



CIRCULAR FOR IMPLEMENTATION OF CERTAIN RECOMMENDATIONS OF THE COMMITTEE ON CORPORATE GOVERNANCE UNDER THE CHAIRMANSHIP OF SHRI UDAY KOTAK¹

1. The Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak made several recommendations. Most of amendments necessary to implement these recommendations have been made in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide notification dated May 9, 2018. There are a few recommendations as accepted by the Board, which are to be implemented through issue of a circular.
2. Accordingly, the following provisions shall apply to entities whose equity shares are listed on a recognized stock exchange:
 - a. **Disclosures on Board Evaluation:**

The listed entity may consider the following as a part of its disclosures on board evaluation:

 - I. Observations of board evaluation carried out for the year.
 - II. Previous year's observations and actions taken.
 - III. Proposed actions based on current year observations.
 - b. **Group Governance Unit:**

Where the listed entity has a large number of unlisted subsidiaries:

 - I. The listed entity may monitor their governance through a dedicated group governance unit or Governance Committee comprising the members of its board of directors.
 - II. A strong and effective group governance policy may be established by the entity.
 - III. The decision of setting up of such a unit/committee or having such a policy shall lie with the board of directors of the listed entity.
 - c. **Medium-term and long-term strategy:**

The listed entity may consider the following with respect to disclosure of medium-term and long-term strategy of the entity:

 - I. I. It may disclose, under the Management Discussion and Analysis section of the Annual report, within the limits set by its competitive position, its medium-term and long-term strategy based on a time frame as determined by its board of directors.
 - II. II. The listed entity may articulate a clear set of long-term metrics specific to the company's long term strategy to allow for appropriate measurement of progress.
 - d. The clause 4.4 of the SEBI Circular No. CIR/CFD/CMD/56/2016 dated May 27, 2016 shall stand deleted.

¹ Available at: https://www.sebi.gov.in/legal/circulars/may-2018/circular-for-implementation-of-certain-recommendations-of-the-committee-on-corporate-governance-under-the-chairmanship-of-shri-uday-kotak_38905.html

3. This circular is issued in exercise of the powers conferred under sections 11 and 11A of the Securities and Exchange Board of India Act, 1992 read with regulation 101 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.
4. This circular is available at www.sebi.gov.in under the link “Legal” and “Circulars”.
5. The recognized Stock Exchanges are advised to disseminate the contents of this circular on their website.

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENT) (AMENDMENT) REGULATIONS, 2018²

Based on the recommendation of Kotak Committee on Corporate Governance constituted under the Chairmanship of Shri Uday Kotak, SEBI has issued the SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018 vide its notification No. SEBI/LAD-NRO/GN/2018/10 dated May 09, 2018 which provides for more stringent Corporate Governance Framework and enhanced compliance mechanism for listed entity in India.

These regulations will come into effect in two phases. Most of the changes will be effective from April 1, 2019, and April 1, 2020, except some provisions which will effective form October 01, 2018.

The major highlights of the notification are as under:

- Top 500 companies to appoint at least one woman independent director by April 01, 2019 and Top 1000 companies to appoint one woman independent director by April 01, 2020 on its Board of Directors. The current regulations require that there must be one woman on board, irrespective of her being an independent or executive director.
- Top 1,000 listed companies to have minimum six directors from April 01, 2019 and for top 2000 listed companies by April 01, 2020.
- A person will not hold directorship position in more than eight listed entities from April 1, 2019 and in not more than seven listed firms from 2020.
- A person will not serve as an independent director in more than seven listed entities.
- A person who is serving as a WTD/MD in any listed entity will not serve as an Independent Director in more than three listed entity.
- Any person or entity belonging to the promoter group of the listed entity and holding at least 20 per cent stake in the listed firm will be deemed to be a related party.
- Besides, shareholder approval will be needed for making royalty or brand payments to related parties exceeding 2 per cent of consolidated turnover.
- These amended regulations also cover issues in accounting and auditing practices by listed companies in order to improve effectiveness of board evaluation practices.
- Companies are now required to disclose details about utilisation of funds raised through qualified institutional placement (QIP) and preferential issues in their annual reports.
- Further, companies will have to make disclosure about auditor credentials, audit fees and any material change in such fee as well as detailed reasons for resignation of auditor.

² Available at: https://www.sebi.gov.in/legal/regulations/may-2018/sebi-listing-obligations-and-disclosure-requirement-amendment-regulations-2018_38898.html

- Top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year.
- The approval of shareholders will be required every year in cases where the annual remuneration payable to a single non- executive director exceeds 50 per cent of the total annual remuneration payable to all non-executive directors.
- Further, shareholders' approval will be needed if the annual fee payable to executive director, who is part of promoter entity, exceeds Rs 5 crore or 2.5 per cent of the net profits of the listed entity.
- Approval is also required in case if there is more than one such director and the aggregate annual fee to such directors is more than 5 per cent of the net profits of the listed entity.
- The quorum for every board meeting of top 1,000 listed firms from April 1, 2019 and of the top 2,000 listed entities from April 1, 2020 will be one-third of its total strength or three directors, whichever is higher, including at least one independent director.
- Special Resolution would be must for non-executive directors over 75 years of age.
- With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings.
- Top 500 listed companies also need to have a risk management committee for cyber security.

Further, SEBI has recognised the significant role played by a Company Secretary as a Governance Professional under the SEBI Listing Regulations and recognised the role to be played by a Company Secretary under various provisions of the aforesaid notification, which are discussed below:

- “Senior management” shall mean officers/personnel of the listed entity who are members of its core management team excluding board of directors and normally this shall comprise all members of management one level below Chief Executive Officer/ Managing Director/ Whole Time Director/ Manager (Including Chief Executive Officer/Manager, in case they are not part of the board) and shall specifically include **Company Secretary** and Chief Financial Officer **[Regulation 16 (1) (d)]**
- **Secretarial Audit**-Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit and shall annex with its annual report, a Secretarial Audit Report, given by a **Company Secretary in Practice**, in such form as may be specified with effect from the year ended March 31, 2019 **[Regulation 24A]**
- 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 Board/ Ministry of Corporate Affairs or any such statutory authority **[Schedule V, Part C, Clause(10) (i)]**

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