

REPORT OF THE
COMMITTEE ON CORPORATE GOVERNANCE

OCTOBER 5, 2017



भारतीय प्रतिभूति और विनियम बोर्ड
Securities and Exchange Board of India

PREFACE

The completion of this Committee's report in a short span of four months has been possible because of the active participation and wholehearted support of all members of the Committee. I take the opportunity to thank my fellow Committee members for their valuable time and contributions as well as for the free and frank discussions over the past few months. I am also grateful to the SEBI Chairman, Mr. Ajay Tyagi for entrusting the Committee with this responsibility.

I would also like to thank the colleagues and families of every Committee member for extending their support without which this Committee would not have been able to complete the arduous task in such a short period.

India is a strong emerging force on the global map. Its growth is enabled by progress and development across sectors by public and private enterprises, and is built on the foundation laid down by the government and regulators that encourages transparency in business dealings, accountability and good governance.

As India aspires to its rightful position as a global leader, the focus will be on Corporate India and on Indian markets. Corporate India has a key role in nation building and corporate governance is an integral part of the broader governance of the country.

Today, leading corporates in India, who are often seen as role models by budding entrepreneurs, emerging SMEs and the broader community at large, are also looked up to for their corporate governance practices. However, if one investigates further, weaknesses become visible. This is where the contention between letter and spirit comes to light. By and large most leading corporates in India follow rules and regulations, and if their governance practices are put to test, they will likely stand scrutiny of the law. However, if one delves deeper, one could find that while the letter of the law may have been complied with, the spirit of regulations has not necessarily been embraced wholeheartedly.

In India, there are broadly two styles of running a company – the "Raja" (Monarch) model and the "Custodian" (Trusteeship) model: In the "Raja" model, promoter interest i.e. self-interest precedes interests of "Prajā" i.e. other stakeholders. Given the sizeable number of promoter-led companies that are present in the Indian market, the challenges India Inc. faces are inherently unique. There are instances of promoters carrying out actions that are favourable to them but detrimental to the interests of minority shareholders. This has affected confidence in India Inc.

The "Custodian" model works on "Gandhian Principles", and is relevant for both promoter-managed as well as professionally managed entities. Under this model, promoters, boards and management wear the hat of "trustees" and act in the interest of all stakeholders – shareholders, investors, employees, customers et al, keeping stakeholder interests before self-interest. Corporate India needs to move in this direction.

This report is a sincere attempt to support and enable sustainable growth of enterprise, while safeguarding interests of various stakeholders. It is an endeavor to facilitate the true spirit of governance. Under the leadership of a vigilant market regulator - SEBI, and with the persistent efforts of key stakeholders, corporate governance standards in India will continue to improve. A stronger corporate governance code will enhance the overall confidence in Indian markets and in India.

Uday Kotak

Chairman, Committee on Corporate Governance

Mumbai, October 5, 2017

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THE COMMITTEE, TERMS OF REFERENCE AND APPROACH

The SEBI Committee on corporate governance was formed on June 2, 2017 under the Chairmanship of Mr. Uday Kotak with the aim of improving standards of corporate governance of listed companies in India. The Committee was requested to submit its report to SEBI within four months.

Composition of the Committee

S.No	Member Details	Organisation and designation	Capacity
1	Mr. Uday Kotak	Executive Vice Chairman and Managing Director, Kotak Mahindra Bank Limited	Chairman
2	Mr. Madhukar Gupta	Additional Secretary, Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises	Member
3	Mr. Praveen Garg	Joint Secretary (Financial Markets), Department of Economic Affairs, Ministry of Finance	Member
4	Mr. Amardeep Singh Bhatia	Joint Secretary, Ministry of Corporate Affairs	Member
5	Mr. Keki Mistry	Vice Chairman & Chief Executive Officer, Housing Development Finance Corporation Limited	Member
6	Mr. Rishad Premji	Chief Strategic Officer and Member of the Board, Wipro Limited	Member
7	Mr. R Shankar Raman	Whole Time Director and CFO, Larsen & Toubro Limited	Member
8	Mr. Nilesh Shivji Vikamsey	President, The Institute of Chartered Accountants of India (ICAI)	Member
9	Mr. Mahavir Lunawat	Chairman, Financial Services Committee and council member, The Institute of Company Secretaries of India (ICSI)	Member
10	Mr. Ashish Kumar Chauhan	MD & CEO, Bombay Stock Exchange (BSE)	Member
11	Mr. J Ravichandran	Group President, National Stock Exchange of India Ltd (NSE)	Member
12	Ms. Zia Mody	Managing Partner, AZB & Partners	Member
13	Mr. Cyril Shroff	Managing Partner, Cyril Amarchand Mangaldas	Member
14	Mr. Joydeep Sengupta	Senior Partner and Leader of Asia Pacific Banking Practice, McKinsey & Company	Member
15	Ms. Shobhana Kamineni ¹	President, Confederation of Indian Industry (CII)	Member
16	Mr. Pankaj R Patel ²	President, Federation of Indian Chambers of Commerce & Industry (FICCI)	Member
17	Mr. J N Gupta	Managing Director, Stakeholders Empowerment Services (SES)	Member
18	Mr. Amit Tandon	Managing Director, Institutional Investor Advisory Services (IIAS)	Member
19	Mr. N Venkatram	Managing Partner & CEO, Deloitte India	Member
20	Mr. Arun M Kumar	Chairman & CEO, KPMG India	Member
21	Prof. Vasanthi Srinivasan	Professor, IIM Bangalore	Member
22	Mr. Krishnamurthy Subramanian	Associate Professor of Finance, Indian School of Business	Member
23	Dr. U D Choubey	Director General, Standing Conference Of Public Enterprises (SCOPE)	Member

¹ Ms. Shobana Kamineni was represented by Ms. Zia Mody/ Mr. Keki Mistry in the meetings

² Mr. Pankaj R Patel was represented by Mr. Ashok Gupta, Co-Chair, Corporate Laws Committee, FICCI and Group General Counsel, Aditya Birla Group, in the meetings

S.No	Member Details	Organisation and designation	Capacity
24	Mr. S. Ravindran	Executive Director, SEBI	Member
25	Mr. S Raman	Former Whole Time Member, SEBI	Special Invitee

Terms of the reference of the Committee

With the aim of improving standards of Corporate Governance of listed companies in India, the Committee was requested to make recommendations to SEBI on the following issues:

1. Ensuring independence in spirit of Independent Directors and their active participation in functioning of the company;
2. Improving safeguards and disclosures pertaining to Related Party Transactions;
3. Issues in accounting and auditing practices by listed companies;
4. Improving effectiveness of Board Evaluation practices;
5. Addressing issues faced by investors on voting and participation in general meetings;
6. Disclosure and transparency related issues, if any;
7. Any other matter, as the Committee deems fit pertaining to corporate governance in India.

The Committee was requested to provide its recommendations in the context of equity listed companies.

Approach

The Committee had twelve meetings over a period of four months with the first meeting held on June 14, 2017 and the last on September 29, 2017. The Committee deliberated each of the terms of reference in detail. The Committee, wherever required, formed sub-groups for analysis of specific issues.

This Report sets out the recommendations of the Committee along with the rationale and the expected timeline for implementation of such recommendations.

The Committee's approach to the recommendations has been driven by the primary objective of enhancing corporate governance for listed entities. In this regard, the Committee believes that there are certain recommendations which may require implementation by authorities/ regulators in addition to SEBI. Therefore, the Committee has suggested that SEBI take up such recommendations with the relevant authorities/ regulators.

The Committee has received a letter from the Ministry of Corporate Affairs ("MCA") dated October 3, 2017 with comments on the recommendations. The same is enclosed in **Annexure 1**. The Committee has also received a letter from the Ministry of Finance ("MoF") dated October 3, 2017 with certain observations/comments on the recommendations. The same is enclosed in **Annexure 2**. These letters have been shared with SEBI and the Committee recommends that SEBI consult with

the MCA and the MoF, as relevant, in the context of implementing the recommendations in this Report.

The Report suggests certain amendments to the existing provisions (*which are reflected in red and underline/strikethrough*) and certain new provisions (*which are reflected in red*) that may be required to implement the recommendations. For the ease of reference of the reader, the Report also summarises the current regulatory framework along with detailed provisions included in **Annexure 3**.

INTRODUCTION

India accounts for nearly 3 per cent of world GDP and 2.5 percent of global stock market capitalization. With over 5,000 listed companies and more than 50 companies in the global Fortune 2000, India represents a vibrant mix of small and large companies that access capital from domestic and international investors to fund their growth. Many of these companies are amongst the largest employers. Moreover, a large number of small investors in India rely on corporate India's good performance so that the returns they obtain on their investments can ensure their financial security. Beyond doubt, corporate India represents a key engine that powers nation building; and nation building requires sound principles of governance, whether it is a country or a company. As corporate India's health is critical for India's future, sound corporate governance needs to be the key enabler to manifest this reality.

Corporate governance deals with the ways in which suppliers of capital to corporations, especially faceless, powerless small investors, can assure themselves of getting fair treatment as stakeholders. A promoter, or a professional manager, raises funds from equity investors either to put them to productive use or to cash out his/her holdings in the firm. The investors need the manager's/promoter's specialized human capital to generate returns on their funds. But how can small suppliers of capital ensure that, once they invest their funds, owners and/or professional managers will invest their money responsibly and return some of the profits generated from such investments? Corporate governance deals with the mechanisms to address this key question.

Does Corporate Governance Really Matter?

Research provides robust evidence that companies that exhibit sound corporate governance generate significantly greater returns when compared to companies that exhibit poor corporate governance.³ In fact, well governed companies across the world command a premium of anywhere between 10 to 40 percent more than their not so well governed counterparts. Research focusing on the governance mechanisms that ensure such value creation highlights the role of: (i) composition of boards, especially their independence in law and in spirit from the company's management; (ii) expertise of the directors on the boards; (iii) the composition and independence of key board committees such as the audit committee and the nomination and remuneration committee; (iv) independence of the companies' auditors and the quality of audit of its financial statements; (v) the quality of disclosures by the company; and (vi) careful balancing of the interests of controlling shareholders vis-à-vis minority shareholders. Numerous studies indicate that the payoff from good corporate governance manifests both in the operating results of publicly listed companies, as well as the market capitalization of such companies. In fact, good firm-level governance often makes up for weaknesses in a country's corporate laws or the enforcement of such laws.

³ For evidence in the Indian context, see Sarkar, Sarkar and Sen (2012), "A Corporate Governance Index for Large Listed Companies in India," Working Paper, IGIDR. For similar evidence across the world, see Agrawal, A., & Knoeber, C. R. (2012), "Corporate governance and firm performance," Oxford Handbook in Managerial Economics, Oxford University Press.

Why Review Corporate Governance Now? The Case for Change

Over the past decade, policymakers in India have been acutely conscious of the importance of corporate governance – several committees, including those under the chairmanship of Mr. Kumar Mangalam Birla, Mr. Narayana Murthy and Mr. Naresh Chandra, have made valuable recommendations which have been largely adopted. Yet, governance practices even in some of the most reputed publicly listed Indian companies have come under question on a number of dimensions. These include evaluation of company boards, board diversity, reliability of disclosures (especially those relating to financial statements), role of independent directors, protection of minority shareholder interests, managerial compensation and related party transactions.

Some global trends, also evident in India, drive the demand for a higher quality of corporate governance, for instance:

a) Increasing pace of change in market conditions, viz. demographic, technological and market change, which require companies and their boards to be agile and quickly adapt to the changing business environment.

b) Obsessive focus on short-term performance often at the cost of long-term performance: Rather than pursuing long-term strategies, many public companies and boards dedicate significant resources to meeting quarterly earnings guidance and communicating their performance relative to this guidance. In a survey conducted by McKinsey and CPPIB in 2014, nearly half of the C-suite respondents stated that the reason for their organizations' overemphasis on short-term financial results and under emphasis on long-term value creation was the company's board.

c) Several corporate governance failures across the world and an increasingly complex regulatory environment have sharpened the focus on good governance.

d) An increasing number of passive institutional owners with small positions in a wide range of companies – raising the expectations towards, and opportunities for, *larger shareholders to be active* and involved as owners to ensure and support the value creation in their individual portfolio companies. What has led to this sharp rise in activism? According to Stephen Murray, president and CEO of CCMP Capital Advisors, a major private-equity firm, *"The whole activist industry exists because public boards are often seen as inadequately equipped to meet shareholder interests."*

e) ⁴Increasing evidence that private equity ("PE") owned companies outperform publicly listed ones. Directors who have served on the boards of both public and private companies add that the behavior of the board is a key element driving superior operational performance. Compared to their public-owned company counterparts, directors in PE-owned companies are believed to spend far more time on strategy and risk management, have deeper functional and industry expertise and engage more actively in talent management. Clearly, public boards cannot (and should not) seek to replicate all elements of the PE model. Nevertheless, can public boards be structured so that their members can put more time into managing strategy, risk, talent and performance?

⁴ Source: Acharya, Kehoe, Reyner, McKinsey on Finance (December 2008), *"The voice of experience: Public versus private equity"*

f) Significant market discount being placed on Public Sector Enterprises (PSEs): Given their multiple objectives, we continue to witness significant value erosion in several PSEs. Most public sector banks, for example, trade at a significant discount to book value, and at a considerable discount to their counterparts in the private sector.

Given these trends, not surprisingly, there's been a renewed focus on improved corporate governance: better structures, more rigorous checks and balances, and greater independence of all key gate-keepers including boards and auditors. Arguably, governance suffers most when boards spend too much time looking in the rearview mirror and not enough scanning the road ahead. Directors have difficulty in prioritizing their time between quarterly reports, audit reviews, budgets and compliance on the one hand and matters crucial to the future prosperity and direction of the business on the other.

This has to change.

Principles of the Change Agenda

The Committee's approach has been to focus on addressing immediate challenges and gaps in governance while at the same time, anchoring its discussions firmly in the long term. The Committee believes that such a focus on the long term is necessary to enable our companies shape a strong and resilient governance apparatus for the foreseeable future. Irrespective of the timeframe, at its core, the Committee believes that well-governed companies need to fulfil two major roles: the first to focus on long-term value creation and the second to protect shareholders interests by applying proper care, skills and diligence to business decisions.

In relation to the governance processes that would help achieve these outcomes, the Committee was guided by the following conceptual underpinnings:

First, high-quality information represents the basic input for governance because it reduces the twin problems of reliability and asymmetric information, which refer to the fact that professional managers, board members and auditors possess significantly greater information than the average investor in these companies. These may get exacerbated by the possibility that good news may be revealed aggressively while bad news may be allowed to percolate slowly or remain undisclosed. Therefore, high-quality information is the primary ingredient for enabling shareholders to exercise their voting rights in general meetings of the company and express their views on such key corporate decisions. Even directors and auditors have to rely on high-quality information about the operations of the company to duly discharge their fiduciary duties. Thus high-quality information is the key pillar of corporate governance.

Second, good corporate governance primarily helps overcome potential agency problems which can occur if managers who are agents of all shareholders (particularly the faceless, powerless ones) pursue their personal interests to the possible detriment of investors' interests.

Last, but not the least, regulatory monitoring and optimal use of the proverbial carrot and stick represents a key element of corporate governance.

With these guiding principles, the Committee deliberated on the following:

A. Shaping governance for long-term value creation: Given long-term trends, it is clear that the board of the future will need to operate with an owner's mindset and guard its authority and independence zealously. Operating with an "owner's" mindset would imply:

i) Optimizing the composition of the board to ensure that it has the right mix of domain, functional and 'future ready' expertise, e.g., digital/analytics in addition to appropriate ethos, given the strategic context of the company. High demographic diversity among board members has a positive effect on financial performance and the quality of strategic decision-making.

ii) Ensuring adequate time is spent by individual board members with clear guidelines. Periodicity of meetings will also have to increase.

iii) Cultivating the spirit of independence on the board and ensuring its unfettered practice through truly independent high quality non-executive directors, a chairman independent of the CEO, regular challenges and discussions with management and through key committees. Truly independent boards are vital to effective governance. As former UK Financial Reporting Council Chairman, Sir Christopher Hogg has noted, *"Good boards are pretty uncomfortable places and that's where they should be."*

iv) Enabling the boards to independently develop and discuss strategic perspectives on the company. Ensuring that substantial time is spent on strategy, performance, talent, risk management, succession planning and social responsibility.

v) Constructively engaging and communicating with long-term institutional shareholders and engaging with them on matters of strategic importance including long-term value creation.

vi) Ensuring consistent and sufficiently frequent evaluation of the board's and the individual board member's performance.

vii) Reviewing board member compensation to enhance commitment and obtain the right talent.

B. Shaping governance to protect shareholder interests: Securing the interests of all shareholders is a fiduciary duty of the board. Today in India, there are a number of ways in which shareholder interests get compromised. Safeguarding shareholder interest would imply:

i) Strengthening the core safeguarding committees of the board, audit, risk and technology (including cyber security) – enhancing their scope and periodicity.

ii) Enhancing monitoring of group entities and subsidiaries to ensure shareholders get a holistic and transparent view of performance.

iii) A majority of Indian listed entities continue to be promoter-driven entities with significant shareholding being held by the promoter/promoter group. Therefore, protection of the interests of minority shareholders, especially those of the retail shareholders assumes even more importance. In this context, clarifying conditions for sharing of information and creating checks and balances on related party transactions are crucial for good governance. It is also important to ensure that

compensation practices, especially with respect to promoter-directors, do not exacerbate potential agency problems.

iv) Enhancing disclosure norms significantly in order to provide greater transparency to investors and thereby reduce possible asymmetric information, including in areas such as credit rating, securities holdings, and performance. Financial and performance disclosures alone tend to yield little insight into the company's value drivers or future potential. These disclosures rarely connect recent performance to long-term strategy and progress on value creation. Companies that articulate a long-term strategy effectively tend to attract investors who are more willing to look beyond short-term under-performance.

v) Recognizing that stakeholders rely significantly on auditors, strengthening the audit function will provide them greater comfort.

vi) Evaluating structural solutions for PSEs.

vii) Strengthening the enforcement mechanism by leveraging data, technology and creating greater enforcement capacity within SEBI. This has the potential to have a multiplier effect on governance of listed entities.

C. Building regulatory capacity for enhancing governance of listed entities: Corporate governance deals not only with the *de jure* but also the *de facto* aspects of the law. In this context, SEBI's role as a regulator of capital markets assumes particular importance given that it requires diligent detection, monitoring and enforcement of punitive action. The efficacy of the Committee recommendations, therefore, depend critically upon SEBI's detection and enforcement capabilities. By drawing on the experiences of regulators in other countries, this Committee recommends specific steps to build capacity at SEBI.

These principles provided the Committee a framework to engage in a more extensive debate around the relative importance of each of the principles and its applicability to the various issues. They also acted as a guardrail to ensure we were leaving no significant issues uncovered in our quest for preparing our boards for the future. All subsequent detailed chapters in the report are consistent with these principles.

Approach to Implementation: Evolution not Revolution

The Committee was faced with a number of choices while defining timelines for implementation of its recommendations. It was tempting to seek an accelerated implementation of all recommendations – however, the Committee picked a balanced and measured approach as it felt that preparedness is important and change must be smooth. Otherwise, there was the risk of poor execution with damaging second order consequences. As such, we have arrived at a phased timetable for most initiatives to be executed between 2018 and 2020. It was agreed that a phased transition could allow companies time to adjust to new governance demands. For example, on disclosure of long-term strategy, the Committee has provided guidance, as opposed to mandating a timeframe.

There are also a few implementation challenges; for one, the availability of qualified independent directors. While we have tried to address some of the obvious deterrents, like compensation, much

needs to be done to enhance the supply of this scarce pool. Similarly, some of these recommendations will not only involve multiple stakeholders but also get into unchartered territories; perhaps even be contentious.

Hence, our approach is evolutionary. We propose that these be implemented in a sequenced but disciplined way over the next three years.

The Committee comprises of persons from diverse backgrounds including representatives from the corporate sector, the government, industry bodies, professional bodies, lawyers, academicians, consulting and accounting firms, stock exchanges and proxy advisors. We have had extensive discussions and our recommendations have been carefully finalized keeping in mind the objective of enhancing corporate governance while facilitating ease of doing business.

We believe that we have a unique opportunity to create a world class corporate governance environment in India that will enable India to fulfil its destiny.

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RECOMMENDATIONS

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CHAPTER I: COMPOSITION AND ROLE OF THE BOARD OF DIRECTORS

The basic principle underlying the governance of a corporate entity is that the superintendence, control and direction of its business and affairs lie with its board of directors, with the executive management being delegated powers for smooth and efficient operational functioning. Accordingly, the board of directors as a whole is responsible to all stakeholders for meeting the requisite standards of corporate governance. The responsibilities of the board of directors are accentuated in a listed entity given the wider ambit of stakeholder interests.

The Committee observed that while aspects relating to the composition and role of the board of directors of listed entities have been subjected to gradual reform, a holistic re-assessment is required to further strengthen the same.

Accordingly, this review by the Committee and the attendant recommendations seek to address aspects relating *inter-alia* to the size of the board and its diversity, separation of the roles of chairperson and executive management, attendance of directors at board meetings, ongoing updation of knowledge of directors and disclosure of their skills/expertise.

1. Minimum Number of Directors on a Board

Current regulatory provisions:

At present, the Companies Act, 2013 read with rules issued thereunder (*hereinafter referred to as the "Companies Act"*) requires a minimum of three directors on the board of a public limited company. There is no similar requirement in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (*hereinafter referred to as the "SEBI LODR Regulations"*). (Click for [Detailed Provisions](#))

Recommendation and rationale:

The board of directors plays an important role in a company's governance and performance. It is therefore essential that a company has a sufficient number of directors on its board to ensure that it is able to carry out its functions effectively. In view of the additional functions and obligations of the board of a listed entity, relative to unlisted entities, it is crucial that a sufficient number of directors with diverse backgrounds and skill sets are available on the boards of listed entities to fulfill these functions and obligations.

