director from the definition of Independent Director	This is aligned to section 149(6) of the Act which excludes nominee Director from the definition of Independent Director.
2	Prohibition of stock options to Independent Directors	This is aligned to section 149(9) of the Act which prescribes that an Independent Director shall not be entitled to any stock options.
3	Separate meeting of Independent Directors	This is aligned to Schedule IV of the Act, which prescribes separate meeting of Independent Directors at least once a year.
4	Performance evaluation of Independent Directors and the Board of Directors	This is aligned to Schedule IV of the Act, which prescribes performance evaluation of Independent Directors and to section 134, which prescribes annual evaluation of the Board.

Sr No	Proposals approved by the SEBI Board	Our comments
Independent Directors related proposals		
5	It has been decided that the maximum number of boards an Independent Director can serve on listed companies be restricted to seven and three in case the person is serving as a whole time director in a listed company	As per section 165 of the Act, the maximum number of Directorships is capped at twenty, of which not more than ten can be public companies. However, no specific limit is prescribed for Independent Directors. This is a welcome move, considering that the demand on Independent Directors is quite onerous under the Act, and they would be required to devote significant time to boards that they serve on.
6	To restrict the total tenure of an Independent Director to 2 terms of 5 years. However, if a person who has already served as an Independent Director for 5 years or more in a listed company as on the date on which the amendment to listing agreement becomes effective, he shall be eligible for appointment for one more term of 5 years only	This is aligned to section 149(10) and (11) of the Act, except that under the Act, these requirements are applied only prospectively, whereas, the SEBI amendment prescribes that one term of 5 years would get reduced if the Independent Director has already served in that role for 5 years or more.
Related Party Transactions (RPTs) related proposals		
7	Prior approval of audit committee for all material Related Party Transactions (RPTs)	Section 177 (4)(iv) of the Act requires the Audit Committee to approve all related party transactions and any subsequent modifications thereof. However, what constitutes 'material' would need to be evaluated based on details to be made available by the SEBI.
8	Approval of all material RPTs by shareholders through special resolution with related parties abstaining from voting	The Act requires pre-approval of related party transactions specified in Section 188 of the Act, which are not in the ordinary course of business and those which are not on an arm's length basis, by the shareholders, with related parties abstaining from voting. The SEBI requirement, therefore, appears to be more onerous.
9	The scope of the definition of RPT has been widened to include elements of Companies Act and Accounting Standards.	This would help align the requirements of the Act with the SEBI requirements.
Other proposals		
10	Compulsory whistle blower mechanism	This is aligned to section 177(9) of the Act which requires all listed companies to establish a vigil mechanism.
11	Expanded role of Audit Committee	This is aligned to section 177(4) of the Act, which expands the current role of audit committees.

Sr No	Proposals approved by the SEBI Board	Our comments
12	Constitution of Stakeholders Relationship Committee	This is aligned to section 178(5) of the Act which requires all companies which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year to constitute such committee.
13	Enhanced disclosure of remuneration policies	This is aligned to section 197(12) of the Companies Act and the draft Rules under Chapter XIII of the Act. The extent of disclosures required by SEBI is yet to be released.
14	Mandatory constitution of Nomination and Remuneration Committee. Chairman of the said committees shall be independent	This is aligned to section 178(1) of the Act which requires the constitution of such committee.
15	At least one woman director on the Board of the company	This is aligned to section 149(1) of the Act which requires the inclusion of at least one woman director on the board of a listed company (class of company as specified in the draft rules). Whilst, the draft rules specify transition period of one year from the date of notification of this section, the SEBI amendments are effective from 1 October, 2014.

In addition to the above, the SEBI Board also approved the proposal to put in place the following:

1. Policy on dealing with RPTs
 2. Disclosure of letter of appointment of Independent Directors and the letter of resignation of all directors
 3. Risk management
 4. Providing training to Independent Directors
 5. E-voting facility by top 500 companies by market capitalisation for all shareholder resolutions – however, as per the Act, this is optional.
 6. Principles of Corporate Governance
 7. Divestment of material subsidiaries
 8. Boards of companies to satisfy themselves that plans are in place for orderly succession for appointments to the Board and senior management.
- The first five points are in line with the provisions of the Act, however, details on the other amendments would be required to understand those further.

Our comments

Most of the proposals approved by the SEBI, are in line with the requirements of the Companies Act, 2013 and would be effective from 1 October 2014. Some of the proposals also provide additional requirements to strengthen the corporate governance framework for listed companies in India.

The detailed requirements that will be incorporated into the Listing Agreement, will need to be evaluated, when they are available, to assess the full impact of these changes on companies.

The bottom line

- SEBI has taken concrete steps to give effect to the provisions of the Companies Act, 2013 to corporate governance norms for listed companies.
- Companies will need to assess impact of those steps and move to implement changes swiftly.

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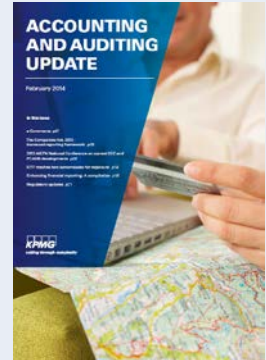
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