Therefore, the Committee recommends that for any listed entity, a minimum of six directors should be required on the board of directors.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 17. Board of Directors.</p> <p>(1) The composition of board of directors of the listed entity shall be as follows:</p> <p>....</p> <p><u>Insertion of a new clause (c):</u></p> <p>(c): board of directors shall comprise of not less than six directors.</p>

2. Gender Diversity on the Board

Current regulatory provisions:

The Companies Act and the rules prescribed thereunder require at least one woman director on the board of directors of every listed entity. The SEBI LODR Regulations also currently require at least one woman director on the board of a listed entity. (Click for [Detailed Provisions](#))

Recommendation and rationale:

Diversity, including gender diversity, is often seen to have a positive impact on the decision making processes of corporate boards. The Companies Act and SEBI LODR Regulations took a progressive step in requiring at least one woman director to be on the board of directors of listed entities. This was done as under-representation of women on boards was a significant concern in India. Although India lags behind global markets in women participation on corporate boards, the broad reaction of corporate India on having to include at least one woman on every board has been largely positive. Women representation on the boards of NIFTY 500 companies, which was at 5% as on March 31, 2012, increased to 13% as on March 31, 2017.

To further improve gender diversity on corporate boards, the Committee recommends that every listed entity have at least one independent woman director on its board of directors.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 17. Board of Directors (1) The composition of board of directors of the listed entity shall be as follows: (a) board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the board of directors shall comprise of non-executive directors;</p>	<p>Reg 17. Board of Directors (1) The composition of board of directors of the listed entity shall be as follows: (a) board of directors shall have an optimum combination of executive and non-executive directors with at least one woman <u>as an independent</u> director and not less than fifty percent of the board of directors shall comprise of non-executive directors;</p>

3. Attendance of Directors

Current regulatory provisions:

Currently, the Companies Act provides for the automatic vacation of the office of director if a director is absent from all meetings of the board of directors held during a 12-month period. There is no requirement for minimum attendance of directors in meetings of the board of directors under the SEBI LODR Regulations. (Click for [Detailed Provisions](#))

Recommendation and rationale:

Board members have the responsibility to protect the interests of various stakeholders. Hence, it is desirable that directors attend all scheduled meetings to carry out their fiduciary duties appropriately. However, it is understandable that sometimes, they may not be able to do attend due to certain exigencies.

The Committee is of the view that it is important for all directors to attend a minimum number of meetings in order to enhance their contribution of skill, time and value towards serving the long-term interests of all stakeholders. It is therefore recommended that 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 17. Board of Directors</p> <p><u>Insertion of a new sub-Regulation (2A):</u></p> <p>2A. With effect from April 1, 2018, if a director does not attend at least half of the total number of board meetings held over the Relevant Period, his/her continuance on the board shall be subject to ratification by the shareholders at the next annual general meeting (notwithstanding the nature of directorship).</p> <p><u>Explanation:</u> For the purposes of this provision, the term “Relevant Period” shall mean a period of two consecutive financial years on a rolling basis, commencing from the financial year immediately succeeding the date of appointment. For existing directors, the “Relevant Period” shall commence from April 1, 2018.</p>

4. Disclosure of Expertise/Skills of Directors

Current regulatory provisions:

The Companies Act and SEBI LODR Regulations require the disclosure of a brief profile of a director on his/her appointment, including expertise in specific functional areas. However, there is no specific requirement under the Companies Act or SEBI LODR Regulations for listed entities to disclose the required and available expertise of the board on a regular basis. (Click for [Detailed Provisions](#))

Recommendation and rationale:

In today’s dynamic and complex world, diverse skill-sets of the board of directors have become a necessity. The importance of diversity on a board cannot be overstated. A group of individuals with varied skill-sets and experience is critical for providing comprehensive guidance and direction to a company.

The Committee acknowledged that while a board of directors may seek external expert advice on various matters, given the collective responsibility and the need for the board to make informed business judgement, a balanced wholesome board with complementary skill-sets amongst the directors is imperative. Typically, these skill-sets would comprise technical/academic skills, general management, global business, technology, manufacturing/operations, risk management, etc. Recognizing this, board members should collectively have a wide set of skill-sets appropriate for the relevant business.

Currently, there is no requirement for the disclosure of the expertise matrix of the board on a regular basis and therefore shareholders are unable to adequately analyze whether a board has a sufficient mix of diverse expertise/skill-sets.

It is therefore recommended that the board of directors 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. Some illustrative parameters that may be considered in this context are listed in **Annexure 4**.

Further, it is recommended that 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 (i.e. for annual report for the financial year ending March 31, 2020).

Proposed amendments to SEBI LODR Regulations (w.e.f. FY ending March 31, 2019/March 31, 2020 as applicable):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Schedule V: Annual Report (C) Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report. (2) Board of Directors: <u>Insertion of a new sub-clause (h):</u> (h) A chart or a matrix setting out the skills/expertise/competence of the board of directors specifying the following:</p> <p>(i) List of core skills/expertise/competencies identified by the board of directors as required in the context of its business(es) and sector(s) for it to function effectively and those actually available with the board; and</p> <p>(ii) Names of directors who have such skills/expertise/competence, with effect from financial year ended March 31, 2020.</p>

5. Approval for Non-executive Directors on Attaining a Certain Age

Current regulatory provisions:

The Companies Act provides that a person may be appointed/continue as Managing Director (*hereinafter referred to as "MD"*), whole-time director or manager on attaining the age of 70 years by passing a special resolution. However, no such provision exists for non-executive directors. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee recognizes that while age itself may not be a determinant of efficiency or capability of a person or the basis for disqualification of a director, a higher level of shareholder endorsement may be required for directors to continue in their position beyond a certain age. The Committee further noted that non-executive roles on a board also require significant commitment of time. In this regard, the Committee is of the view that checks and balances should be considered in connection with the age of Non-executive Directors (*hereinafter referred to as "NEDs"*) similar to the provisions of the Companies Act for executive directors.

Therefore, the Committee recommends that a provision requiring a special resolution on a similar basis should be inserted for listed entities for the appointment/continuation of NEDs on attaining the age of 75 years for the relevant term. All shareholders should be permitted to vote on such a resolution.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2019):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	Reg 17. Board of Directors. <u>Insertion of a new sub-Regulation (1A):</u> (1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

6. Minimum Number of Board Meetings

Current regulatory provisions:

Currently, both the Companies Act and the SEBI LODR Regulations require at least four meetings of the board every year with a maximum gap of one hundred and twenty days between any two meetings. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee believes that the four meetings of the board tend to focus primarily on financial results and other matters relating to regular compliance. Hence, boards may be required to meet more frequently to focus on other critical aspects of a listed entity such as its management and corporate governance. Accordingly, it is recommended that the minimum number of meetings of board of directors be increased to five every year.

Additionally, the Committee is of the view that aspects like strategy, succession planning, budgets, risk management, ESG (environment, sustainability and governance) and board evaluation are critical to the medium-term and long-term future of a listed entity – and in order to ensure that there is adequate attention paid thereto, the Committee recommends that, at least once a year, the above-referred aspects should be specifically discussed by the board.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 17. Board of Directors. (2) The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.	Reg 17. Board of Directors (2) The board of directors shall meet at least four five times a year, with a maximum time gap of one hundred and twenty days between any two meetings <u>and at least once a year, the board shall specifically discuss strategy, budgets, board evaluation, risk management, ESG (environment, sustainability and governance) and succession planning.</u>

7. Updation of Knowledge of the Board Members

Current regulatory provisions:

Currently, the Companies Act contains general provisions pertaining to the induction of independent directors. SEBI LODR Regulations require familiarization of the independent directors relating to certain specified matters and that the board of directors periodically reviews compliance reports pertaining to all laws applicable to the listed entity as well as steps taken to rectify instances of non-compliances. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee is cognizant of the ever-evolving and changing regulatory environment. The Committee also acknowledges that ignorance of the law is no excuse, and that the board's supervisory role holds it ultimately accountable for unlawful actions of the company. Accordingly, in order for the directors to exercise their judgement and discharge their duties with sufficient knowledge, the directors need to be kept abreast of changes in laws, regulations, relevant judicial or regulatory orders, and compliance requirements.

Therefore, in order to fill this information gap, it is recommended that at least once every year, the board of directors should be updated on regulatory and compliance changes.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	Reg 17. Board of Directors <u>Insertion of a new sub-Regulation (3A)</u> (3A) The listed entity shall, at least once every year, undertake a formal updation programme for the board of directors on changes in applicable laws, regulations and compliance requirements.

8. NED Engagement with the Management

Current regulatory provisions:

Currently, the Companies Act and SEBI LODR Regulations do not have any provisions requiring mandatory engagement of the NEDs with the management.

Recommendation and rationale:

The Committee believes that interaction between the NEDs and the management is critical for a better understanding by NEDs of the company's business and of the managerial capacity and capability of the company.

Therefore, it is recommended that at least once every year, an interaction should be required between the NEDs and senior management.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	Reg 17. Board of Directors <u>Insertion of a new sub-Regulation (3A)</u> (3A) The listed entity shall, at least once every year,

	undertake a formal interaction between the non-executive directors and the senior management.
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9. Quorum for Board Meetings

Current regulatory provisions:

Currently, the Companies Act requires a quorum of one-third of the total strength of the board of directors or two directors, whichever is higher, for every board meeting. SEBI LODR Regulations do not prescribe any quorum for meetings of board of directors. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee is of the opinion that in view of the increased obligations of the boards of listed entities, a higher quorum may be required vis-à-vis other companies. The Committee also believes that in the interest of all stakeholders, especially minority shareholders, the presence of at least one independent director is required for every board meeting.

Therefore, it is recommended that 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.

Proposed amendments to SEBI LODR Regulations (October 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	Reg 17. Board of Directors <u>Insertion of a new sub-Regulation (2A):</u> (2A) The quorum for every meeting of the board of directors of the listed entity shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director and subject to the requirements of the Companies Act, 2013, the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.

10. Separation of the Roles of Non-executive Chairperson and Managing Director/CEO

Current regulatory provisions:

Currently, the Companies Act states that an individual shall not be appointed/reappointed as the chairperson of a company as well as its MD/CEO at the same time unless the articles of such company provide otherwise or the company does not undertake multiple businesses. SEBI LODR Regulations do not mandate a separation of the posts of chairperson and chief executive officer of the listed entity but state that it is a discretionary requirement for a listed entity. (Click for [Detailed Provisions](#))

Recommendation and rationale:

Corporate democracy is built into the interconnected arrangement amongst the board, the shareholders and the management, where the board supervises the management and reports to the

shareholders. The issue of whether to separate the roles of the chairperson and the CEO/MD, while not a recent phenomenon, is a growing concern in corporate governance worldwide.

The separation of powers of the chairperson (i.e. the leader of the board) and CEO/MD (i.e. the leader of the management) is seen to provide a better and more balanced governance structure by enabling better and more effective supervision of the management, by virtue of:

- a) providing a structural advantage for the board to act independently;
- b) reducing excessive concentration of authority in a single individual;
- c) clarifying the respective roles of the chairperson and the CEO/MD;
- d) ensuring that board tasks are not neglected by a combined chairperson-CEO/MD due to lack of time;
- e) increasing the possibility that the chairperson and CEO/MD posts will be assumed by individuals possessing the skills and experience appropriate for those positions;
- f) creating a board environment that is more egalitarian and conducive to debate.

Several corporate governance codes for best practices recommend this, a few jurisdictions require it, and many companies are actively debating whether to undertake it. The Committee noted that in some jurisdictions, such as the U.K. and Australia, this debate has tilted in favour of separating the two posts. In other countries, such as France and the U.S., the issue continues to be vigorously debated. Countries with a two-tier board structure, such as Germany and the Netherlands, separate the top board and top management roles.

In this regard, the Committee also noted the rationale of the United Kingdom’s Cadbury Committee in the Report of the Committee on the Financial Aspects of Corporate Governance (1992) that *“given the importance and the particular nature of the chairmen’s role, it should in principle be separate from that of the chief executive. If the two roles are combined in one person, it represents a considerable concentration of power”*.

After deliberation, the Committee believes that the time is right in India to introduce a separation of the roles of the Chairperson and the CEO/MD for listed entities. The Committee observed that such separation, at least at the stage of introduction of the construct, may be more relevant where public shareholders constitute a large portion of the shareholding of a company. In this regard, the Committee considered various thresholds and concluded at least 40% of public shareholding would be an appropriate threshold. Further, in view of the fact that this would require a significant transition from the existing requirements, the Committee believes that listed entities should be given sufficient time to undertake such a transition.

Therefore, it is recommended that:

- 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2020/April 1, 2022, as applicable):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Schedule II: Corporate Governance: Part E: Discretionary Requirements D. Separate posts of chairperson and chief executive	Schedule II: Corporate Governance: Part E: Discretionary Requirements D. Separate posts of chairperson and chief executive

<p><u>officer</u> The listed entity may appoint separate persons to the post of chairperson and managing director or chief executive officer.</p>	<p><u>officer</u> The listed entity may appoint separate persons to the post of chairperson and managing director or chief executive officer.</p> <p>17. Board of Directors <u>Insertion of a new sub-Regulation (1A):</u></p> <p><u>(1A) With effect from April 1, 2020, all listed entities which have public shareholding of forty percent or more at the beginning of a financial year shall ensure that the Chairperson of the board of such listed entity shall be a non executive director, on and from that financial year;</u></p> <p><u>Provided that once a listed entity is subject to the above provision, any subsequent reduction in public shareholding below forty percent will not make the provision inapplicable.</u></p> <p><u>After 2020, if deemed fit by SEBI, the aforesaid sub-Regulation (1A) may be modified as under:</u> <u>(1A) With effect from April 1, 2022, the Chairperson of the board of each of the listed entities shall be a non executive director.</u></p>
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11. Matrix Reporting Structure

Current regulatory provisions:

The Companies Act states that the board of directors of a company shall be entitled to exercise all such powers, and to undertake all such activities as the company is authorised to exercise and undertake. Additionally, the board of directors of a company as a whole is responsible for all decision-making in relation to the company, with the ability to delegate certain powers to committees/individuals, and is required to provide a detailed report (popularly referred to as the Director’s Report) that sets forth details in relation to the company’s business, financial performance and certain other aspects. The SEBI LODR Regulations also set forth detailed responsibilities for the board of directors of a listed entity. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee acknowledges that many companies (including global conglomerates) follow matrix reporting structures to meet their internal functional reporting requirements, whereby reporting happens along functional lines to relevant heads who operate at a group level (including in other jurisdictions). Given that the Companies Act and the SEBI LODR Regulations require the board of directors of a listed entity to exercise authority and assume responsibility for the overall business and affairs of that entity, the Committee believes that informal matrix reporting structures may dilute the powers and the role of the board of a listed entity.

Accordingly, the Committee recommends that a confirmation be provided by the board of a listed entity as a part of the corporate governance report that it has been responsible for the business and overall affairs of the listed entity in the relevant financial year and that the reporting structures of the listed entity, formal and informal, are consistent with the above.

Proposed amendments to SEBI LODR Regulations (w.e.f. FY ending March 31, 2019):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Schedule V: Annual Report</p> <p>C. Corporate Governance Report</p> <p><u>Insertion of a new clause (1A):</u></p> <p>(1A) A confirmation that the board of directors has been responsible for the business and overall affairs of the listed entity in the relevant financial year and that the reporting structures of the listed entity, formal and informal, are consistent with the above.</p>

12. Maximum Number of Directorships

Current regulatory provisions:

Currently, the Companies Act provides that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten. SEBI LODR Regulations state that a person shall not serve as an independent director in more than seven listed entities and if the director is a whole time director in one listed entity, then he/she can't serve as an independent director in more than three listed entities. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee believes that multiple directorships beyond a reasonable limit may lead to a director not being able to allocate sufficient time to a particular company, thus hindering their ability to play an effective role. In light of the increasing responsibilities of corporate boards and thereby increased requirement of time from directors, the Committee recommends that 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2019/April 1, 2020, as applicable):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg. 25. Obligation with respect to independent directors.</p> <p>(1) A person shall not serve as an independent director in more than seven listed entities; Provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than three listed entities</p>	<p><u>Insertion of a new regulation (17A):</u></p> <p><u>Maximum number of directorships</u></p> <p><u>17A. No person shall hold office as a director, including any alternate directorship, in more than eight listed entities at the same time (of which independent directorships shall not exceed seven), with effect from April 1, 2019 and not more than seven listed entities with effect from April 1, 2020:</u></p> <p><u>Provided that any person who is serving as a whole time director/managing director in any listed entity shall serve as an independent director in not more than three listed entities.</u></p>

	<p>Reg. 25. Obligation with respect to independent directors.</p> <p>(1) A person shall not serve as an independent director in more than seven listed entities; Provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than three listed entities</p>
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13. Disclosures on Board Evaluation

Current regulatory provisions:

The Companies Act and SEBI LODR Regulations contain broad provisions on board evaluation i.e. evaluation of the performance of: (i) the board as a whole, (ii) individual directors (including independent directors and Chairperson) and (iii) various committees of the board. The provisions also specify responsibilities of various persons/committees for the conduct of such evaluation and the disclosure requirements that are a part of the listed entity's corporate governance obligations. A guidance note on board evaluation has also been issued by SEBI vide circular dated January 5, 2017. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee is of the view that the concept of board evaluation is at a nascent stage in India and prescribing detailed requirements in this area may not be desirable at this stage. The Committee also takes note of the Guidance Note dated January 5, 2017 issued by SEBI on board evaluation and is of the opinion that the Note is comprehensive and covers all major aspects of board evaluation.

However, based on the study of a few actual board evaluation disclosures made by global companies, the Committee recommends that in order to strengthen disclosures on board evaluation, a guidance should be issued specifying, in particular, the following disclosures to be made as a part of the disclosures on board evaluation:

- a) Observations of board evaluation carried out for the year
- b) Previous year's observations and actions taken
- c) Proposed actions based on current year observations

In due course, depending on the experience, SEBI could consider making them mandatory, if it so deems fit.

Proposed amendments to SEBI LODR Regulations:

Since the aforesaid recommendations are in the nature of guidance, no specific amendments may be required to the SEBI LODR Regulations. However, a guidance note in the nature of a circular should be issued by SEBI, in this regard stating as under:

"All listed entities may consider the following as a part of their disclosures on board evaluation:

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

CHAPTER II: THE INSTITUTION OF INDEPENDENT DIRECTORS

The institution of Independent Directors (*hereinafter referred to as 'IDs'*) forms the backbone of the corporate governance framework worldwide and in India. IDs are expected to bring objectivity into the functioning of the board and improve its effectiveness. IDs are required to safeguard the interests of all stakeholders, particularly minority shareholders, balance the conflicting interest of the stakeholders and bring an objective view to the evaluation of the performance of the board and management.

Given the importance of this role, the institution of independent directors must be continually supported and strengthened. In this regard, the Committee believes that there needs to be greater focus in areas of eligibility, monitoring, awareness of role and functions, domain knowledge, provision of resources to play an effective role, adequacy of compensation vis-à-vis their responsibilities, addressing the fear of disproportionate liability, etc. An attempt has been made in this report to provide recommendations in this regard.

1. Minimum Number of Independent Directors

Current regulatory provisions:

At present, the Companies Act requires every listed company to have at least one-third of total number of directors as IDs. SEBI LODR Regulations impose stricter obligations that require at least half of the total directors of the board of a listed entity to be IDs if the Chairperson is executive/related to the promoter, and in other cases, at least one-third IDs. (Click for [Detailed Provisions](#))

Recommendation and rationale:

With the institution of the ID being the backbone of the governance of a company, it is imperative that there are sufficient IDs on a board to ensure safeguarding of interest of all stakeholders, especially minority shareholders. To improve governance, it is recommended that 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 IDs. However, given that this may require significant changes to the composition of the boards, the Committee felt that appropriate transition time should be provided for effecting such change. In this regard, the Committee recommends that this 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2019/April 1, 2020, as applicable):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 17. Board of Directors. (1) The composition of board of directors of the listed entity shall be as follows:</p> <p>(b) Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:</p>	<p>Reg 17. Board of Directors. (1) The composition of board of directors of the listed entity shall be as follows:</p> <p>(b) Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:</p>

<p>Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.</p> <p><u>Explanation.</u>-For the purpose of this clause, the expression “related to any promoter” shall have the following meaning: (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it; (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.</p>	<p>Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.</p> <p><u>Explanation.</u> For the purpose of this clause, the expression “related to any promoter” shall have the following meaning: (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it; (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.</p> <p><u>(b) At least half of the board of directors shall comprise of independent directors (i) with effect from April 1, 2019, for the top 500 listed entities, determined on the basis of market capitalization, as at the end of the immediately preceding financial year; and (ii) with effect from April 1, 2020, for all listed entities.</u></p>
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2. Eligibility Criteria for Independent Directors

Current regulatory provisions:

Section 149(6) of the Companies Act and Regulation 16(1)(b) of the SEBI LODR Regulations set out certain objective criteria for determination of independence of a director. Under Section 149(7) of the Companies Act, every ID is required to provide a declaration that he/ she meets the legal criteria of independence, at the first meeting of the relevant board in which he or she participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director.

Further, at the time of appointment of an ID, the board needs to certify that in the opinion of the board, the ID proposed to be appointed fulfils the conditions specified in the Companies Act and the rules made thereunder and that the proposed director is independent of the management. (Click for [Detailed Provisions](#))

Recommendation and Rationale:

Given the critical role of IDs within a good governance framework, and one of the most important elements being “independence”, the Committee felt that the evaluation of “independence” of an ID should entail both objective and subjective assessments and such assessments should be both continuing and genuine.

In this regard, the Committee noted that there were some instances of persons who are relatives of promoters being appointed as IDs. It was therefore concluded that the net of exclusions be appropriately expanded to avoid the appointment of family associates as independent directors. The Committee also studied different options on measuring or ensuring the “spirit of independence” that underlies the institution of IDs. Given the nebulous nature of the determination of “independence”, it was felt that a self-assessment of “independence” be required of every ID, the veracity of which would need to be confirmed by the board.

Another trend that was brought to the attention of the Committee and found to be undesirable from a good governance standpoint, is “board interlocks” which may run a structural vulnerability of *quid-pro-quo*.

In this context, the Committee recommends the revision of eligibility criteria for a director to be an “independent director” to also include the following:

- (i) Specifically exclude persons who constitute the ‘promoter group’ of a listed entity;
- (ii) Requirement of an undertaking from the ID that such a director is not aware of any circumstance or situation, which exists or may be reasonably anticipated, that could impair or impact his/her ability to discharge his/her duties with objective independent judgements and without any external influence.
- (iii) The board of the listed entity taking on record the above undertaking after due assessment of the veracity of such undertaking.
- (iv) Exclude “board inter-locks” arising due to common non-independent directors on boards of listed entities (i.e. a non-independent director of a company on the board of which any non-independent director of the listed entity is an independent director, cannot be an independent director on the board of the listed entity). For instance, If Mr. A is an executive director on Co. A (being a listed entity) and is also an independent director on Co. B, then no non-independent director of Co. B can be an independent director on the board of Co. A.

Further, the Committee observed that there needs to be continuous assessment of the independence criteria. Regulatory requirements for testing the independence of directors are currently based on factual information or checklists. However, true independence is a function of behavior, and an objectiveness being brought to board deliberations and overall decision making. Some markets follow a practice of the board certifying to the independence of its directors: the Committee believes this practice must be brought to India as well. It is therefore recommended that the board of directors as a part of the board evaluation process may be required to certify every year that each of its IDs fulfils the conditions specified in the SEBI LODR Regulations and is independent of the management.

Proposed amendments of SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provisions in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Regulation 16: Definitions</p> <p>(1) (b) "independent director" means a non-executive director, other than a nominee director of the listed entity:</p> <p>(i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;</p> <p>(ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company;</p> <p>...</p>	<p>Regulation 16: Definitions</p> <p>(1) (b) "independent director" means a non-executive director, other than a nominee director of the listed entity:</p> <p>(i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;</p> <p>(ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company <u>or member of the promoter group of the listed entity;</u></p> <p><u>..... (viii) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director</u></p>

<p>Reg 17. Board of Directors (10) The performance evaluation of independent directors shall be done by the entire board of directors: Provided that in the above evaluation the directors who are subject to evaluation shall not participate</p>	<p>Reg 17. Board of Directors (10) The performance evaluation of independent directors shall be done by the entire board of directors <u>which shall include:</u> <u>(a) performance of the directors; and</u> <u>(b) fulfillment of the independence criteria as specified in these regulations and their independence from the management:</u> Provided that in the above evaluation the directors who are subject to evaluation shall not participate.</p>
<p>No specific provision</p>	<p>Schedule V: Annual Report Part C.: Corporate Governance Report <u>Insertion of a new sub-clause 2(h) as follows:</u> (h) confirmation that in the opinion of the board the independent directors fulfill the conditions specified in these regulations and are independent of the management.</p>
<p>No specific provision.</p>	<p>Reg 25. Obligations with respect to independent directors. <u>Insertion of new sub-regulations (8) and (9):</u> (8) Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with objective independent judgements and without any external influence. (9) The board of directors of the listed entity shall take on record the declaration and confirmation provided by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.</p>

3. Minimum Compensation to Independent Directors

Current regulatory provisions:

While the Companies Act prescribes a ceiling on the compensation that can be paid to directors, there is no requirement for minimum compensation to be paid, except that the sitting fee paid to IDs cannot be lower than that of other directors. SEBI LODR Regulations also do not prescribe any minimum compensation to be paid to IDs. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee acknowledges that good governance is the cornerstone of value creation and sustainable growth of listed entities, and that independent directors have a pivotal role to play in such good governance. The Committee believes that, (a) a risk-reward balance in the compensation payable to IDs, would make it attractive for competent people to accept appointment as IDs, and that (b) the compensation paid should be commensurate to the value that the IDs deliver.

Therefore, in order to attract competent IDs on the boards of the listed entities, it is recommended that a listed entity may be required to pay certain minimum compensation to IDs as under:

1. The minimum total remuneration for an ID 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.
2. The minimum sitting fees to be paid to IDs for every board meeting shall be:
 - a. Rs. 50,000 for top 100 companies by market capitalisation;
 - b. Rs. 25,000 for next 400 companies by market capitalisation.
3. The minimum sitting fees to be paid to IDs for every audit committee meeting shall be:
 - a. Rs. 40,000 for top 100 companies by market capitalisation;
 - b. Rs. 20,000 for next 400 companies by market capitalisation.
4. The minimum sitting fees to be paid to IDs for every other board committee meeting (*only for those committees which are mandatory under SEBI LODR Regulations*) shall be:
 - a. Rs. 20,000 for top 100 companies by market capitalisation;
 - b. Rs. 10,000 for next 400 companies by market capitalisation.

While the Committee acknowledges the importance of all board committees, it is felt that the workload and obligations on the Audit Committee are significantly higher and therefore merit higher sitting fees.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No provision on minimum compensation.	<p>Reg 17. Board of Directors</p> <p><u>Insertion of a new sub-clause (e) under sub-Regulation (6):</u></p> <p>(6) (e) The top 500 listed entities by market capitalisation shall pay compensation to each independent director as under:</p> <p style="padding-left: 40px;">(i) Minimum total remuneration in aggregate of rupees five lakhs per annum, whether through sitting fees or profit linked commissions subject to receipt of approvals, if any, as may be necessary under Companies Act, 2013.</p> <p style="text-align: right;">Provided that, this provision will not apply</p>

	<p>in case of inadequacy of profits in accordance with Section 197 of Companies Act, 2013.</p> <p>(ii) Minimum sitting fees for every board meeting of rupees 50,000 for top 100 entities by market capitalisation and rupees 25,000 for next 400 entities by market capitalisation.</p> <p>(iii) Minimum sitting fees for each audit committee meeting of rupees 40,000 for top 100 entities by market capitalisation and rupees 20,000 for next 400 entities by market capitalisation.</p> <p>(iv) Minimum sitting fees for each board committee meeting (other than audit committee) of rupees 20,000 for top 100 entities by market capitalisation and rupees 10,000 for next 400 entities by market capitalisation for all such committees mandatory to be formed under these regulations.</p> <p><u>Explanation:</u> Market capitalisation for the purpose of this clause shall be calculated as on March 31 of the preceding financial year.</p>
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4. Disclosures on Resignation of Independent Directors

Current regulatory provisions:

The Companies Act provides that a director who resigns before the expiry of his term shall give detailed reasons to the registrar of companies. There is no specific provision on this aspect in SEBI LODR Regulations. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Companies Act already provides for the disclosure of detailed reasons to the registrar of companies in case of resignation of a director prior to the expiry of his/her term. However, this disclosure can be made anytime within 30 days of the resignation and therefore is not current. There is no corresponding provision in the SEBI LODR Regulations which requires (immediate) disclosure to the stock exchanges in case of resignation of a director.

The Committee noted that IDs are in a unique position, not being a part of the executive management but having overall insight into the functioning of the listed entity – and that their resignation (prior to expiry of their term) may be occasioned by reasons that need wider disclosure (including material negative developments or governance concerns). Also, as the resignation of IDs can be construed as a worrisome sign for external stakeholders, in order to provide greater clarity and reassurance to the stakeholder community, it is considered a good practice for companies to provide full disclosure on the reasons for an ID’s resignation. In this context, the Committee also encourages directors to be forthright in providing reasons for their resignation: resigning directors

must consider this to be the last act of discharging their fiduciary responsibility towards the company's stakeholders.

The Committee recommends that listed entities should be required to disclose detailed reasons for resignation of IDs (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. As part of such disclosure, 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. The Committee believes this will enhance transparency and strengthen the institution of IDs.

Proposed amendments to SEBI LODR Regulations and proposed modifications to SEBI circular (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Schedule V: Annual report</p> <p>(C) Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.</p> <p>....</p> <p>(2) Board of Directors:</p> <p>....</p> <p><u>Insertion of a new sub-clause (h):</u> (h): Detailed reasons for resignation of independent directors who resigns before the expiry of his tenure: Provided that the director shall be required to confirm that there are no other material reasons other than those provided, the disclosure of which shall also be made by the listed entity.</p>
<p><u>Proposed modifications to SEBI circular:</u> Clause 7 of Annexure I of SEBI circular No. CIR/CFD/CMD/4/2015 dated Sep 9, 2015 may be amended as under: 7.1A. Detailed reasons for the resignation of independent directors as given by the said director; Provided that the director shall be required to confirm that there are no other material reasons other than those provided, the disclosure of which shall also be made by the listed entity.</p>	

5. Directors and Officers Insurance for Independent Directors

Current regulatory provisions:

The Companies Act provides that the letter of appointment of IDs shall specify the provision for Directors and Officers (D&O) insurance, if any. However, it is not mandatory under the Companies Act for a company to undertake such D&O insurance. SEBI LODR Regulations have no specific provision on the matter. (Click for [Detailed Provisions](#))

Recommendation and rationale:

IDs have significant responsibilities and liabilities in their capacity as board members and even more so in their capacity as an IDs. It is often observed that such liabilities act as a deterrent for several good quality IDs from joining corporate boards.

It is therefore recommended that it may initially be mandatory for Top 500 companies by market capitalization to undertake D&O insurance for its IDs, with effect from October 1, 2018, which may

be subsequently extended to all listed entities. However, it may be left to the board of directors of the listed entity to determine the quantum and type of risks covered under such insurance.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 25. Obligations with respect to independent directors.</p> <p><u>Insertion of a new sub-Regulation (8):</u> (8) The top 500 listed entities by market capitalization, calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors with effect from October 1, 2018.</p> <p><u>Based on future impact assessment as deemed fit by SEBI, the aforesaid sub-Regulation (8) may be modified as under:</u> (8) All listed entities shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.</p>

6. Induction and Training of Independent Directors

Current regulatory provisions:

The Companies Act provides general clauses pertaining to training, induction, etc. of directors. SEBI LODR Regulations require familiarization of the IDs relating to certain specified matters. However, specific provisions on induction training and periodicity of continuous updation are lacking. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The IDs will, in most cases, bring a diverse set of skills and experiences to the board deliberations – some of these may not be strictly associated with the company's main operation / business or product. To ensure that these skills can be harnessed in the context of the company's business, it is important to ensure that these IDs understand the company's operations in reasonable granularity. While accepting that IDs will not, and need not, know the business as well as executive directors, the Committee recommends the following:

- A formal induction should be mandatory for every new ID appointed to the board; and
- Formal training, whether external/internal, especially with respect to governance aspects, should be required for every ID once every five years, the onus of which shall be on the director.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 25. Obligations with respect to independent directors. (7) The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following: (a) nature of the industry in which the listed entity operates; (b) business model of the listed entity; (c) roles, rights, responsibilities of independent directors; and (d) any other relevant information.</p>	<p>Reg 25. Obligations with respect to independent directors. (7) The listed entity shall undertake a formal induction process to familiarise the independent directors through various programmes about the listed entity, including the following: (a) nature of the industry in which the listed entity operates; (b) business model of the listed entity; (c) roles, rights, responsibilities of independent directors; (d) <u>organization structure and operations</u>; and (e) any other relevant information.</p> <p><u>Insertion of new sub-Regulation (7A)</u> <u>(7A) Each independent director shall ensure that he/she undergoes 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:</u> <u>Provided that all independent directors currently on boards of listed entities shall ensure compliance with this provision within a period of two years from the date of its notification.</u></p>

7. Alternate Directors for Independent Directors

Current regulatory provisions:

The Companies Act permits alternate directors for all directors including IDs (*for a director during his absence for a period of not less than three months from India*). It also states that no person shall be appointed as an alternate director for an ID unless he is qualified to be appointed as an ID under the provisions of this Act. There is no specific provision pertaining to alternate directors in SEBI LODR Regulations. (Click for [Detailed Provisions](#))

Recommendation and rationale:

IDs are elected to the board for their skills, experience, acumen, network and objectivity. These qualities are unique to the relevant appointee and are not replaceable with an alternate. Additionally, the concept of alternate directors itself (i.e. a director being appointed in case of absence of the appointee director for a particular duration from a particular place) was probably more relevant when the physical presence of directors was required to constitute attendance at board meetings – currently, the Companies Act recognizes the right of directors to attend board meetings via video conference and other audio visual means (which enables directors to attend meetings from any location). For the above reasons, the Committee is of the view that the appointment of an alternate director for IDs should not be permitted.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 25. Obligations with respect to independent directors.</p> <p><u>Insertion of a new sub- Regulation (1A)</u> (1A) No person shall be appointed as an alternate director for an independent director of a listed entity with effect from April 1, 2018.</p>

8. Lead Independent Director in Companies with Non-independent Chairperson

Current regulatory provisions:

Currently, there is no requirement of a Lead ID in Companies Act/SEBI LODR Regulations.

Recommendation and rationale:

The Committee acknowledges that while IDs have equal fiduciary responsibility as other directors on the board, their role is more defined and distinct and needs better coordination amongst the IDs to improve effectiveness. In this, it was felt that the appointment of a Lead ID may facilitate better engagement of, and by, the IDs. Globally, there are several countries which adopt the concept of lead IDs in their jurisdictions. The Lead ID is expected to assist in coordinating the activities and decisions of the other non-executive and/or independent directors to chair the meetings of the IDs.

The position of Lead ID becomes especially crucial where the chairperson is non-independent.

The Committee recommends the following:

1. All listed entities where the Chairperson is not independent to designate an ID as the Lead ID;
2. The Lead ID should be a member of NRC;
3. The Lead ID shall:
 - a) lead exclusive meetings of the IDs and provide feedback to the Chairperson/board of directors after such meetings;
 - b) Serve as liaison between the chairperson of the board and the IDs;
 - c) Preside over meetings of the board at which the chairperson or vice-chairperson is not present, including executive sessions of the IDs;
 - d) Have the authority to call meetings of the IDs; and
 - e) If requested by significant shareholders, ensure that he/she is available for consultation and direct communication.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 25: Obligations with respect to independent directors.</p> <p><u>Insertion of a new sub-Regulation (2A):</u> (2A) All listed entities which have a non-independent chairperson shall designate an independent director as the lead independent director who, apart from being a member of the nomination and remuneration committee, shall fulfil the following role:</p> <ul style="list-style-type: none"> a) leading exclusive meetings of the independent directors and providing feedback to the chairperson/board of directors after such meetings; b) serving as a liaison between the chairperson of the board and independent directors; c) presiding over meetings of the board at which the chairperson and vice-chairperson, if any, is not present, including executive sessions of the independent directors; d) having the authority to call meetings of independent directors; e) if requested by significant shareholders, ensuring that he is available for consultation and direct communication.

9. Exclusive Meeting of Independent Directors

Current regulatory provisions:

The Companies Act and the SEBI LODR Regulations require at least one meeting of the IDs in a year without the presence of other directors. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee observed that given the inherent information asymmetry between IDs and executive/promoter directors, exclusive meetings of IDs encourage free flowing discussions and facilitate higher preparedness for effective participation of the IDs. Further, such meetings assume greater importance in view of the proposed introduction of the concept of Lead ID. Therefore, the Committee recommends that such meetings may be held more than once at the discretion of the IDs.

Proposed amendments to SEBI LODR Regulations:

No amendments are required to SEBI LODR Regulations.

10. Casual Vacancy of Office of Independent Director

Current regulatory provisions:

Currently, the Companies Act states that if the office of any director appointed by the company in a general meeting is vacated before his term of office expires in the normal course, the resulting

casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled for the residual term by the board of directors at a meeting of the board.

SEBI LODR Regulations provide for filling the vacancy of IDs only in case of resignation and removal and provides that in case of such resignation/removal, such vacancy shall be filled but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later. (Click for [Detailed Provisions](#))

Recommendation and rationale:

IDs represent the interests of all stakeholders, especially minority shareholders. At the first instance, the IDs are appointed by the shareholders. In the same spirit, the Committee recommends that any appointment to fill a casual vacancy of office of any ID should also be approved by the shareholders at the next general meeting.

Proposed amendments to SEBI LODR Regulations (w.e.f April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 25. Obligations with respect to independent directors. (6) An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later:</p> <p>Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.</p>	<p>Reg 25. Obligations with respect to independent directors. (6) <u>Any casual vacancy arising in the office of</u> an independent director who resigns or is removed from the board of directors of the listed entity shall be replaced filled by a new independent director by listed entity at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later:</p> <p>Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.</p> <p><u>Insertion of a new sub-Regulation (6A):</u> <u>(6A) Any appointment to fill a casual vacancy in the office of independent director shall be subject to approval by the shareholders at the next general meeting, and such director shall cease to hold office:</u></p> <p style="padding-left: 40px;">a) <u>if not so approved at the said meeting;</u> b) <u>on the last date on which the meeting ought to have been held;</u></p> <p><u>whichever is earlier.</u></p>

CHAPTER III: BOARD COMMITTEES

Given the broad range of responsibilities of the board, the constitution of committees enables effective governance through small-group discussions, focus and diligence on various aspects. The key is to ensure an appropriate balance between the role delegated to a board committee while maintaining the overall supervisory role of the Board, with key matters requiring prior recommendation of the relevant committee and final approval of the Board. The law already provides for several mandatory board committees with distinct roles and responsibilities, including the audit committee, stakeholder relationship committee, nomination and remuneration committee, corporate social responsibility committee, and for some companies, even a risk management committee.

The Committee recognizes that the effective functioning of board committees is crucial for the Board to successfully discharge its duties. Therefore, the Committee's recommendations address fundamentals like balanced representation in board committees, mandating more focused discussion by setting a minimum number of meetings and a quorum for each such committee. Further, keeping in mind the changing operating environment, and expanding scope of roles and responsibilities of the Board, the Committee also recommends an increase in the number and nature of board committees.

1. Minimum Number of Committee Meetings

Current regulatory provisions:

Currently, SEBI LODR Regulations require at least four meetings of the Audit Committee every year. The SEBI LODR Regulations does not require a minimum number of meetings for other committees. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The four Audit Committee meetings in the year are generally tied in with the quarterly financial results where most of the discussions revolve around financial and other regulatory & compliance matters.

Therefore, to allow audit committees the time and opportunity to address matters beyond the quarterly reporting, it is recommended that the minimum number of Audit Committee meetings be increased to five every year. This is also consistent with the recommendation to increase the number of board meetings from four to five.

In addition, the Committee recommends all other mandatory board committees necessarily meet at least once in a year.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 18. Audit Committee (2) The listed entity shall conduct the meetings of the audit committee in the following manner: (a) The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.	Reg 18. Audit Committee (2) The listed entity shall conduct the meetings of the audit committee in the following manner: (a) The audit committee shall meet at least four five times in a year and not more than one hundred and twenty days shall elapse between two meetings.

No specific provision	<p>Reg. 19 Nomination and remuneration committee</p> <p><u>Insertion of a new sub- regulation 3A:</u> (3A) The nomination and remuneration committee shall meet at least once in a year.</p>
No specific provision	<p>Reg. 20 Stakeholders Relationship Committee</p> <p><u>Insertion of a new sub-regulation 3A:</u> (3A) The stakeholders relationship committee shall meet at least once in a year.</p>
No specific provision	<p>Reg. 21 Risk Management Committee</p> <p><u>Insertion of a new sub-regulation 3A:</u> (3A) The risk management committee shall meet at least once in a year.</p>

2. Role of Audit Committee

Current regulatory provisions:

The Companies Act and the SEBI LODR Regulations provide the specific role and terms of reference of the audit committee. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee is of the opinion that the audit committee should also review the utilization of funds of the listed entity infused into unlisted subsidiaries including foreign subsidiaries. In order to ensure such an obligation is not onerous on the audit committee, the Committee recommends that 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Schedule II Part C: Role of the Audit Committee and Review of Information by Audit Committee A. The role of audit committee shall include the following:</p> <p><u>Insertion of a new sub- clause (21):</u> (21) reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower.</p>

3. Composition of Nomination and Remuneration Committee

Current regulatory provisions:

Under the Companies Act, the Audit Committee and the Nomination and Remuneration Committee (*hereinafter referred to as "NRC"*) are required to have at least half of their members as IDs. On the other hand, under SEBI LODR Regulations, while the Audit Committee is required to have 2/3rd of its members as IDs, the NRC is required to have only half of its members as IDs. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee is of the view that the role and importance of NRC is increasing by the day and ensuring independence of the NRC is becoming crucial for effective governance of the entity. Therefore, the Committee recommends that the requirement of having at least two thirds of its members as IDs may be required for NRC as well, in line with the requirement for the audit committee.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2019):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 19. Nomination and remuneration committee. (1) The board of directors shall constitute the nomination and remuneration committee as follows: (c) at least fifty percent of the directors shall be independent directors.</p>	<p>Reg 19. Nomination and remuneration committee. (1) The board of directors shall constitute the nomination and remuneration committee as follows: (c) at least fifty percent of the directors <u>two-thirds of the members of the committee</u> shall be independent directors.</p>

4. Role of Nomination and Remuneration Committee

Current regulatory provisions:

The Companies Act and SEBI LODR Regulations provide for detailed provisions on roles and functions of the Nomination and Remuneration Committee (NRC). (Click for [Detailed Provisions](#))

Recommendation and rationale:

Currently, SEBI LODR Regulations state that the role of the NRC includes identifying persons who may be appointed in senior management in accordance with the criteria laid down, and recommending to the board of directors their appointment and removal.

It is recommended that a clarification be provided that persons in senior management should include all members of management one level below the chief executive officer/managing director/whole time director/manager (including CEO/manager, in case CEO/manager is not part of the board) and shall specifically include the company secretary and the chief financial officer.

Further, it was noted by the Committee that in the absence of specific provisions in SEBI LODR Regulations, compensation paid to certain KMPs were not being recommended by NRC in some companies. Therefore, it was decided that it may be clearly specified in SEBI LODR Regulations that all payments made to senior management, in whatever form, shall be recommended by the NRC to the board of the listed entity. The Committee recommends that this process be followed for any

payments to be made to the senior management, irrespective of existing contracts, unless the same has been approved earlier through this process.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 16(1)(d) “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 the executive directors, including all functional heads.</p> <p>Schedule II: Corporate Governance Part D (A): ROLE OF NOMINATION AND REMUNERATION COMMITTEE : Role of committee shall, inter-alia, include the following: ...</p>	<p>Reg 16(1)(d) “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 the <u>chief executive officer/managing director/whole time director/manager (including chief executive officer/manager, in case chief executive officer /manager not part of the board) and shall specifically include company secretary and chief financial officer:</u> <u>Provided that administrative staff shall not be included.</u></p> <p>Schedule II: Corporate Governance Part D (A): ROLE OF NOMINATION AND REMUNERATION COMMITTEE : Role of committee shall, inter-alia, include the following:</p> <p><u>Insertion of a new sub-Regulations (6):</u> <u>(6) recommend to the board all remuneration, in whatever form, payable to senior management;</u></p>

5. Composition and Role of Stakeholders Relationship Committee

Current regulatory provisions:

The Companies Act and SEBI LODR Regulations provide for detailed provisions on composition and role of the Stakeholders Relationship Committee (*hereinafter referred to as “SRC”*) and specify that the role of the SRC shall be *inter alia* to consider and resolve the grievances of the security holders of a listed entity including complaints related to the transfer of shares, non-receipt of annual report and non-receipt of declared dividends. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The rapidly growing influence of activists in global capital markets is fundamentally transforming how public-company boards interact with investors. This transformation extends to the role of the board in investor relations, cognizance of the importance of outside voices, and more transparent relationships between directors and company managers. Today, as a direct consequence of shareholder activism, boards and executives frequently review lists of the largest shareholders in order of percentage of holdings. They then decide on a consultation strategy. Mary Jo White, the ex-chair of the US Securities and Exchange Commission, has even publicly stated that shareholder relations are now a board duty: “*The board of directors is—or ought to be—a central player in shareholder engagement.*”

Larry Fink, CEO of BlackRock wrote an April 2015 letter to all S&P 500 CEOs, urging them to have “consistent and sustained engagement” with their shareholders. And the Vanguard Group has encouraged boards of its investee companies to promote communication with shareholders through a “shareholder liaison committee” or other structures.

Recent events in India have brought into sharp focus the role of active investors and major security holders not just in questioning the quality of governance of boards, but also demanding greater and continual engagement in the areas of strategy and significant decisions made by companies.

While the SRC exists in India, currently, the Companies Act and SEBI LODR Regulations specify that the role of the SRC shall be to consider and resolve the grievances of the security holders of a listed entity, including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends. The Committee is of the view that the role of the SRC is limited and recommends a significant increase in its scope and responsibilities to include actively engaging and communicating with the major shareholders of the company/Group it represents, including obtaining proactive input on strategy.

In arriving at its conclusions, the Committee considered several factors, including that most directors assume that dealing with investors is the role of management and revamping the composition of the existing SRC to add strategic and investor skills. In its deliberations, the Committee felt that these challenges could be mitigated through a purposeful reshaping of the SRC by inducting new skills, (including adding an ID).

In addition to the existing role of resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report and non-receipt of declared dividends, it is recommended that the role of the SRC be widened to include the following:

- (1) Resolving security holder grievances relating to issue of new/duplicate certificates, general meetings etc.
- (2) Proactively communicating and engaging with security holders including with the institutional shareholders at least once a year along with members of the Committee/Board/KMPs, as may be required and identifying actionable points for implementation.
- (3) Reviewing measures taken for effective exercise of voting rights by shareholders.
- (4) Reviewing adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.
- (5) Reviewing various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the security shareholders of the company.

Further, the Committee recommends that there be at least three directors as members of the SRC, with at least one being an ID. Further, the Committee recommends that the Chairperson of the SRC be present in the annual general meeting to answer queries of the security holders.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 20. Stakeholders Relationship Committee. (1) The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal</p>	<p>Reg 20. Stakeholders Relationship Committee. (1) The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances as also various</p>

<p>of grievances of shareholders, debenture holders and other security holders.</p> <p>(2) The chairperson of this committee shall be a non-executive director.</p> <p>(3) The board of directors shall decide other members of this committee.</p> <p>(4) The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II.</p> <p>Schedule II: Corporate Governance Part D (B): Stakeholders Relationship Committee The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.</p>	<p><u>aspects of interest</u> of shareholders, debenture holders and other security holders.</p> <p>(2) The chairperson of this committee shall be a non-executive director.</p> <p><u>Insertion of a new sub-Regulation (2A) and substitution of sub-Regulation 3:</u> <u>(2A) At least three directors, with at least one being an independent director, shall be members of the Committee.</u></p> <p>(3) The board of directors shall decide other members of this committee.</p> <p><u>(3) The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meeting to answer queries of the security holders.</u></p> <p>(4) The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II.</p> <p>Schedule II: Corporate Governance <u>Part D: ROLE OF COMMITTEES (OTHER THAN AUDIT COMMITTEE)</u> <u>(B): Stakeholders Relationship Committee</u></p> <p><u>Insertion of a detailed role:</u></p> <p><u>The role of committee shall, inter-alia, include the following:</u></p> <p>(1) Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, <u>issue of new/duplicate certificates, general meetings etc.</u></p> <p>(2) <u>Proactively communicate and engage with stockholders including engaging with the institutional shareholders at least once a year along with members of the Committee/Board/KMPs, as may be required and identifying actionable points for implementation.</u></p> <p>(3) <u>Review of measures taken for effective exercise of voting rights by shareholders.</u></p> <p>(4) <u>Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.</u></p> <p>(5) <u>Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.</u></p>
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6. Quorum for Committee Meetings

Current regulatory provisions:

Currently, there is no quorum requirement for meetings of the committees of the board in the Companies Act. SEBI LODR Regulations specifies quorum requirement for meetings of the Audit committee but not for other committees. (Click for [Detailed Provisions](#))

Recommendation and rationale:

IDs bring an unbiased perspective to the proceedings of committee/board meetings, which improves the quality of governance and decision making. In order to protect the interest of all stakeholders, especially minority shareholders, it is recommended that for meetings of each such committee of the board, the composition of which statutorily requires at least one ID, the presence of at least one ID may be made mandatory for attaining quorum for such meetings (*apart from the audit committee where the quorum requirement remains unchanged*).

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	<p>Reg 19. Nomination and remuneration committee. <u>Insertion of a new sub-Regulation (2A)</u> (2A) The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, with at least one independent director.</p> <p>Reg 20. Stakeholders Relationship Committee. <u>Insertion of a new sub-Regulation (3A)</u> (3A) The quorum for a meeting of the Stakeholders Relationship Committee shall be either two members or one third of the members of the committee, whichever is greater, with at least one independent director.</p>

7. Applicability and Role of Risk Management Committee

Current regulatory provisions:

Currently, SEBI LODR Regulations require the constitution of a risk management committee by the top 100 listed entities. There is no specific provision in the Companies Act on this aspect. The role of the risk management committee is not specified in the SEBI LODR Regulations. (Click for [Detailed Provisions](#))

Recommendation and rationale:

Given the dynamic business environment, an active risk management committee is imperative for identification, mitigation and resolution of risks. These risks that are being managed operationally on a daily basis call for a more formal structure, especially for the next set of high-growth companies. Hence, 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. In addition, the Committee recommends that, in view of the increasing relevance of cyber security and related risks, the role of risk management committee specifically cover this aspect.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Regulation 21: Risk Management Committee. (4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. (5) The provisions of this regulation shall be applicable to top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.</p>	<p>Regulation 21: Risk Management Committee. (4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. <u>Such function shall specifically cover cyber security.</u> (5) The provisions of this regulation shall be applicable to top 100 500 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.</p>

8. Membership and Chairpersonship Limit

Current regulatory provisions:

Currently, in determining the maximum number of committees of which a director can be a member/Chairperson, SEBI LODR Regulations considers only the Audit Committee and Stakeholders Relationship Committee. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee recognizes the important role that is being played and would continue to be played by the NRC, which is integral to the entity’s governance processes. Therefore, in addition to recommending a higher number of IDs as part of constitution of the NRC (as recommended above), it is also recommended that in determining the maximum number of committees of which a director can be a member/Chairperson, NRC should also be included and thereby treated at par with the Audit Committee and Stakeholders Relationship Committee.

Proposed amendments to SEBI LODR Regulations w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Regulation 26. (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows: (b) for the purpose of determination of limit, chairpersonship and membership of the audit committee and the Stakeholders' Relationship Committee alone shall be considered.</p>	<p>Regulation 26. (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows: (b) for the purpose of determination of limit, chairpersonship and membership of the audit committee, <u>Nomination and Remuneration Committee</u> and the Stakeholders' Relationship Committee alone shall be considered.</p>

9. Information Technology Committee

Current regulatory provisions:

There are no specific provisions in the Companies Act and SEBI LODR Regulations on constitution of an information technology committee.

Recommendation and rationale:

The Committee is of the view that listed entities may constitute an information technology committee which, in addition to the risk management committee, will focus on digital and other technological aspects.

Proposed amendments to SEBI LODR Regulations:

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No provision.	<p>Schedule II: Corporate Governance Part E: Discretionary Requirements <u>Insertion of a new sub-clause (F):</u> F. Information technology committee The listed entity may constitute an information technology committee which will focus on digital and technological aspects.</p>

CHAPTER IV: ENHANCED MONITORING OF GROUP ENTITIES

As companies grow in scale and operations go global, businesses become more complex. Business and structural compulsions (both legal and financial) often necessitate the creation of holding and operating entities. The Committee notes that several listed entities in India operate through a network of entities – where some companies have over 200 subsidiaries, step-down subsidiaries, associates, and joint ventures. While investors hold direct equity only in the listed holding company, they have valued the entire business structure at the time of investment. Therefore, it is important for boards to ensure that good governance trickles down to the entire structure. Accordingly, to provide for better transparency on the governance levels of downstream investee entities of the listed entity and to improve the monitoring of the listed entity at a consolidated level, the following recommendations have been made by the Committee.

1. Obligation on the Board of the Listed Entity with Respect to Subsidiaries

Current regulatory provisions:

The Companies Act does not provide for the board of the listed entity to oversee the affairs of its subsidiaries. SEBI LODR Regulations, however, impose specific obligations on the board of the listed entity with respect to its subsidiaries such as: at least one ID must be a director in unlisted material Indian subsidiaries; audit committee to review financial statements of unlisted subsidiaries; minutes of the board of directors of an unlisted subsidiary to be placed before a meeting of the board of directors of the listed entity; etc. SEBI LODR Regulations also provide the threshold for determining “material subsidiary” as a subsidiary whose income or networth exceeds 20% of the consolidated income or networth of the listed entity. (Click for [Detailed Provisions](#))

Recommendation and rationale:

Many Indian companies operate through global and Indian subsidiaries in view of business needs. These subsidiaries are an integral/material part of the listed entity. In many instances, the global subsidiaries are as large as the Indian listed entity. Hence, these global subsidiaries should be at par with Indian subsidiaries in the context of governance. The Committee also observed that an appropriate level of review and oversight is required of the board of the listed entity over its unlisted subsidiaries for protection of interests of public shareholders.

Further, the Committee noted from the presentation made by ICSI that based on an analysis of the top 100 listed companies at BSE, under the existing threshold for determining “material subsidiaries”, less than 3% of the total subsidiaries get classified as such. Therefore, the threshold may be modified to 10% to enhance monitoring and hence governance of material subsidiaries.

In the interest of better monitoring at a consolidated level, the following is recommended:

- Currently, SEBI LODR Regulations require that at least one ID on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India. The same may be extended to unlisted foreign material subsidiaries as well.
- Currently, LODR Regulations state that the management of the unlisted subsidiary be required periodically to bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary. However, under the explanation for the term “significant transaction or arrangement”, the term “unlisted material subsidiary” has been used. The Committee is of the opinion that significant

transactions which could be higher than the prescribed limits of even those companies which are not material subsidiaries should come under the purview of the board of the listed entity. Therefore, it was recommended that the word “material” shall be dropped from the explanation to Regulation 24(4) of SEBI LODR Regulations.

- 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).

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 16. Definitions (1)(c) “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.</p> <p>Reg 24. Corporate governance requirements with respect to subsidiary of listed entity. (1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India.</p> <p>(4) The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.</p> <p><i>Explanation.</i>-For the purpose of this regulation, the term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.</p>	<p>Reg 16. Definitions (1)(c) “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty <u>ten</u> percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.</p> <p>Reg 24. Corporate governance requirements with respect to subsidiary of listed entity. (1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, <u>whether</u> incorporated in India <u>or not.</u> <u>Explanation- For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.</u></p> <p>(4) The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.</p> <p><i>Explanation.</i>-For the purpose of this regulation, the term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.</p>

2. Group Governance Unit/Committee and Policy

Current regulatory provisions:

There are currently no provisions under the Companies Act or SEBI LODR Regulations with respect to group governance unit/governance committee or a group governance policy.

Recommendation and rationale:

In order to improve monitoring of group entities, it is recommended that where a listed entity has a large number of unlisted subsidiaries:

- 1) The listed entity may monitor their governance through a dedicated group governance unit or Governance Committee comprising the members of the board of the listed entity.
- 2) A strong and effective group governance policy may be established by the entity.
- 3) However, the decision of setting up of such a unit/committee and having such a group governance policy may be left to the board of the listed entity.

Accordingly, it is recommended that guidance to this effect may be provided by SEBI.

Proposed amendments to SEBI LODR Regulations:

No amendments may be required to SEBI LODR Regulations.

However, guidance may be issued by SEBI stating the following where a listed entity has multiple unlisted subsidiaries:

- The entity may monitor their governance through a dedicated group governance unit or Governance Committee comprising the members of its board of directors.
- A strong and effective group governance policy may be established by the entity.
- 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.

3. Secretarial Audit

Current regulatory provisions:

Currently, the Companies Act requires a secretarial audit for listed companies and unlisted companies above a certain threshold. However, there is no specific provision for secretarial audit under SEBI LODR Regulations. (Click for [Detailed Provisions](#))

Recommendation and rationale:

Secretarial functions are critical to efficient board functioning. Therefore, it is recommended that:

- 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. This is in line with the theme of strengthening group oversight and improving compliance at a group level.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p><u>Insertion of a new Regulation 24A</u> 24A. 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 prescribed.</p>

CHAPTER V: PROMOTERS/CONTROLLING SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

A majority of Indian listed entities continue to be promoter driven, with significant shareholding held by promoter/promoter group. Therefore, protection of the interests of minority shareholders, especially those of retail shareholders assumes even greater importance. In this context, checks and balances on interactions and relationships between listed entities and the promoters/significant shareholders is crucial for good governance.

The Committee therefore deliberated at length on aspects such as information rights of promoters, significant non-promoter shareholders, approval of related party transactions and arrived at the following recommendations:

1. Sharing of Information with Controlling Promoters/Shareholders with Nominee Directors

Current regulatory provisions:

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “SEBI PIT Regulations”) provide that any communication or procurement of unpublished price sensitive information (hereinafter referred to as “UPSI”) is prohibited except in furtherance of legitimate purpose, performance of duties or discharge of legal obligations. The SEBI LODR Regulations provide for equitable treatment of all shareholders. Under the SEBI PIT Regulations and the SEBI LODR Regulations, there is no specific provision enabling information sharing by the listed entity with specific shareholders. (Click for [Detailed Provisions](#))

Recommendation and Rationale:

Equal access to information and information symmetry is the cornerstone of efficient functioning of any securities market. This, in fact, is the genesis and foundation of the market conduct laws in India and specifically the laws curbing communication of UPSI and insider trading. The law does, however, facilitate asymmetric access to UPSI for legitimate purposes, performance of duties and discharge of legal obligations. These are subjective standards requiring event-based determination.

The Committee members recognize that the business reality in India is that a majority of the listed Indian entities are controlled by a single promoter (or a set of persons acting in concert) where the lines of control, influence and information flow do not necessarily follow the formal and distinct corporate structure. This is true for Indian groups as well as MNCs. Information flow occurs through informal channels, matrix structures and through nominees. Generally, these may be for genuine business reasons, such as strategic transactions, including acquisitions, mergers, divestments, financing, etc., which often require the support of the promoter to be successful. The significance of the role played by promoters is recognized in the legal construct as well, where extant regulations impose greater responsibility on promoters as compared to other shareholders in relation to certain strategic matters such as funding. Further, in addition to promoters, there are shareholders with such strategic or financial association with the company (such as private equity investors) that they are considered significant by the company and consequently, allowed to exercise their representation and information rights through nominee directors on the board of such company.

While it is recognized that the status of a promoter is akin to a perpetual insider requiring access to information on a regular basis and the role of the nominee director is to protect the interests of the nominating shareholder (subject to the former’s fiduciary duty), the information flow to such

promoters and significant shareholders occurs in the “shadows” in the absence of a green channel legitimizing such information flow. Given the absence of a formal green channel on information access and an explicit framework recognizing a legitimate right to information of promoters and significant shareholders, all communication of UPSI to promoters and significant shareholders (including those for legitimate purposes and on a need-to-know basis) are open to regulatory scrutiny on a *post facto* basis.

Therefore, the Committee members felt that the ground realities are at substantial variance from the legal framework and this regulatory white space has so far possibly been filled in by virtue of legal interpretation (of terms such as “legitimate purpose”, “need to know”, etc.), market practice and pragmatism. Whilst derivative economic interest may suffice for some entities to constitute legitimate purpose, other companies may need clarity on each issue. This entails event-based determination based on subjective standards which not only leads to ambiguous legal interpretations of “legitimate purpose” but also brings uncertainty in the business environment and adversely impacts the ease of doing business. This has also led to creation of a grey zone which is examined only when something goes wrong.

After due consideration and detailed deliberation, the Committee members proposed that the regulatory framework should be amended to provide an enabling transparent framework regulating the information rights of certain promoters (including promoters of the promoter) and significant shareholders to reduce subjectivity and provide clarity for ease of business, along with appropriate and adequate checks and balances to prevent any abuse and unlawful exchange of UPSI i.e. to ensure information moves from one known safe container to another. The Committee recommends that this framework be optional at this stage. In addition, this framework will not impact the applicability of the SEBI PIT Regulations other than as specified.

Detailed recommendations of the Committee in relation to amendments to the current regulations are set out below.

Proposed Amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current Provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p><u>Insertion of a new Chapter IV-A:</u></p> <p style="text-align: center;">CHAPTER IV-A</p> <p style="text-align: center;">INFORMATION RIGHTS OF CERTAIN PROMOTERS AND SIGNIFICANT SHAREHOLDERS</p> <p>Definitions</p> <p>48A. For the purposes of this chapter, unless the context otherwise requires-</p> <p>(a) “agreement” means an agreement titled Access to Information Agreement entered into between the listed entity and the counterparty;</p> <p>(b) “control” shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;</p> <p>(c) “counterparty” means any person who</p> <p>(i) qualifies as promoter of the listed entity and holds, by itself or together with the members of the promoter group, shareholding of more than 25% in the listed entity;</p>

	<p>(ii) is in direct or indirect control of the person specified in sub-clause (i); or</p> <p>(iii) has nominated a director on the board of directors of the listed entity.</p> <p>(d) “Designated Person” shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;</p> <p>(e) “unpublished price sensitive information” shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.</p> <p>Information rights under the agreement</p> <p>48B. (1) A listed entity may enter into the agreement in relation to providing access to material information (including unpublished price sensitive information) to the counterparty as per the provisions of this chapter.</p> <p>(2) Under the agreement, the persons mentioned in sub-clauses (i) and (ii) of clause (c) of sub-regulation (1) of regulation 48A shall be provided access to any material information subject to the terms of the agreement, and the persons mentioned in sub-clause (iii) of clause (c) of sub-regulation (1) of regulation 48A shall be provided only such material information as is shared with the nominee director in the normal course by virtue of his directorship in the listed entity.</p> <p>Terms of the agreement</p> <p>48C. (1) The agreement shall include provisions adopting the principles set out below, without diluting them in any manner:</p> <p>(a) Counterparty’s duty to maintain strict confidentiality of all material information.</p> <p>(b) Each party to the agreement to put in place appropriate safeguards in respect of procedures for communication and procurement of material information pursuant to the agreement, including categorization of any individual representative of the counterparty who is a recipient of unpublished price sensitive information as a ‘Designated Person’ under the code of conduct formulated in accordance with sub-regulations (1) and (2) of regulation 9 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, where necessary.</p> <p>(c) The counterparty may be categorized as a ‘Designated Person’ by the listed entity under the code of conduct formulated in accordance with sub-regulations (1) and (2) of regulation 9 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, at the time of entering into or at any time during the subsistence of the agreement pursuant to an assessment by the board of directors of the listed entity, in consultation with the compliance officer, on the basis of the extent of information access provided or proposed to be provided to the counterparty.</p> <p>(d) The listed entity to have no responsibility for the accuracy and veracity of the material information shared pursuant to the agreement.</p> <p>(e) The counterparty may onward communicate the information received pursuant to the agreement only in compliance with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.</p> <p>(f) The counterparty to provide the following undertaking/acknowledgement to the listed</p>
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	<p>entity:</p> <ul style="list-style-type: none"> (i) the counterparty shall comply with and use the information received pursuant to the agreement in accordance with, the securities laws; and (ii) the access to information provided pursuant to the agreement does not undermine the independence and autonomy of the board of directors of the listed entity in any manner. <p>(g) The listed entity to have the right to withhold communication/access to material information in case the board of directors of the listed entity determines that:</p> <ul style="list-style-type: none"> (i) providing access to the material information to the counterparty is not in the interests of the listed entity, or (ii) there is a conflict of interest in the listed entity sharing the material information with the counterparty, or (iii) there has been a breach of the agreement by the counterparty and the same has been established by the board of directors of the listed entity or its committee pursuant to an investigation. <p>(h) Term and termination of the agreement shall be as follows:</p> <ul style="list-style-type: none"> (i) The term of the agreement shall not be less than one year at a time. (ii) In case the counterparty ceases to be eligible in the same category (i.e. one of the three categories as specified in clause (c) of sub-regulation (1) of regulation 48A) to which the counterparty belonged at the time of entering into the agreement, there will be an automatic termination of the agreement. (iii) The counterparty shall have the right to unilaterally terminate the agreement, provided that the obligations in respect of material information communicated or procured under the agreement shall survive such termination. (iv) The listed entity shall have the right to unilaterally terminate the agreement with the consent of majority of directors of the listed entity representing three-fourths in number, provided that the counterparty or a nominee of the counterparty on the board of directors of the listed entity shall abstain from such voting. <p>(2) In case of the termination of the agreement (other than expiry of the term of the agreement in its normal course), the parties may enter into another agreement only after a 6 month cooling off period from the date of termination. For avoidance of doubt, any renewal of the agreement in the normal course will not require any cooling off period.</p> <p>(3) Once a counterparty is categorized as a “Designated Person”, such counterparty may be permitted to be removed from being a “Designated Person” as per clause (c) of sub-regulation (1) of regulation 48C during the subsistence of the agreement pursuant to a good faith assessment undertaken by the board of directors of the listed entity in consultation with the compliance officer. In the absence of such an assessment, the said counterparty shall continue to be a Designated Person.</p> <p>(4) A listed entity that enters into the agreement shall disclose the following information or events under regulation 30:</p> <ul style="list-style-type: none"> (a) fact of entering into the agreement;
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	<p>(b) the names of the counterparty to such agreement; (c) termination of the agreement.</p> <p>(5) A listed entity may enter into the agreement after amending its articles of association to include an enabling provision authorizing the listed entity to enter into such agreements in accordance with this chapter.</p>
	<p>Schedule III Part A</p> <p>A: Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):</p> <p><u>Insertion of a new clause (16)</u></p> <p>16. The fact of entering into or termination of the agreement under regulation 48B along with the name of the counterparty.</p>

Proposed Amendments to SEBI PIT Regulations:

Current Provision in SEBI PIT Regulations	Proposed amended provision in SEBI PIT Regulations
<p>Regulation 3. Communication or procurement of unpublished price sensitive information.</p> <p>(1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purpose, performance of duties or discharge of legal obligations.</p> <p>(2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.</p>	<p>Regulation 3. Communication or procurement of unpublished price sensitive information.</p> <p>(1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purpose, performance of duties or discharge of legal obligations.</p> <p>(2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.</p> <p><u>Insertion of a new sub-Regulation (2A)</u> <u>(2A) Notwithstanding anything contained in this regulation, any unpublished price sensitive information may be communicated, provided, access is allowed to or procured, as part of and in accordance with Chapter IV-A of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, and the same shall be considered as communication or procurement of unpublished price sensitive information in furtherance of legitimate purposes.</u></p>

2. Re-classification of Promoters/Classification of Entities as Professionally Managed

Current regulatory provisions:

Presently, the Companies Act is silent on reclassification of promoters, while the SEBI LODR Regulations permit reclassification of promoters in limited circumstances.

SEBI LODR Regulations cover mainly four aspects on the subject: (i) requirement of approval of stock exchanges, (ii) reclassification when a promoter is replaced by a new promoter, (iii) reclassification where a company ceases to have any promoters (i.e. becomes professionally managed) and (iv) general conditions. The specific categories of reclassification as specified in points (ii) and (iii) require the approval of shareholders. In addition, in cases where the entity becomes professionally managed, the aggregate shareholding of a person or group along with persons acting in concert (hereinafter referred to as “PACs”) should not exceed 1%. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee is of the opinion that where there is no identifiable promoter/promoter group, the 1% threshold to be able to classify the entity as professionally managed is too low and merits an increase to 10% for the following reasons:

- from the listed entity’s perspective, if a promoter (*being sole promoter*) along with its promoter group/PAC in aggregate holds less than 10%, it is unlikely to be able to exercise *de-facto* control; and
- from the promoter’s perspective, even after ceasing to be in control, a ‘promoter’ may want to continue as a financial investor with a shareholding of more than 1%, and in such cases, should not be required to reduce his/her shareholding to 1% or lower.

In addition, the SEBI LODR Regulations also do not deal with a situation where there are multiple and distinct parties classified as promoters, and one of them wishes to be reclassified. The Committee is of the opinion that there ought to be a mechanism to enable such reclassification, to ensure that persons who may have been promoters but are no longer in day-to-day control and management and have a low shareholding, should have an “opt-out” from being classified as “promoters”. The Committee is also of the view that any reclassification would have to be done in a fair and transparent manner, keeping in mind the interests of public shareholders.

The Committee accordingly recommends the following:

- **Where there are multiple promoters/promoter groups and a specific promoter/promoter group wishes to undergo re-classification**

In case the following conditions are met:

- (i) promoters, promoter group and PACs cumulatively hold 10% or more of the aggregate shareholding and voting rights in a listed entity;
- (ii) a specific person/entity therein (classified as a “specific promoter”), its promoter group and PACs cumulatively hold less than 5% of the aggregate shareholding and voting rights; and
- (iii) the specific promoter or its promoter group or PAC are neither on the board of directors of the listed entity (“Listed Entity Board”) (including not having a nominee director) nor in the management of the listed entity and are not acting in concert with other persons forming part of the promoter and promoter group,

then, on request for reclassification being received from the specific promoter, the Listed Entity Board shall consider the same.

Post the Listed Entity Board's consent, reclassification would require shareholder approval based on the Listed Entity Board's (positive) recommendation. The specific promoter, its promoter group and PAC shall abstain from voting on such a resolution placed before the shareholders for approval.

- **Where there is only one specific promoter/ promoter group who/ which wishes to be re-classified and the entity wishes to be classified as professionally managed**

In the case of a promoter, where:

- (i) such promoter or its promoter group or PAC for that promoter is/are neither on the Listed Entity Board nor in management of the company nor has a nominee director;
- (ii) cumulative shareholding and voting rights of such promoter and its promoter group and PACs goes below 10%; and
- (iii) there are no other persons qualifying as promoters of the company,

then, on request for reclassification being received from the promoter, the Listed Entity Board shall consider the same.

Post the Listed Entity Board's consent, reclassification would require shareholder approval based on the Listed Entity Board's (positive) recommendation. All members of promoter, promoter group and PAC shall abstain from voting on such a resolution placed before the shareholders for approval.

Proposed amendments to SEBI LODR Regulations (with immediate effect):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 31A. Disclosure of Class of shareholders and Conditions for Reclassification.</p> <p>(6) Where an entity becomes professionally managed and does not have any identifiable promoter the existing promoters may be re-classified as public shareholders subject to approval of the shareholders in a general meeting.</p> <p><i>Explanation.-</i> For the purposes of this sub-regulation an entity may be considered as professionally managed, if-</p> <p>(i) No person or group along with persons acting in concert taken together shall hold more than one per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/ Depository Receipts: Provided that any mutual fund, bank, insurance company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding</p>	<p>Reg 31A. Disclosure of Class of shareholders and Conditions for Reclassification.</p> <p>(6) Where an entity becomes professionally managed and does not have any identifiable promoter then existing promoter(s) may be re-classified as public shareholders, <u>on receipt of request in this regard from the promoter(s), subject to approval of the board of directors and</u> the shareholders in a general meeting <u>in which the promoter, promoter group and persons acting in concert shall not vote.</u></p> <p><i>Explanation.-</i> For the purposes of this sub-regulation, an entity may be considered as professionally managed, if-</p> <p>(i) No person-promoter or <u>promoter</u> group along with persons acting in concert taken together shall hold more than one ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts: Provided that any mutual fund, bank, insurance</p>

<p>warrants/Depository Receipts.</p> <p>(ii) The promoters seeking reclassification and their relatives may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval.</p> <p>(iii) The promoter seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall be terminated.</p>	<p>company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts.</p> <p>(ii) The promoter(s) seeking reclassification and their relatives may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval. shall not be on the board of directors of the listed entity or in management of the listed entity or have a nominee director on the board of the listed entity.</p> <p>(iii) The promoter(s) seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall have been terminated.</p> <p><u>Insertion of a new sub-Regulation (6A):</u></p> <p><u>(6A) Any person/entity ("Specific Promoter") which is a part of promoters, promoter group or persons acting in concert with them may be re-classified as public shareholders, on receipt of request in this regard from the Specific Promoter, subject to the approval of the board of directors and approval of the shareholders in a general meeting, wherein the Specific Promoter(s), along with its promoter group and persons acting in concert shall abstain from voting on such resolution placed before the shareholders for approval, and provided the following conditions are met:</u></p> <p>(i) <u>promoters, promoter group and persons acting in concert of the listed entity cumulatively hold 10% or more of the paid-up equity capital of the entity; and</u></p> <p>(ii) <u>the Specific Promoter, its promoter group and persons acting in concert cumulatively hold less than 5% of the paid-up equity capital of the entity;</u></p> <p>(iii) <u>Specific Promoter or its promoter group or persons acting in concert (a) is not on the board of directors of the listed entity or in management of the listed entity or have a nominee director on the board of the listed entity, and (b) is not acting in concert with other persons forming part of the promoter and promoter group; and</u></p>
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	<p>(iv) <u>The Specific Promoter(s) seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements and all shareholding agreements granting special rights to such outgoing entities shall have been terminated.</u></p> <p>(7) Without prejudice to sub-regulations (5), and (6) <u>and (6A)</u>, re-classification of promoter as public shareholders shall be subject to the following conditions:</p> <p>...</p>
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3. Disclosure of Related Party Transactions

Current regulatory provisions:

Currently, the Companies Act contains provisions on disclosure of related party transactions (*hereinafter referred to as "RPTs"*) in the board's report, approval of the shareholders in certain cases, etc. Similar approval and disclosure requirements are also required in SEBI LODR Regulations. (Click for [Detailed Provisions](#))

Recommendation and rationale:

In order to strengthen transparency on related party transactions, the following is recommended:

- (a) Half yearly disclosure of RPTs on a consolidated basis, in the disclosure format required for RPT in the annual accounts as per the accounting standards, 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.
- (b) Strict penalties may be imposed by SEBI for failing to make requisite disclosures of RPTs.

In addition, the 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).

The Committee noted that penalties included in SEBI Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015 for breach of Regulation 33, will be applicable to the recommended amendments.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision on half yearly disclosure of RPTs	<p>Reg 33. Financial results. (3) The listed entity shall submit the financial results in the following manner:</p> <p><u>Insertion of a new clause (g):</u> (g) The listed entity shall submit within 30 days of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format prescribed in the relevant accounting standards for annual results, to the stock exchanges and publish the same on its website.</p>
<p>Reg. 34. Annual Report (3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations</p>	<p>Reg. 34. Annual Report (3) The annual report shall include following: (a) <u>disclosures of transactions of the listed entity with any person or entity belonging to the promoter/promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results;</u> (b) contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations</p>
<p>Reg. 2(1) Definitions</p> <p>(zb)“related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:</p> <p>Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);</p>	<p>Reg. 2(1) Definitions</p> <p>(zb)“related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:</p> <p><u>Insertion of a new proviso:</u> <u>Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall also be a related party:</u></p> <p>Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);</p>

4. Approval of Related Party Transactions

Current regulatory provisions:

The Companies Act provides that a shareholder cannot vote to approve a contract or transaction which may be entered into by a company if such a shareholder is a related party to that transaction. However, SEBI LODR Regulations have a blanket restriction on related parties voting on any resolution pertaining to a material related party transaction. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee deliberated upon the gap in the legal framework wherein the Companies Act allowed related parties to vote on (albeit not in favour of) a related party transaction while the SEBI LODR Regulations require such parties to abstain from voting. The Committee is of the view that similar to the Companies Act, the SEBI LODR Regulations may be amended to allow related parties to cast a negative vote, as such voting cannot be considered to be in conflict of interest.

Proposed amendments to SEBI LODR Regulations (with immediate effect):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 23. Related party transactions</p> <p>(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.</p>	<p>Reg 23. Related party transactions</p> <p>(4) All material related party transactions shall require approval of the shareholders through resolution and no the related parties shall abstain from voting <u>vote to approve on</u> such resolutions whether the entity is a related party to the particular transaction or not.</p>
<p>(7) For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.</p>	<p>(7) For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting <u>not vote to approve the relevant transaction</u> irrespective of whether the entity is a party to the particular transaction or not.</p>

5. Royalty and Brand Payments to Related Parties

Current regulatory provisions:

Currently, there are no specific provisions in the SEBI LODR Regulations pertaining to payments made pertaining to brand and royalty to related parties.

Recommendation and rationale:

A number of companies make payment towards royalty/brand usage. While royalty payments are recognized as there is value in brand strength and product technology, which drive sales or margins, shareholders must comprehend the terms and conditions of such payouts. Therefore, the Committee encourages all companies to make better disclosures on the value a company derives from a brand or technology for which it has agreed to pay royalty, brand, or technical fees to the parent company/promoters. Where royalty payout levels are high and exceed 5% of consolidated revenues, the Committee believes the terms of conditions of such royalty must require shareholder approval.

The Committee therefore recommends that payments made by listed entities with respect to brands usage/royalty amounting to more than 5% of consolidated turnover of the listed entity may require prior approval from the shareholders on a “majority of minority” basis. This sub-limit of 5% will be considered within the overall 10% limit to determine material related party transactions.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 23. Related party transactions (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:</p> <p>Explanation.- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.</p>	<p>Reg 23. Related party transactions (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:</p> <p>Explanation.- (1) A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.</p> <p><u>Insertion of a new sub-Regulation (2):</u> <u>(2) Notwithstanding the above, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds five percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.</u></p>

6. Remuneration to Executive Promoter Directors

Current regulatory provisions:

While the Companies Act prescribes a ceiling on the compensation that can be paid to directors, there are no specific provisions in the SEBI LODR Regulations on maximum remuneration payable to executive promoter directors. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee noted various cases of disproportionate payments made to executive promoter directors as compared to other executive directors. It is felt that this issue should be subjected to greater shareholder scrutiny. The Committee recommends that shareholder approval by special resolution should be required if the total remuneration paid:

- a) to a single executive promoter-director exceeds Rs. 5 crore or 2.5% of the net profit, whichever is higher; or
- b) to all executive promoter-directors exceeds 5% of the net profits.

It is clarified that net profits should be calculated under Section 198 of the Companies Act. The Committee also recommends that SEBI could review the status in future based on experience gained.

Proposed amendments to SEBI LODR Regulations (w.e.f. FY starting April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision on minimum compensation.	<p>Reg 17. Board of Directors</p> <p><u>Insertion of a new sub-clause (e) under sub-Regulation (6):</u></p> <p>(e) The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if:</p> <p>(i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or</p> <p>(ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:</p> <p>Provided that, the approval of the shareholders under this provision shall be valid only till expiry of term of such director.</p> <p>Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.</p>

7. Remuneration of Non-executive Directors

Current regulatory provisions:

In case of non-executive directors, the Companies Act requires the approval of shareholders for any remuneration payable to such directors exceeding 1% of the net profits in case there is a managing director or whole time director or manager and 3% in other cases. As per SEBI LODR Regulations, the board is required to recommend all fees and compensation to be paid to non-executive directors. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee deliberated upon managerial remuneration based on the data available and observed that certain non-executive directors (generally promoter directors) were receiving disproportionate remuneration from the total pool available vis-à-vis all other non-executive directors.

Based on its deliberations, the Committee recommends that 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. However, it is clarified that the promoter should also be allowed to vote.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	<p>Reg 17. Board of Directors</p> <p>Insertion of new sub-clause (ca) under sub-regulation 6</p> <p>(ca) The approval of shareholders shall be obtained every year in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.</p>

8. Materiality Policy

Current regulatory provisions:

Currently, SEBI LODR Regulations require listed entities to formulate a policy on materiality of related party transactions and on dealing with related party transactions. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee considered that while some companies have formulated their materiality policy, they have not spelt out any threshold limits for determining materiality and therefore, enforcement in such cases becomes difficult. It was therefore decided that clear threshold limits, as considered appropriate by the board of directors may be required to be disclosed in the materiality policy. The Committee also recommends that such materiality policy should be reviewed and updated at least once every three years.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Regulation 23: Related party transactions.</p> <p>(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:</p>	<p>Regulation 23: Related party transactions.</p> <p>(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions <u>including clear threshold limits duly approved by the board of directors.</u></p> <p><u>Insertion of a new sub-Regulation (1A):</u></p> <p><u>(1A) Such policy on materiality shall be reviewed by the board of directors at least once every three years and updated accordingly.</u></p>

CHAPTER VI: DISCLOSURES AND TRANSPARENCY

Disclosure and transparency underpin good governance and the efficient functioning of the markets. A corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, business performance, strategic shifts, ownership, and governance of the company.

Regulations in India, have driven a large part of the disclosure and transparency construct, especially for listed entities. While companies, in general, comply with the regulatory minimum, the Committee encourages boards and managements to view disclosure and transparency as a means to build trust with stakeholders and to proactively disclose material information that may impact decision-making variables.

Accordingly, the Committee makes the following recommendations:

1. Submission of Annual Reports

Current regulatory provisions:

Currently, under the Companies Act read with Companies (Accounts) Rules, 2014, for listed entities, the financial statements may be sent *inter-alia* by electronic mode to such members (holding demat securities) whose email ids are registered with the depository for communication purposes, and by dispatch of physical copies in all other cases.

However, under SEBI LODR Regulations, soft copies of the full annual report are required to be sent to all those shareholder(s) who have registered their email address(es) for the purpose, hard copies of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act or rules made thereunder to those shareholder(s) who have not so registered and hard copies of full annual reports to those shareholders, who request for the same. Further, under SEBI LODR Regulations, the annual report is required to be submitted to the stock exchange within 21 working days of it being approved and adopted in the AGM. (Click for [Detailed Provisions](#))

Recommendation and rationale:

In the interest of environmental responsibility and in view of increased digital access, it is recommended that only a soft copy of the annual report should be given to all shareholders who have registered their email addresses either with the company or with the depository, unless the shareholder specifically asks for a physical copy. Only in case the shareholder has not provided his/her e-mail address, should he/she be sent a hard copy.

The Committee also felt that there is a need to consider making mobile numbers and email addresses compulsory for demat accounts. The Committee is also of the view that SEBI may consider taking up with the depositories the linking of all demat accounts with Aadhar, wherein depositories may be permitted to pick up information like bank account details, telephone numbers and email addresses from the Aadhar database.

Further, the Committee is of the opinion that requiring disclosure of annual report to the exchanges within 21 working days after the AGM results in delayed disclosures to the shareholders. Therefore, it is recommended that the annual report may be disclosed by the listed entity to the stock exchanges and on the website in the following manner:

- Copy of the annual report sent to the shareholders along with the notice of the AGM to be disclosed 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 34. Annual Report. (1) The listed entity shall submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013.</p> <p>Reg 36. Documents & Information to shareholders. (1) The listed entity shall send the annual report in the following manner to the shareholders: (a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) for the purpose;</p>	<p>Reg 34. Annual Report. (1) The listed entity shall submit the annual report to the stock exchange <u>and publish on its website: within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013.</u></p> <p>(a) <u>Copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;</u> (b) <u>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) to be sent no later than 48 hours after the annual general meeting.</u></p> <p>Reg 36. Documents & Information to shareholders. (1) The listed entity shall send the annual report in the following manner to the shareholders: (a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) <u>for the purpose either with the listed entity or with any depository.</u></p>

2. Disclosures Pertaining to Holders of Depository Receipts

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or SEBI LODR Regulations on requiring disclosures of holders of Depository Receipts (ADRs/GDRs) issued by listed entities.

Recommendation and rationale:

The Committee believes that transparency in understanding a company’s holding structure and voting rights requires disclosure of the holders of the depository receipts and not just the name of the overseas depository that has issued the depository receipts. The Committee recognizes that the member of the listed entity for the purpose of depository receipts issuance is the overseas depository. However, the Committee notes that the information of holders of the depository receipts is available with the overseas depository. Therefore, the Committee recommends that:

- Indian listed entity should obtain details of holders of any global depository receipts (as defined under the Companies Act, which includes American Depository Receipts) issued by such entity from the overseas depository at least on a monthly basis.
- Based on the information shared by the overseas depository, the listed entity shall disclose details of such holders of global depository receipts who hold more than 1% shareholding of the

entity to the stock exchange as a part of the disclosure on shareholding pattern on a quarterly basis.

This would enable transparency in shareholding and consequently in voting by such shareholders.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 31. Holding of specified securities and shareholding pattern</p> <p><u>Insertion of new sub-regulations(1A) and (1B):</u></p> <p>(1A) The statement of holding of securities and shareholding pattern as specified in clause (1) above shall include details of names of holders of global depository receipts issued by the listed entity, if any, holding more than 1% of the total shareholding of the entity.</p> <p>(1B) The listed entities shall obtain the information on holders of global depository receipts issued by the entity, if any, from the overseas depository at least once every month.</p>

3. Disclosures Pertaining to Credit Rating

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act with respect to disclosure of credit ratings. SEBI LODR Regulations require the disclosure of revisions in credit ratings. (Click for [Detailed Provisions](#))

Recommendation and rationale:

Currently, listed entities are required to disclose the changes in credit rating for different instruments from time to time to the stock exchanges as and when changes happen.

The Committee is of the opinion that an updated list of all credit ratings obtained by the listed entity be made available at one place, which would be very helpful for investors and other stakeholders.

It is therefore recommended that the 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. In addition, SEBI may consider requiring the credit rating agencies and the stock exchanges to set up a mechanism by which the ratings may be sent directly from the credit rating agencies to the stock exchanges.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 46. Website.</p> <p>(2) The listed entity shall disseminate the following information on its website:</p> <p><u>Insertion of a new sub-clause (r):</u></p>

	<p>(r) 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.</p> <p>Schedule V: Annual Report C. Corporate Governance Report The following disclosures shall be made in the section on the corporate governance of the annual report. ... (9) General shareholder information: ... <u>Insertion of a new sub-clause (g)</u> (g) List of all credit ratings obtained by the entity along with any revisions thereto during the relevant financial year, for all debt instruments of such entity or any fixed deposit programme or any scheme or proposal of the listed entity involving mobilization of funds, whether in India or abroad.</p>
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4. Searchable Formats of Disclosures

Current regulatory provisions:

Currently, there is no specific provision in Companies Act or SEBI LODR Regulations with respect to ‘searchability’ of the disclosures.

Recommendation and rationale:

While several disclosures (both event based and periodic) have been mandated under applicable law, certain concerns were raised on the manner of presentation thereof by listed entities. Specifically, information shared is often not in “searchable” formats (i.e. if an investor wishes to search for a particular word or a phrase in the voluminous disclosures, he/she is unable to do so due to the formats of the documents, especially scanned documents), substantially constraining the ease of review.

Accordingly, it is recommended that 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 36. Documents & Information to shareholders.</p> <p><u>Insertion of a new sub-Regulation (4):</u> (4) All disclosures made in soft copy by the listed entity shall be in XBRL format to the stock exchanges and in any searchable format on its website.</p>

5. Harmonization of Disclosures

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or SEBI LODR Regulations with respect to harmonized/standardized dissemination of disclosures made by the listed entities across websites of stock exchanges.

Recommendation and rationale:

The Committee felt that in the absence of such a mandated, harmonized dissemination of disclosures, there could be a risk of disclosure arbitrage. In addition, multiple disclosure formats in different exchanges as well as to the MCA place an unnecessary compliance burden on the listed entities without any consequent benefit.

Therefore, it is recommended that:

- The stock exchanges shall collectively harmonise the formats of the disclosures made by the listed entities on their respective websites no later than April 1, 2018.
- The stock exchanges shall move to disclosures by listed entities on exchange platforms in XBRL format in latest available taxonomy no later than April 1, 2018.
- Further, a common filing platform may be devised on which a listed entity may submit all filings, which could then be disseminated to all exchanges simultaneously. The exchanges shall introduce such a platform in consultation with SEBI by April 1, 2018.
- The disclosures filed with the exchanges may, as far as possible, be harmonized with the filings made to MCA.

Proposed amendments to SEBI LODR Regulations:

No amendments may be required to SEBI LODR Regulations. However, SEBI may consider issuance of a circular to the stock exchanges in this regard.

6. Disclosures Pertaining to Analyst/Institutional Investor Meets

Current regulatory provisions:

Currently, SEBI LODR Regulations require the disclosure of schedules for analyst or institutional investor meetings and presentations made by the listed entity to analysts or institutional investors on its website and to the stock exchange. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee was of the view that the disclosure of schedules of analyst/institutional investor meetings does not serve any practical purpose, and there have been instances of its misuse. Hence, the Committee recommended that the disclosure of schedules of analyst/institutional investor meetings may not be required. To clarify, the information to be shared at such meetings has to be strictly in compliance with the SEBI PIT Regulations.

Proposed amendments to SEBI LODR Regulations (with immediate effect):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 46. Website (2) The listed entity shall disseminate the following information on its website: (o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;</p> <p>SCHEDULE III , PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s): A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30): 15. Schedule of Analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors;</p>	<p>Reg 46. Website (2) The listed entity shall disseminate the following information on its website: (o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;</p> <p>SCHEDULE III , PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s): A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30): 15. Schedule of Analyst or institutional investor meet and p Presentations on financial results made by the listed entity to analysts or institutional investors;</p>

Appropriate modifications may also be made to SEBI circular No. CIR/CFD/CMD/4/2015 dated Sep 9, 2015.

7. Disclosures of Key Changes in Financial Indicators

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or SEBI LODR Regulations requiring an entity with listed equity shares to report key changes in certain indicators and explanations for the same, other than general disclosures in the Management Discussion and Analysis (MD&A) section of the annual report. (Click for [Detailed Provisions](#))

Recommendation and rationale:

While the periodic disclosure of financial information and disclosure of material events/information is mandated for listed entities, the Committee considered that in addition to the same, disclosures of significant changes in key financial indicators along with reasons thereof would enable the investors to further comprehend the company's business and financial performance.

Accordingly, it is recommended that all listed entities may be required to disclose in the section on MD&A in the Annual report, certain key financial ratios (or sector-specific equivalent ratios), as applicable, wherever there is a change of 25% or more in a particular financial year, along with detailed explanations thereof, including:

1. Debtors Turnover
2. Inventory Turnover
3. Interest Coverage Ratio

4. Current Ratio
5. Debt Equity Ratio
6. Operating Profit Margin (%)
7. Net Profit Margin (%)

In addition, the Committee recommends that the listed entity shall disclose any change in Return on Net Worth along with a detailed explanation thereof irrespective of the percentage of change in the financial year under the same section.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>SCHEDULE V: ANNUAL REPORT <u>B. Management Discussion and Analysis:</u> 1. This section shall include discussion on the following matters within the limits set by the listed entity's competitive position:</p> <p><u>Insertion of new sub-clause (i) and (j):</u> (i) Details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:</p> <ul style="list-style-type: none"> (i) Debtors Turnover (ii) Inventory Turnover (iii) Interest Coverage Ratio (iv) Current Ratio (v) Debt Equity Ratio (vi) Operating Profit Margin (%) (vii) Net Profit Margin (%) <p>or sector-specific equivalent ratios, as applicable.</p> <p>(j) Details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.</p>

8. Utilisation of Proceeds of Preferential Issue and Qualified Institutional Placement

Current regulatory provisions:

Currently, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (*hereinafter referred to as "SEBI ICDR Regulations"*) require periodic disclosures on utilization of issue proceeds in case of public issues. However, these disclosures are not required for funds raised by way of preferential allotments and QIPs. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee felt that for better transparency, appropriate disclosures may be required on utilisation of proceeds of preferential issues and QIPs till the time such proceeds are utilised.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	<p>Schedule V: Annual Report C. Corporate Governance Report (10) Other Disclosures</p> <p><u>Insertion of a new clause (h):</u></p> <p>(h) Utilization of funds raised through preferential allotment or QIPs undertaken in the relevant financial year, until such funds are fully utilized</p>

9. Disclosures in Valuation Reports in Schemes of Arrangement

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or SEBI LODR Regulations pertaining to disclosures of the basis of the valuation arrived at in valuation reports or requirement of disclosure of assets and liabilities of the relevant entities which are part of, or subject to, the schemes of arrangement.

Recommendation and rationale:

The Committee noted that it has been observed that there are divergent market practices of disclosures made in valuation reports and the schemes of arrangement involving listed entities. This may lead shareholders not having sufficient information to make an informed decision.

Therefore, in the interest of full disclosures to the investors, it is recommended that:

- SEBI may consider issuing guidelines for overall improvement in standards of information in the valuation reports that are included as part of schemes of arrangement disclosures.
- Specific disclosures on assets, liabilities and turnover of the entities involved should be disclosed in the valuation reports on schemes of arrangement.

Proposed amendments to SEBI LODR Regulations:

No amendments may be required to SEBI LODR Regulations. However, SEBI may consider amending its circular dated March 10, 2017 on Schemes of Arrangement by listed entities in this regard.

10. Disclosures Pertaining to Directors

Current regulatory provisions:

Currently, SEBI LODR Regulations provide that at the time of the appointment of a director, the names of listed entities in which the proposed director holds directorship and membership of the committees are to be disclosed to the shareholders.

Recommendation and rationale:

The Committee felt that for better transparency, it is recommended that 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p><u>Schedule V: Annual report</u> C. Corporate Governance Report: (2) Board of directors: (c) number of other board of directors or committees in which a directors is a member or chairperson;</p>	<p><u>Schedule V: Annual report</u> C. Corporate Governance Report: (2) Board of directors: (c) number of other board or committees in which a director is a member or chairperson, <u>giving separately the names of the listed entities where the person is a director and category of directorship;</u></p>

11. Disclosures Pertaining to Disqualification of Directors

Current regulatory provisions:

Currently, there is no provision under the Companies Act or the SEBI LODR that requires a confirmation on a regular basis of the directors of the company not having been barred to act as such by any regulatory authorities.

Recommendation and rationale:

The Committee felt that investors are often unaware whether the directors of the company have been debarred from acting as directors of a company. Therefore, the Committee recommended that disclosures on this basis be made in the annual report as certified by a practising company secretary.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>No specific provision.</p>	<p><u>Schedule V: Annual report</u> C. Corporate Governance Report: (10) Other Disclosures: <u>Insertion of a new sub-clause (h):</u> (h) 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.</p>

12. Disclosures on Website

Current regulatory provisions:

Currently, as per Regulation 46 of the SEBI LODR Regulations, a listed entity is required to maintain a functional website containing the basic information about itself. (Click for [Detailed provisions](#))

Recommendation and rationale:

The Committee recommended that companies shall maintain a separate section for investors on its website and provide all the information mandated under Regulation 46 of SEBI LODR Regulations in a separate section, to ensure ease of availability and access of pertinent information in one place to investors and regulators alike.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Regulation 46: Website. (2) The listed entity shall disseminate the following information on its website: 	Regulation 46: Website. (2) The listed entity shall disseminate the following information on its website <u>under a separate section:</u>

13. Disclosures of Subsidiary Accounts

Current regulatory provisions:

Currently, proviso to Section 136(1) of the Companies Act requires every company having a subsidiary to place separate audited accounts in respect of each of its subsidiary on its website, if any. Further, as per Regulation 46 of the SEBI LODR Regulations, a listed entity is required to maintain a functional website containing the certain specified information. (Click for [Detailed Provisions](#))

Recommendation and rationale:

In the spirit of transparency and ease of reference for public shareholders of listed entities, the Committee recommends that 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Regulation 46: Website. (2) The listed entity shall disseminate the following information on its website: 	Regulation 46: Website. (2) The listed entity shall disseminate the following information: <u>(r) separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to <i>inter alia</i> consider accounts of that financial year.</u>

14. Disclosures on Long-term and Medium-term Strategy

Current regulatory provisions:

Currently, there is no specific provision on disclosure of medium-term and long-term strategy under the Companies Act, 2013 or SEBI LODR Regulations.

Recommendation and rationale:

The Committee recommends that in order to provide for disclosures pertaining to strategy of the entity, especially the medium-term and long-term strategy (*in line with the Committee's recommendation that boards devote more time on strategy*), a guidance may be issued by SEBI to listed entities to disclose their medium and long-term strategy in their annual reports under the

MD&A section. In addition, entities should articulate a clear set of long-term metrics specific to the company's long term strategy to allow for appropriate measurement of progress. However, each entity may define its own time frame with respect to medium and long-term since it would vary across entities/sectors. Some examples of strategy and metrics in this regard that may be considered are included in **Annexure 5**.

Further, SEBI may review the status in future based on experience gained.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	<p>Schedule V: Annual Report: B. Management Discussion and Analysis: <u>Insertion of a new sub-clause (2)</u> (2) Under this section, the listed entity may also disclose, 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.</p>

15. Prior Intimation of Board Meeting to Discuss Bonus Issue

Current regulatory provisions:

Currently, SEBI LODR Regulations require prior intimation to the stock exchange about the meeting of the board of directors in which a proposal for the declaration of certain items including bonus shares is going to be discussed. However, where the declaration of bonus by the listed entity is not on the agenda of the meeting of board of directors, prior intimation is not required to be given to the stock exchanges. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee felt that in view of the price sensitive nature of bonus issues, advance notice for consideration of bonus issue by the board should be required to be submitted to stock exchanges. Accordingly, it is recommended that the proviso to Regulation 29 in the SEBI LODR Regulations may be dropped.

Proposed amendments to SEBI LODR Regulations (with immediate effect):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>29. Prior intimations (1) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered: (f) the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers: Provided that in case the declaration of bonus by the listed entity is not on the agenda of the meeting</p>	<p>29. Prior intimations (1) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered: (f) the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers: Provided that in case the declaration of bonus by the listed entity is not on the agenda of the meeting</p>

of board of directors, prior intimation is not required to be given to the stock exchange(s).	of board of directors, prior intimation is not required to be given to the stock exchange(s).
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16. Views of Committees Not Accepted by the Board of Directors

Current regulatory provisions:

Several provisions of the Companies Act and the SEBI LODR Regulations require the committees of the board (including the audit committee and the nomination and remuneration committee) to consider and recommend certain matters to the board of directors. However, except for Section 177(8) of the Companies Act (in relation to the Audit Committee), there is no provision for disclosure to shareholders if the recommendations of the relevant committee are not accepted by the board. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The committees constituted by the board usually provide their recommendations to the board of directors in relation to relevant matters falling within their terms of reference, after due consideration. The final decision, except in certain instances, (on whether to accept the recommendation or not) lies with the board of directors. However, the Committee is of a view that if the board of directors chooses not to accept the recommendations of the statutory committees of the board, the same should be disclosed to shareholders on an annual basis.

It is clarified that the above disclosure requirement pertains to matters which require a recommendation of the committee for the approval of the board (or submission by the committee for approval of the board), and will not affect matters that require prior approval of the relevant committee (for e.g., approval of related party transactions by the audit committee).

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Schedule V: Annual Report</p> <p><u>(C) Corporate Governance Report:</u> The following disclosures shall be made in the section on the corporate governance of the annual report.</p> <p>(2) Other Disclosures:</p> <p>.....</p> <p><u>Insertion of a new sub-clause (h):</u></p> <p><u>(h) where the board had not accepted any recommendation of any committee of the board which is mandatorily required, in the relevant financial year, the same to be disclosed along with reasons thereof.</u></p>

17. Commodity Risk Disclosures

Current regulatory provisions:

SEBI LODR Regulations require the disclosure of commodity price risk and commodity hedging activities by the listed companies in the corporate governance section of the annual report. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee noted the lack of uniformity in disclosures with respect to the commodity risks and hedging activities by listed companies. In order to benefit the shareholders and to bring further clarity in disclosures to be made in the annual reports by the listed companies, the Committee is of the view that the listed companies should disclose their risk management activities during the year, including their commodity hedging positions in a more transparent, detailed and uniform manner for easy understanding and appreciation by the shareholders.

The Committee believes that for the consistent implementation of the requirements of SEBI LODR Regulations regarding disclosure of commodity risks and other hedging activities across listed companies, a detailed reporting format along with the periodicity of the disclosures may be outlined by SEBI which would depict the commodity risks they face, how these are managed and also the policy for hedging commodity risk, etc. followed by the company for the purpose of disclosures in the annual report.

Proposed amendments to SEBI LODR Regulations:

No amendment to the SEBI LODR Regulations required. SEBI should consider issuing a circular in this regard.

CHAPTER VII: ACCOUNTING AND AUDIT RELATED ISSUES

Financial statements are the primary document that stakeholders (including investors, lenders, customers, and suppliers) rely upon. These statements are intended and expected to depict the true nature of the business, and foretell its longevity. The Committee acknowledges that a good audit and appropriate levels of disclosure are pre-requisites for reliable financial statements. After careful consideration, the Committee makes the following recommendations with a view to improving disclosures and enhancing the quality of financial statements and audit.

1. Audit Qualifications

Current regulatory provisions:

Currently, under the Companies Act, or SEBI LODR Regulations, there is no restriction on an auditor qualifying the accounts of a company. However, both the Companies Act and SEBI LODR Regulations and circulars issued thereunder require detailed disclosures in this regard. Specifically, the SEBI LODR Regulations require quantification of the audit qualification by the auditor and if not possible, the management shall make an estimate which is to be reviewed by the auditor. (Click for [Detailed Provisions](#))

Recommendation and rationale:

The Committee noted that several jurisdictions across the world proscribe a listed company from filing a set of financial results/statements on which the auditor has issued a qualified opinion. In these jurisdictions, financial statements with audit reports that express a qualified or “except for” opinion due to a departure from generally accepted accounting principles (GAAP), or state that the auditor is disclaiming an opinion on the financial statements for any reason, or state that the financial statements taken as a whole are not presented fairly in conformity with GAAP, are not considered sufficient to meet the requirements of the listing regulations. These jurisdictions consider that financial statements not in conformity with GAAP are presumed to be inaccurate or misleading, notwithstanding explanatory disclosures in footnotes or in the auditor’s report. Detailed deliberations were held as to whether it is the right time to consider moving in the direction of not permitting filing of financial results with audit qualifications in India as well.

After due deliberation, the Committee concurred that it may be early to entirely proscribe the filing of financial results with audit qualifications in India. Therefore, the Committee recommends that a move may be made to strengthen disclosures by requiring quantification of audit qualifications to be mandatory, with the exception being only for matters like going concern or sub-judice matters. In such an instance, the management will be required to provide reasons, which will be reviewed by the auditors and reported accordingly.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Schedule IV, Part A: Disclosure in Financial Results The listed entity shall disclose the following while preparing the financial results:- B. If the auditor has expressed any modified opinion(s) in respect of audited financial results submitted or published under this para, the listed entity shall disclose such modified opinion(s) and	Schedule IV, Part A: Disclosure in Financial Results The listed entity shall disclose the following while preparing the financial results:- B. If the auditor has expressed any modified opinion(s) in respect of audited financial results submitted or published under this para, the listed entity shall disclose such modified opinion(s) and

<p>cumulative impact of the same on profit or loss, net worth, total assets, turnover/total income, earning per share, total expenditure, total liabilities or any other financial item(s) which may be impacted due to modified opinion(s), while publishing or submitting such results.</p> <p>BA. If the auditor has expressed any modified opinion(s), the management of the listed entity has the option to explain its views on the audit qualifications and the same shall be included in the Statement on Impact of Audit Qualifications (for audit report with modified opinion).</p> <p>BB. With respect to audit qualifications where the impact of the qualification is not quantifiable:</p> <ol style="list-style-type: none"> i. The management shall make an estimate and the auditor shall review the same and report accordingly; or ii. If the management is unable to make an estimate, it shall provide the reasons and the auditor shall review the same and report accordingly. <p>The above shall be included in the statement on impact of audit qualifications (for audit report with modified opinion)</p>	<p>cumulative impact of the same on profit or loss, net worth, total assets, turnover/total income, earning per share, total expenditure, total liabilities or any other financial item(s) which may be impacted due to modified opinion(s), while publishing or submitting such results.</p> <p>BA. If the auditor has expressed any modified opinion(s), the management of the listed entity has the option to explain its views on the audit qualifications and the same shall be included in the Statement on Impact of Audit Qualifications (for audit report with modified opinion).</p> <p>BB. With respect to audit qualifications where the impact of the qualification is not quantifiable:</p> <ol style="list-style-type: none"> i. The management shall make an estimate and the auditor shall review the same and report accordingly; or ii. If the management is unable to make an estimate, it shall provide the reasons and the auditor shall review the same and report accordingly. <p>The above shall be included in the statement on impact of audit qualifications (for audit report with modified opinion)</p> <p>i. The management shall make an estimate and the auditor shall review the same and report accordingly; or <u>Provided that the management may be permitted to not provide estimate on matters like going concern or sub-judice matters; in which case, the management shall provide the reasons and the auditor shall review the same and report accordingly.</u></p> <p>ii. If the management is unable to make an estimate, it shall provide the reasons and the auditor shall review the same and report accordingly.</p> <p>The above shall be included in the statement on impact of audit qualifications (for audit report with modified opinion)</p>
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Proposed modifications to SEBI Circular No. CIR/CFD/CMD/56/2016 dated May 27, 2016:

Current provision in SEBI circular	Proposed modified provision in SEBI circular
<p>4.4. Where the impact of the audit qualification is not quantified by the auditor, the management shall make an estimate. In case the management is unable to make an estimate, it shall provide reasons for the same. In both the scenarios, the auditor shall review and give the comments.</p>	<p>4.4. Where the impact of the audit qualification is not quantified by the auditor, the management shall make an estimate. In case the management is unable to make an estimate, it shall provide reasons for the same. In both the scenarios, the auditor shall review and give the comments.</p> <p><u>(The clause is recommended to be deleted since the aforesaid amendments to SEBI LODR Regulations incorporate the necessary requirements.)</u></p>

2. Independent External Opinion by Auditors

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or the SEBI LODR Regulations enabling an auditor to obtain an independent external opinion in relation to the audit/limited review at the cost of the listed entity.

Recommendation and rationale:

It is felt that in cases where the auditor does not concur with the opinion of an expert (e.g. lawyers, valuers, actuaries etc.) appointed by the listed entity, the auditors should have a right to obtain independent external opinions as deemed fit, at the cost of the listed entity. This would boost the independence of the auditors.

Therefore, it is recommended that SEBI LODR Regulations should be amended, providing a clear right to an auditor to independently obtain external opinions from experts.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 33. Financial results. <u>Insertion of a new sub-regulation (7):</u> (7) In case an auditor is not satisfied with the views or opinions of the management or of an expert whose services have been availed by the management, the auditors shall have the right to independently obtain external opinions from experts appointed by the auditors themselves and any expenditure incurred for such purpose shall be borne by the listed entity.</p>

3. Group Audits

Current regulatory provisions:

Currently, there is no specific provision with respect to group audits under the Companies Act or SEBI LODR Regulations.

However, provisions for group audits are covered under the Standards on Auditing issued by ICAI which permit the holding company auditor to place reliance on the audit performed by the auditor of the subsidiaries and provide an audit opinion on the consolidated financial statements based on the audit report provided by the other auditors.

The principal auditor may, depending upon circumstances, decide that supplemental tests of the records or the financial statements of the subsidiary companies are necessary. When considered necessary, the principal auditor may require the other auditor to answer a detailed questionnaire regarding matters on which the principal auditor requires information for discharging his duties.

Recommendation and rationale:

The Committee noted that several international jurisdictions that have adopted the International Standards on Auditing (ISA) are governed by the requirements of ISA 600 which do not permit a division of responsibility between auditors of the holding company and its subsidiaries. Therefore, in such cases, the auditor of the holding company is responsible for the direction, supervision and performance of the group audit engagement.

The Committee noted that auditing standards in India (SA 600) differ from the International Standards on Auditing by allowing the holding company auditor to place reliance on the audit performed by the auditor of the subsidiaries and provide an audit opinion on the consolidated financial statements based on the audit report provided by the other auditor. While certain provisions as specified above permit auditors of the holding company to decide supplemental tests/require the other auditor to answer a detailed questionnaire, such an auditor is not completely

responsible for the direction, supervision and performance of the group audit engagement as in other jurisdictions. It was also noted that this was the only provision in which Indian auditing standards differed from their international counterpart.

It was therefore deliberated as to whether there is a need to introduce such a requirement in India in line with international standards, which will require the auditor of the holding company to take full responsibility for the audit opinion in the consolidated financial statements in respect of Indian subsidiaries and not permit a division of responsibility between the auditor of the holding company and the other auditor in the consolidated auditors' report.

Various concerns which may arise upon the introduction of such a requirement were noted by the Committee. For instance, if such a requirement is introduced, inevitably, the same auditor would be engaged for all subsidiaries as well in most of the cases and therefore, may lead to concentration. In addition, there may not be alignment in the rotation periods of auditors of the holding company and its subsidiaries due to the respective periods of appointment or regulatory requirements (e.g. RBI requires auditors to be rotated every four years with a cooling off period of six years whereas the Companies Act requires rotation every five years). However, the Committee believes that a move needs to be made to align Indian auditing standards with global best practices.

Therefore, as a step in the right direction, but keeping in mind the concerns that may arise, it is recommended that for listed entities in India, the auditor of the holding company should be made responsible for the audit opinion of all material unlisted subsidiaries.

Proposed amendments to SEBI LODR Regulations:

No amendment may be required to the SEBI LODR Regulations. However, SEBI may consider recommending to the ICAI to introduce amendments to the relevant accounting/auditing standards to implement the above.

4. Quarterly Financial Disclosures

Current regulatory provisions:

While the Companies Act does not require a company to submit quarterly financial results, SEBI LODR Regulations have detailed provisions for the submission of quarterly financial results by a listed entity to the stock exchanges. (Click for [Detailed Provisions](#))

Recommendation and rationale:

In order to strengthen periodic financial disclosures, the following recommendations are made:

- (i) Consolidated financial results: Currently, the Companies Act and SEBI LODR Regulations mandate the submission of consolidated financial statements by a listed entity every financial year. However, SEBI LODR Regulations do not mandate that a listed entity submit consolidated financial results on a quarterly basis. In the interest of greater transparency at the group level, it is recommended that that disclosure of consolidated financial statements should be made mandatory for all listed entities on a quarterly basis. It is also clarified that standalone results shall continue to be required to be published. The Committee also believes that in due course, SEBI may, based on experience gained, consider requiring only consolidated accounts to be published.
- (ii) Cash flow statement: It is recommended that publishing a cash flow statement on a half-yearly basis should be made mandatory for all listed entities for the following reasons:

1. It will provide timely information necessary to evaluate the operational, financial or investment decisions of the company. Such information may not be available in the quarterly financial results.
 2. Cash flow statements can give investors meaningful information regarding business development directions and information on the seasonality of some activities, collection efficiency, quality of revenue or asset liquidation efforts, etc. which may not be available in the quarterly financial results.
 3. Overall, half-yearly cash flow statements will enhance levels of transparency by providing quality and prompt financial and accounting information as well as contribute to the efficient management of the company and assessment of value driver potential.
- (iii) Audit/limited review of quarterly financial results: The Committee believes that the audit/limited review of the listed entity does not often take into account a substantial portion of the group business since the accounts of the underlying subsidiaries often do not undergo limited review/audit. It is therefore recommended that for all listed entities, for every quarter, financial information of the group, accounting for at least 80% of each of the consolidated revenue, assets and profits, respectively, should have undergone limited review/audit.
- (iv) Last quarter financial results: Currently, SEBI LODR Regulations state that the listed entity shall submit the audited financial results in respect of the last quarter along with the results for the entire financial year, with a note stating that the figures of the last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures up to the third quarter of the current financial year. The Committee believes that any material adjustments made in the results of the last quarter which pertain to earlier periods should be disclosed by the listed entity as a note in the financial results.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
<p>Reg 33. Financial results. (3) The listed entity shall submit the financial results in the following manner:</p> <p>(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.</p> <p>(b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following:</p> <p>(i) the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year. Provided that this option shall also be applicable to listed entity that is</p>	<p>Reg 33. Financial results. (3) The listed entity shall submit the financial results in the following manner:</p> <p>(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.</p> <p>(b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may shall also submit quarterly/year-to-date consolidated financial results. subject to following: (i) the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year. Provided that this option shall also be</p>

<p>required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.</p> <p>(ii) in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.</p> <p>(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:</p> <p>(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.</p> <p>Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.</p> <p>(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.</p> <p>(d) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):</p> <p>Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)</p> <p>Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.</p> <p>(e) The listed entity shall also submit the audited financial results in respect of the <u>last quarter</u> along-with the results for the entire</p>	<p>applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.</p> <p>(ii) in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.</p> <p>(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:</p> <p>(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.</p> <p>Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.</p> <p>(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.</p> <p>(d) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):</p> <p>Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)</p> <p>Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.</p> <p>(e) The listed entity shall also submit the audited financial results in respect of the last</p>
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<p>financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.</p> <p>(f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.</p>	<p>quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year</p> <p>(f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.</p> <p><u>Insertion of a new clauses (g), (h) and (i):</u></p> <p>(g) <u>The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.</u></p> <p>(h) <u>The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.</u></p> <p>(i) <u>The listed entity shall disclose by way of a note, the aggregate effect of material adjustments made in the results of the last quarter which pertain to earlier periods.</u></p>
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5. Internal Financial Controls

Current regulatory provisions:

Section 143(3)(i) of the Companies Act requires the auditor to report on Internal Financial Controls (*hereinafter referred to as "IFCs"*) and Section 129(4) of the Companies Act states that the provisions of the Companies Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis*, apply to the consolidated financial statements. However, ICAI, vide its guidance, has restricted the reporting requirements for an auditor of the consolidated financial statements, to the IFC at the Indian subsidiaries only. The Companies (Amendment) Bill, 2017 proposes to substitute the words "internal financial control system" with the words "internal financial controls with reference to financial statements". Further, while the SEBI LODR Regulations have general provisions on IFC, there is no specific provision on the coverage of the same. (Click for [Detailed Provisions](#))

Recommendation and rationale:

As per the Companies Act, India has adopted IFC reporting requirements for certain companies. Therefore, while reporting on the consolidated financial statements, the auditors of companies in

India are required to report on the IFCs for Indian companies only and their foreign subsidiaries are exempt unlike in other markets, where the requirement applies to the entire group.

The Committee recommends that IFC reporting requirements be made applicable to the entire operations of the group and not just to the Indian operations. However, the Committee recognizes that companies may require adequate transition time and in this regard, recommends that IFC reporting requirements for entire operations initially be only applicable to listed entities with networth of Rs. 1000 crore and above.

Proposed amendments to SEBI LODR Regulations:

No amendments required to SEBI LODR Regulations. The Committee suggests that SEBI take up the above recommendation with ICAI.

6. Disclosure of Reasons of Resignation of Auditors

Current regulatory provisions:

The Companies Act read with Companies (Audit and Auditors) Rules, 2014 requires that upon the resignation of auditors, reasons for such resignation shall be filed with the company and the Registrar. While under SEBI LODR Regulations, a change in auditor is a deemed material event and disclosure is required to be made to the exchanges, there is no specific provision for disclosure of detailed reasons for such change. (Click for [Detailed Provisions](#))

Recommendation and rationale:

Auditors are critical gatekeepers of corporate governance standards. Their role in ensuring that the financial statements of the entity provide a true and fair view of the affairs of the entity makes them critical to the corporate governance agenda. The resignation of an auditor before the expiry of the term may be a cause for concern. For the sake of greater transparency, the Committee believes that it is important for companies to disclose the reasons for the resignation of its audit firm. Moreover, audit firms too must be encouraged to truthfully disclose the reasons for their resignation as audit firms must see this disclosure as part of their fiduciary responsibility towards the shareholders.

Proposed modifications to SEBI circular (w.e.f. April 1, 2018):

Clause 7 of Annexure I of SEBI circular No. CIR/CFD/CMD/4/2015 dated September 9, 2015 may be amended by insertion of a new clause as under:

7.5. Detailed reasons for resignation of auditor as given by the said auditor.

7. Disclosures on Audit and Non-audit Services Rendered by the Auditor

Current regulatory provisions:

The Companies Act permits auditors to perform only those non-audit services as approved by the board/audit committee and specifically prohibits certain services that can be provided. Under SEBI LODR Regulations, the audit committee approves payment to statutory auditors for any other services rendered by the statutory auditors. However, there is no requirement in either the Companies Act or the SEBI LODR Regulations on disclosure of non-audit services rendered by the auditor to the entire network/group. (Click for [Detailed Provisions](#))

Recommendation and rationale:

In the interest of improving transparency, the Committee recommends that the 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).

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Schedule V: Annual report</p> <p>C. Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.</p> <p><u>(10) Other disclosures:</u></p> <p><u>Insertion of a new sub-clause (h):</u> (h) 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.</p>

8. Audit Quality Indicators

Current regulatory provisions:

There is no specific provision in the Companies Act or SEBI LODR Regulations with respect to audit quality indicators.

Recommendation and rationale:

The quality of audit/auditors can be judged through various indicators such as workforce metrics, skill-development and training of audit team, quality metrics such as audit restatements, trends in audit metrics such as billable hours and audit fines, legal actions and fines against the firm, independence metrics such as client and group concentration, use of technology, etc.

The Committee noted that many of the aforesaid indicators are already a part of ICAI’s peer review system.

The Committee believes that making such indicators public will enable transparency and comparison of the audit quality of different auditors.

Proposed amendments to SEBI LODR Regulations:

There is no specific amendment required to SEBI LODR Regulations. The Committee suggests that SEBI take up the above recommendation with ICAI.

9. Disclosures of Credentials and Audit Fee of Auditors

Current regulatory provisions:

Section 142 of the Companies Act provides for the remuneration of auditors. Section 102(1) of the Companies Act requires certain disclosures to be made in the notice convening the meeting for each item of “special business” to be transacted at the general meeting. The appointment of auditors at an annual general meeting is not considered to be a “special business” and hence does not require any statement to shareholders with requisite disclosures.

While the SEBI LODR Regulations do not prescribe any specific disclosures in relation to appointment of auditors, Regulation 4(1)(b) of the SEBI LODR Regulations imposes an obligation on the listed entity to ensure that the audit is conducted by an independent, competent and qualified auditor.

(Click for [Detailed Provisions](#))

Recommendation and rationale:

In order to ensure that the shareholders are able to take informed decisions on the appointment of auditors of listed entities, the Committee is of the view that the notice being sent to shareholders should contain certain minimum disclosures in relation to the credentials and terms of appointment of the auditors who are proposed to be appointed/re-appointed.

Further, the Committee is of the view that the audit fee that is charged by some of the firms is not on parity with benchmarks such as percentage of total assets, etc. Therefore, the Committee recommends that in order to improve transparency, the proposed audit fees must be disclosed in the notice and if there is any material change in the fees paid to a new auditor as compared to the current audit fee, the rationale for the same must be provided.

Hence, the Committee recommends that the explanatory statement in relation to the item on appointment/re-appointment of auditor(s) in the relevant notice calling an annual general meeting, should include the following disclosures (in addition to any other disclosures that the board of directors may deem fit):

- (a) Basis of recommendation for appointment including the details in relation to and credentials of the auditor(s) proposed to be appointed; and
- (b) Proposed fees payable to the auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor and the rationale for such change.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No provision.	<p>Insertion of Regulation 34A</p> <p>34A Disclosure in notice to shareholders</p> <p>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 the following disclosures as a part of the explanatory statement to the notice:</p> <ul style="list-style-type: none"> (a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change; (b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.

10. IND-AS Adoption

Current regulatory provisions:

The MCA and SEBI have specified timelines for listed entities (including listed banks, NBFCs and insurance companies) to adopt IND-AS. While listed entities (other than banks, NBFCs and insurance companies) are currently required to comply with the provisions of IND-AS in preparation of their financial statements and audit,:

- (i) Banks are required to prepare IND-AS based financial statements for accounting periods beginning from April 1, 2018;
- (ii) Certain NBFCs (depending on net worth and whether listed/unlisted) are required to prepare IND-AS based financial statements for accounting periods beginning from April 1, 2018 or April 1, 2019, as the case may be; and
- (iii) Insurance companies are required to prepare IND-AS based financial statements for accounting periods beginning from April 1, 2020.

Recommendation and rationale:

The Committee is of the view that listed banks, NBFCs and insurance companies are important financial intermediaries, critical to the sanctity of India's financial markets and its growth. Given the principle-based rules of IND-AS and resultant disclosures in financial statements, the Committee recommends full implementation of IND-AS as currently scheduled without extension, for all listed entities including banks, NBFCs and insurance companies.

Proposed amendments to SEBI LODR Regulations:

No amendments are required to the SEBI LODR Regulations. . The Committee suggests that SEBI take up the above recommendation with the relevant authorities/ regulators, as necessary.

11. Strengthening Monitoring, Oversight and Enforcement by SEBI

A. Review of Audit Qualifications

Current regulatory provisions:

Earlier, SEBI LODR Regulations had detailed provisions on the review of audit qualifications by the Qualified Audit report Review Committee (QARC) and further reference of the same to the Financial Reporting Review Board (FRRB) of ICAI. However, after consultation with SEBI Advisory Committees, ICAI, Stock Exchanges and Industry Bodies, it was decided by SEBI to discontinue with QARC mechanism and in place of the same, require disclosures on the impact of audit qualifications.

Recommendation and rationale:

The Committee is of the view that any audit qualification needs detailed scrutiny and therefore, the QARC mechanism may be revived or any other similar mechanism may be devised wherein audit qualifications are examined in greater detail. It is also recommended that the process to be followed by such committee should be time bound.

Proposed amendments to SEBI LODR Regulations:

Suitable amendments may be made as determined by SEBI.

B. Powers of SEBI with Respect to Auditors and Other Statutory Third Party Fiduciaries for Listed Entities

Current regulatory provisions:

1. The statutory audit process forms the bedrock of reliance by external stakeholders (shareholders, lenders and regulatory authorities, among others) on the financial performance of a listed entity, making statutory auditors the principal gatekeepers, enhancing corporate governance. ICAI, as the professional services regulator, regulates the profession of chartered accountants and has a mechanism in place for disciplinary proceedings against them. The Companies Act also sets forth detailed provisions for responsibilities and liabilities of auditors, which are administered by the MCA.
2. Section 11 of SEBI Act provides that subject to the provisions of the SEBI Act, it shall be the duty of SEBI to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, through such measures as it thinks fit. However, under the SEBI Act or Regulations framed thereunder, there is no specific provision which provides specific penal powers in relation to auditors.
3. In *Price Waterhouse and Co. a partnership firm registered with the Institute of Chartered Accountants of India and Ms. Sharmila Karve, Partner, Price Waterhouse and Co. vs. Securities and Exchange Board of India and Whole Time Member Mr. M.S. Sahoo, Securities and Exchange Board of India (2011(2) BomCR173)*, the Bombay High Court has extensively considered SEBI's jurisdiction on statutory auditors (keeping in mind the provisions of the ICAI Act), where the issue of show cause notice by SEBI to auditors (the individuals as well as the firm) was challenged – relevant extracts from the said decision are set forth below:
 - (a) After considering the provisions of Section 11(1) and other applicable provisions of the SEBI Act, held the following:

17....“A reading of the said provisions discloses the scope and width of the powers vested with the SEBI to be exercised in the interest of investors and for regulating the securities market. The SEBI in its capacity as a Market Regulator can take any of the measures mentioned in sub-section (2) of Section 11 towards the said end. The said measures are only illustrative and not exhaustive and in a given case the SEBI considering the duty it is enjoined with may take such measures as it deems appropriate. In our view, the words employed in the aforesaid provisions are of wide amplitude and would therefore take within its sweep a Chartered Accountant if his activities are detrimental to the interest of the investors or the securities market.”
 - (b) *“35...In a given case, if there is prima facie evidence in connection with the conduct of a Chartered Accountant such as fabricating the books of accounts, etc., the SEBI can certainly give appropriate direction not to utilize the services of such a Chartered Accountant in the matter of audit of a listed Company.”* (emphasis supplied)
 - (c) *“39...Section 11(1) of the SEBI Act empowers SEBI to inquire into as well as to initiate the proceedings like the one in question. As pointed out earlier, the proceedings started against the petitioners on the basis of some statements made by one Ramalinga Raju on the basis of e-mail to which a reference is made in the show cause notices. Whether any of the petitioners with an intention and knowledge tried to fabricate and fudge the books of accounts is a matter of investigation and inquiry by the SEBI. Ultimately if any evidence in this behalf is brought on record before the SEBI during the inquiry, appropriate steps can be taken in this behalf as provided for by the SEBI Act. We must at this stage take note of the argument of Mr. Seervai that so far as his clients are concerned, they were not in any way*

connected with the audit of the Company in any manner. Simply because they are Partners of Price Waterhouse Network, no notice could have been issued against his clients. However, so far as this submission is concerned, these petitioners can very well point out these facts before the concerned Member of SEBI. SEBI being a quasi-judicial authority, while adjudicating the matter, will look into this aspect and will consider as to whether any particular firm of Chartered Accountants has any role to play or for that reason any of the petitioners had played any role in any manner they may bring the matter to the notice of the SEBI. In a given case, if ultimately it is found that there was only some omission without any mens rea or connivance with anyone in any manner, naturally on the basis of such evidence the SEBI cannot give any further directions. If there is available evidence, SEBI can proceed further in the matter of giving direction against a particular Chartered Accountant as envisaged by Sections 11 and 12 of the SEBI Act and Regulations in this behalf. On the basis of detailed evidence on record, this aspect is required to be considered by SEBI. The question of jurisdictional fact depends upon the facts which may be available at the time of evidence before the SEBI. SEBI will have to answer the question as to whether on the basis of evidence on record, it has any power to give directions as provided under the SEBI Act. This aspect will depend upon the evidence which may be available at the time of inquiry. All these aspects are therefore left to the consideration of SEBI at the time of passing final order in the inquiry.” (emphasis supplied).

Recommendation and rationale:

Given SEBI’s mandate to protect the interests of investors in the securities market and regulating listed entities, the Committee recommends that SEBI should have clear powers to act against auditors and other third party fiduciaries with statutory duties under securities law (*as defined under SEBI LODR Regulations*), subject to appropriate safeguards. This power ought to extend to act against the impugned individual(s), as well as against the firm in question with respect to their functions concerning listed entities. This power should be provided in case of gross negligence as well, and not just in case of fraud/connivance. This recommendation may be implemented after due consultation with the relevant stakeholders, including the relevant professional services regulators/institutions.

Dissenting View: The ICAI has expressed its dissent on the above recommendation as the regulation of chartered accountants is covered under the Chartered Accountants Act, 1949 and to avoid jurisdictional conflict and other issues.

Proposed amendments to SEBI LODR Regulations:

No amendment may be required to SEBI LODR Regulations.

12. Strengthening the Role of ICAI

Current regulatory provisions:

The ICAI Act regulates the conduct of Chartered Accountants in India and provides a mechanism for taking disciplinary action against members who are in violation of obligations cast on such professionals. Further, ICAI Act permits ICAI to punish such a member or levy a penalty on the member not exceeding Rs. 5 lakh. It does not permit ICAI to punish or impose penalties on firms. While the Companies Act also has provisions for enhanced monetary penalties on auditors, the enforcement of the same is through the MCA and not the ICAI, which is the professional services regulator.

Recommendation and Rationale:

The Committee is of the view that reliable financial statements are at the core of corporate governance and therefore the fiduciary role of the auditor is crucial. Hence there needs to be sufficient deterrence to ensure this objective in the interest of corporate governance. In this context, the current maximum amount for penalty under the ICAI Act of Rs. 5 lakh is too low to act as a deterrent. Additionally, a need is identified for ICAI to be able to punish or impose penalties on audit firms, in addition to individual members.

Therefore, in the interest of enhancing governance of listed entities, the Committee recommends that ICAI may be given powers to increase the scope of punishment as well as the penalty amount as follows:

- On the member - penalty of up to Rs. 1 crore;
- On the audit firm- punishment or impose penalties of up to Rs. 5 crore in case of repeated violations (that is, where the number of violations exceed three).

In addition, in relation to the enforcement/disciplinary process of the ICAI, the Committee recommends:

- increased disclosure by ICAI of actions taken against members to increase transparency and act as a deterrent
- a separate team/cell for enforcement pertaining to listed entities in order to reduce the turnaround time for disciplinary proceedings
- to have a team that analyses reports of proxy advisors on audit related matters of listed entities and take appropriate action, if any, against its members.

ICAI view: This recommendation is outside the scope of the terms of reference of the Committee and ICAI has already taken up most of the aforesaid matters at appropriate levels.

Committee view: The Committee stands by its recommendation as it believes that the above is critical for enhancing corporate governance of listed Indian entities.

Proposed amendments to SEBI LODR Regulations:

No amendments required to the SEBI LODR Regulations.

The Committee suggests that SEBI take up the above recommendation with the appropriate authorities/ regulators.

13. Strengthening the Independent Functioning of QRB

Current regulatory provisions:

There is no specific provision on Quality Review Board (“QRB”) under the Companies Act or SEBI LODR Regulations.

Recommendation and Rationale:

Most major economies in the world have implemented systems of independent oversight for the auditors of listed companies that provide confidence to shareholders and stakeholders. The International Forum of Independent Audit Regulators (IFIAR) is an international body established in 2006 that comprises independent audit regulators from 52 jurisdictions representing Africa, North America, South America, Asia, Oceania, and Europe. IFIAR's mission is to serve the public interest and enhance investor protection by improving audit quality globally. In India, the Quality Review Board (QRB) is mandated to conduct such reviews and has now started carrying out reviews of audits performed by various auditors. Therefore, strengthening the role of QRB assumes significance.

In view of the above, the Committee recommends that:

- QRB should be further strengthened to meet the independence criteria laid down by the International Forum of Independent Audit Regulators (IFIAR) and should become a member of IFIAR at the earliest. In this regard, QRB may also be provided requisite financial resources as well as staffed with adequate full time personnel to be able to effectively carry out its mandate. Steps should also be taken for further operational independence of QRB such as providing infrastructural support by the government, etc.
- Reasons for disagreement between the ICAI and the QRB should be recorded in writing and communicated to QRB for improving transparency in functioning.

ICAI view: This recommendation is outside the scope of the terms of reference of the Committee. Further, QRB has already applied for IFIAR membership and the dialogue is on with the IFIAR with respect to the above.

Committee view: The Committee stands by its recommendation as it believes that the above is critical for enhancing corporate governance of listed Indian entities.

Proposed amendments to SEBI LODR Regulations:

No amendments required to the SEBI LODR Regulations. The Committee suggests that SEBI take up the above recommendation with the appropriate authorities/ regulators.

CHAPTER VIII: INVESTOR PARTICIPATION IN MEETINGS OF LISTED ENTITIES

It is understood that increased and better participation by constituents enhances good governance. Accordingly, the Committee recognises that easing investor participation, including through the use of technology, is imperative. While e-voting has enabled shareholders to have a greater say in shareholder resolutions (over 70% of the voting power is being exercised in most companies), participation in general meetings continues to be limited. The Committee believes that responding to questions from shareholders promotes accountability of boards and management. Accordingly, it is important to facilitate and ease participation by removing the boundaries of physical meetings and adopting the use of technology.

The Committee also acknowledges the stewardship role that must be played by asset managers who in turn hold fiduciary responsibilities towards their own investors. It is only with the discharge of duties on both sides that the governance agenda will be served. In this context, the following recommendations have been made by the Committee.

1. Timeline for Annual General Meetings of Listed Entities

Current regulatory provisions:

Currently, under the Companies Act, listed entities in India are required to hold Annual General Meetings within six months from the end of the financial year. There is no specific provision in SEBI LODR Regulations on this matter. (Click for [Detailed Provisions](#))

Recommendation and rationale:

It was observed that in many countries such as South Korea, Thailand, Italy, Singapore, Japan, etc., timelines for holding AGM were shorter than the timeline of six months provided in India. The Committee felt that in line with the global practices, and to avoid a bunching up of AGMs (especially in August/September) which results in lower shareholder participation, there is a need to reduce timelines for holding of AGMs by listed entities, albeit in a phased manner.

Therefore, it is recommended that:

- 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	<p><u>Insertion of a new Regulation 43A:</u></p> <p>Reg 43A. Meetings of shareholders (1) The top 100 listed entities by market capitalization, determined as on March 31 of every financial year, shall hold their annual general</p>

	meetings within a period of five months from the date of closing of the financial year with effect from the financial year beginning April 1, 2018.
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2. E-voting and Webcast of Proceedings of the Meeting

Current regulatory provisions:

Currently, under the Companies Act read with Companies (Management and Administration) Rules, 2014, it is mandatory for a listed entity to provide e-voting facility to shareholders and such e-voting is permitted upto 5 p.m. one day prior to the general meeting. Further, webcast of the meeting proceedings is not mandatory. Similarly, under SEBI LODR Regulations, remote e-voting facility is mandatory in respect of all shareholder resolutions and voting results are to be submitted within forty eight hours of conclusion of the general meeting. (Click for [Detailed Provisions](#))

Recommendation and rationale:

As stated above, currently, e-voting is permitted upto 5 p.m. one day prior to the general meeting and webcast of the meeting proceedings is not mandatory. Given that the e-voting timeline expires before the meeting is held, shareholders not attending the meetings in person are unable to take into account discussions at the meeting in order to make informed decisions.

For the investors to take into account the discussions during the general meeting and hence, vote with complete information, it is recommended that:

- (i) 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.; and
- (ii) 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.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision (on webcast).	<p><u>Insertion of a new clause under the new Regulation 44A as recommended above:</u></p> <p>Reg 44A. Meetings of shareholders (2) The top 100 listed entities by market capitalization, determined as on March 31 of every financial year, shall provide one-way live webcast of the proceedings of all shareholder meetings held on or after April 1, 2018.</p>

The Committee suggests that SEBI take up the above recommendation with the Ministry of Corporate Affairs for amendment of the Companies (Management and Administration) Rules, 2014 to allow the facility for remote e-voting to remain open till end of the day (i.e. 11:59 p.m.) on the date of the general meeting.

3. Stewardship Code

Current regulatory provisions:

There is no specific provision for a 'stewardship code' under SEBI LODR Regulations. However, for specific institutional investors such as mutual funds, etc., certain stewardship principles such as on voting, conflict of interest, etc. have been adopted under the specific SEBI regulations as may be applicable. IRDAI in March 2017 issued a stewardship code for insurance companies in India.

Recommendations and rationale:

The Committee observed that in view of the increasing importance of institutional investors in capital markets across the world, they are expected to shoulder greater responsibility towards their clients/beneficiaries by enhancing their monitoring of and engagement with their investee companies. Such activities are commonly referred to as '*Stewardship Responsibilities*' of institutional investors. Such increased engagement is also seen as an important step towards improved corporate governance of the investee companies. The fulfillment of stewardship responsibilities by institutional investors also protects the interests of the retail investors in such companies.

Several countries such as United Kingdom, Japan, Malaysia, etc. have prescribed detailed Stewardship Codes to be followed by institutional investors in their jurisdictions on a voluntary basis. These Codes include certain principles applicable to institutional investors which require that investors have clear and comprehensive policies on:

- a) Discharge of their stewardship responsibilities
- b) Management of conflicts of interest in fulfilling stewardship responsibilities
- c) Monitoring of investee companies
- d) Intervention in investee companies
- e) Collaboration with other institutional investors
- f) Voting and disclosure of voting activity
- g) Periodical reporting on their stewardship activities

Several other countries have also adopted one or more of the principles in different forms in their own jurisdiction. The Committee noted that one of the first steps in this regard was taken by SEBI which prescribed detailed requirements for disclosures with respect to voting policies and actual voting on different resolutions of investee companies by mutual funds in India.

The Committee was informed that based on SEBI's representation in the matter, the Financial Stability and Development Council (FSDC) directed the formation of a Committee under the Chairpersonship of SEBI with representatives from the Insurance Regulatory and Development Authority of India (IRDAI) and the Pension Fund Regulatory and Development Authority (PFRDA) to consider various aspects of introduction of a stewardship code in India. It was also informed that the said Committee has submitted its recommendations to FSDC and is pending FSDC approval. It was also noted that after the formation of the aforesaid Committee, IRDA had also issued a detailed stewardship code for insurance companies.

The Committee has taken note of the efforts made by FSDC and the regulators towards a stewardship code, and recommends that a common stewardship code be introduced in India for the entire financial sector on the lines of best practices globally based on the seven principles of stewardship as outlined above. The Committee also recommends that since SEBI is the capital

market regulator and the Code applies to investments in the capital market, the common Stewardship Code may be introduced by SEBI for investments by institutional investors in Indian capital markets.

Proposed amendments to SEBI LODR Regulations:

Amendments to SEBI Regulations, if any, may be in accordance with the framework devised by SEBI to implement the Stewardship Code in India.

4. Treasury Stock

Current regulatory provisions:

The Companies Act specifically prohibits the creation of treasury stock (i.e. shares in its own name or in the name of any trust either on its behalf or on behalf any of its subsidiary or associate companies). However, there is no requirement for cancelling/extinguishing treasury stock which existed prior to notification of provisions of the Act. Further, under SEBI LODR Regulations, there is no specific provision on treasury stock. (Click for [Detailed Provisions](#))

Recommendation and rationale:

As stated above, there is no requirement to cancel/extinguish treasury stock which existed prior to notification of provisions of the Companies Act. To avoid misuse arising from exercise of voting rights in respect of shares held by employee benefit/employee welfare trusts, SEBI had withdrawn voting rights of the trustees on such shares under the SEBI (Share Based Employee Benefits) Regulations, 2014 – however, SEBI has permitted a three year sunset period in this regard. To meet the same objective as set forth above and to balance voting rights of all shareholders, the Committee recommends that a sunset clause may be imposed requiring all existing treasury stock in listed entities to not carry voting rights after three years.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2021):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p><u>Insertion of a new Regulation 43B:</u></p> <p>43B. Voting rights attached to Treasury Stock In case a listed entity holds its own shares in its name or in the name of any trust either on its behalf or on behalf of any of its subsidiaries or associates (i.e. treasury stock), no voting rights attached to such shares shall be exercisable with effect from April 1, 2021.</p>

5. Resolutions sent to Shareholders without Board’s Recommendation

Current regulatory provisions:

While in certain cases the board’s recommendation is required for consideration by shareholders (for e.g. declaration of dividend), there is no general rule (either in the Companies Act or in SEBI LODR Regulations) that every resolution placed before the shareholders should have been recommended by the board of directors.

Recommendation and rationale:

It is not necessary for every resolution placed before shareholders to have received a recommendation from the board of directors. The Committee recognises that there may be (exceptional) circumstances where the resolution being sent to shareholders would not have received such a recommendation. However, in such circumstances, some additional safeguards and disclosures may be made in the general meeting notice to enable the shareholders to come to an informed decision while considering the same.

In this regard, the Committee recommends the following:

- (i) In the usual course, 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;
- (ii) However, in exceptional circumstances, a listed entity may issue a notice of a general meeting, which may include one or more resolutions for consideration by shareholders without such resolution having been recommended by the board. In such cases, an explanatory statement for such a resolution must disclose the board’s deliberated views to the shareholders.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	<p>Reg 17. Board of Directors.</p> <p><u>Insertion of new clauses 11A and 11B</u></p> <p>11A. The statement referred to in Section 102(1) of the Companies Act, 2013 in respect of items of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders.</p> <p>11B. Notwithstanding what is contained in sub-clause 11A above, in exceptional circumstances as may be determined by the board at its discretion:</p> <ul style="list-style-type: none"> (i) the statement referred to above may not contain the recommendation referred to in sub-clause 11A; and (ii) instead of the recommendation, the board of directors shall, in the statement referred to in sub-clause 11A, disclose the nature of exceptional circumstances that have arisen, and their deliberated views that explains the different views on the resolution as may be applicable.

CHAPTER IX: GOVERNANCE ASPECTS OF PUBLIC SECTOR ENTERPRISES

Public Sector Enterprises (PSEs) play a prominent role in the economic development of our country, and their importance can not only be gauged from their size but also their leadership position in sensitive and strategic sectors of the economy. Further, the role of PSEs in generation of employment opportunities, welfare initiatives, balanced regional development, undertaking long-term capital intensive projects and other initiatives for the general public welfare is well acknowledged. Some of them are also listed, allowing them access to public markets for funds. These have a broader range of stakeholders. The Committee discussed various issues to enhance governance concerning PSEs and consequently improve shareholder value. This may also set the stage for more PSEs to list.

The Committee acknowledged that PSEs also face unique challenges that make their governance more complex than in the private sector, given that (i) most PSEs pursue multiple and diverse objectives in line with their broader social welfare objectives (unlike private enterprises which may focus on value maximization for their shareholders); (ii) PSEs may also have certain structural issues arising due to conflicts of interest that are inherent in cases where the same entity is both the owner and regulator; (iii) protracted decision making in PSEs owing to accountability at multiple levels. Nonetheless, there is a need for moving to enhanced governance standards.

The Committee debated several mechanisms in addressing these challenges and was of the view that all listed entities, government or private, should be treated at par on governance standards. Therefore, all listed PSEs should be compliant with the SEBI LODR Regulations. In case there is any inconsistency between the relevant legislation, if any, under which the respective PSE has been established and the SEBI LODR Regulations, appropriate harmonization of the legislation to bring the same in line with the requirement of SEBI LODR Regulations should be undertaken.

During the course of detailed deliberations, the Committee reviewed international examples on PSE governance and ownership structures (as set out in **Annexure 6**) and had broad consultations with different stakeholders to understand the issues in the Indian context. The Committee came to the conclusion that while this issue would require more consideration and detailed analysis, the following key guiding principles must be kept in mind for such assessment on this subject:

1. *Establish a transparent mandate for PSEs and disclose its objectives and obligations:* The government, as owner, must set clear objectives and mandates for the PSEs, and, where there are non-commercial objectives, these should be clearly articulated, quantified and transparently disclosed to the shareholders on a regular basis so that investors can take informed investment decisions.
2. *Ensure independence of the PSEs from the administrative ministry:* The government should aim at ensuring independence of the PSEs from the administrative ministry to ensure speedy decision making, functional and operational autonomy in pursuit of their stated objectives, for better commercial goals and to attract talent in a competitive market place.
3. *Consolidate the Government stake in listed PSEs under holding entity structure(s):* As a sustainable and optimal solution for minimizing conflicts arising from the ownership and regulatory dichotomy in PSEs, the government should consider consolidating its ownership and monitoring of PSEs into independent holding entity structure(s) by April 1, 2020. An independent board with diversified skill set of the holding entity(s) would also facilitate operationalizing a consistent and high quality process on significant issues such as strategy, performance monitoring, mergers and acquisitions, and recruitment of best talent.

Recommendations:

The Committee recommends that the listed PSEs fully comply with the provisions of SEBI LODR Regulations and the same be suitably enforced. Additionally, the government should assess and examine the broader issues referenced above *inter alia* concerning ownership structure for the government stake, removal of conflicts and creating a more autonomous environment for PSEs to function in the best interest of all stakeholders. The Committee believes that this will significantly enhance value of the national assets. This should be done in a time-bound manner.

CHAPTER X: LENIENCY MECHANISM

Current regulatory provisions:

Section 24B of the SEBI Act and Section 230 of the Securities Contracts (Regulation) Act, 1956 (“SCRA”) provide powers to the Central Government (based on recommendations by SEBI) to grant immunity both from prosecution and imposition of penalty under the SEBI Act and the SCRA for the alleged violation, subject to certain conditions. (Click for [Detailed Provisions](#))

In addition, while SEBI currently has a consent mechanism for certain categories of violations, there are no specific provisions in the regulatory framework that empower SEBI to grant leniency (by way of reduction in/waiver of penalty or immunity from prosecution) as well as to protect a whistle-blower who is allegedly in violation of relevant securities laws.

Recommendation and rationale:

A leniency programme creates structural incentives for persons connected with the commission of an infringement to come forward and disclose such violations and assist the regulatory authorities by receiving lenient treatment and protection against victimization. Currently, the Competition Commission of India has powers to grant leniency to cartel members in case they disclose true, full and vital information. The Committee felt that a leniency programme would improve effective detection of violations and enhance ease of investigation and enforcement, while also acting as a deterrent that could result in an increase in the overall compliance of securities regulations.

The Committee felt that SEBI may be empowered to grant leniency and offer protection against victimisation to whistle-blowers in certain instances determined on a case by case basis. Any such power would have to be accompanied by the rules and regulations in relation to the conditions to be satisfied for getting benefits under the leniency programme and protection against victimization, the procedure for the grant of lesser penalty or reduction in liability, the quantum of penalties that are waived when lenient treatment is meted out and protection of the whistle-blower. In a nutshell, availing of leniency provisions is a win-win situation for SEBI as well as the whistle-blower.

The Committee suggests that SEBI take up the above recommendation with the Ministry of Finance. In this regard, the drafts of proposed amendments to the SEBI Act and the SCRA are below:

Current provision in SEBI Act and SCRA	Proposed amended provision in SEBI Act and SCRA
No specific provision	<p><u>Insertion of a new section [●]:</u></p> <p>(1) The Board may, if it is satisfied that any person (the informant) who has disclosed to the Board any alleged violation(s) of this Act or rules or regulations made thereunder and has made full, true and vital disclosures in respect of the alleged violation(s), impose a lesser penalty or liability than that prescribed or waive the same, as it may deem fit, in respect of the informant, to the extent and in the manner as may be prescribed:</p> <p>Provided also that lesser penalty or liability or waiver of the same shall not be imposed/granted by the Board if the informant does not continue to cooperate with the Board till the completion of the proceedings before the Board, and if required, shall</p>

	<p>cooperate in any further legal proceedings:</p> <p>Provided also that the Board may, if it is satisfied that the informant had in the course of proceedings,—</p> <ul style="list-style-type: none">a) not complied with the condition on which the lesser penalty or liability was imposed or waiver was granted by the Board; orb) had given false evidence or material misstatements; orc) the disclosure made is not vital, <p>and thereupon the informant may be tried for the violation/offence with respect to which lesser penalty or liability was imposed or waiver was granted by the Board and shall also be liable to the imposition of penalty/liability to which the informant has been liable, had lesser penalty or liability not been imposed or waiver not been granted.</p> <p>(2) The discretion of the Board, in regard to reduction in penalty or liability or grant of waiver under this Act, shall be exercised having due regard to —</p> <ul style="list-style-type: none">a) the stage at which the informant comes forward with the disclosure;b) the evidence already in possession of the Board;c) the quality of the information provided by the informant;d) role played by the informant in the said violations; ande) the entire facts and circumstances of the case. <p>(3) The Board shall treat as confidential the identity of the informant and the information obtained from such informant and shall not disclose the identity or the information obtained unless-</p> <ul style="list-style-type: none">a) the disclosure is required by law; orb) the informant has agreed to such disclosure in writing, which has not been withdrawn in writing until the disclosure is made; orc) there has been a public disclosure by the informant. <p>(4) The Board may require companies to offer protection to the informant or any other person against victimisation in the manner as may be prescribed.</p>
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CHAPTER XI: CAPACITY BUILDING IN SEBI FOR ENHANCING CORPORATE GOVERNANCE IN LISTED ENTITIES

Corporate governance deals not only with the *de jure* but also the *de facto* aspects of the law. In this context, SEBI's role as a regulator of capital markets assumes particular importance given that it requires diligent detection, monitoring and enforcement action. Thus, the efficacy of the Committee recommendations depends critically upon SEBI's detection and enforcement capabilities. This chapter focuses on various steps that the Committee recommends to enhance capacity of SEBI in line with global best practices. Broadly, the Committee therefore recommends that SEBI should:

- A. enhance the number and skill-sets of its human resources;
- B. exploit the power of data science and technology; and
- C. strategically work with other agencies, especially for monitoring and enforcement.

A. Bridge the Human Resources Gap

Staff Strength: Based on the Annual Report (CY 2016) of the US Securities and Exchange Commission (SEC), the SEC has almost one employee for each listed company. However, based on SEBI's Annual Report (FY 2017), it appears that SEBI has one employee for six listed companies. In key divisions such as Corporate Finance, which is *inter alia* responsible for ascertaining the quality of financial statements of listed entities, SEC has more than 15 times as many employees as SEBI (477 versus 31). Key indicative comparative data in this regard is set out below:

SEC		SEBI Equivalent	
Division	Manpower	Division	Manpower
Corporate Finance	477	Corporate Finance Department	31
Enforcement	1,380	Integrated Surveillance Department	214
		Enforcement Department, Investigations Department	
Investment Management	183	Investment Management Department	53
Economic Analysis and Risk	151	Department of Economic and Policy Analysis (DEPA)	20
Trading and Markets	258	Market Intermediaries Regulation and Supervision Department (MIRSD)	109
		Market Regulation Department (MRD)	
Others	2,105	Others	353
Total	4,554	Total	780

Therefore, staff strength at SEBI needs to be increased to strengthen its monitoring and enforcement functions. SEBI may also at an appropriate stage consider the need to outsource certain functions with relevant safeguards.

Staff Skill and Expertise: Successful enforcement actions by SEBI can have the twin effect of penalising the guilty, on the one hand, and creating a significant deterrent effect on the other hand. However, for such deterrent effects to be felt in India, SEBI must equip itself so that it can adroitly gather evidence with the objective of "investigate to litigate." SEBI needs to develop teams comprising data scientists, accountants, lawyers specialised in corporate law, software engineers

and academicians. The members need to have depth of knowledge within their respective areas as also possess broad expertise across functional areas. In addition, SEBI should build its market intelligence through regular review of market research and reports of proxy advisors.

Revolving Door Policy: Successful leveraging of investments in technology, data science and risk prediction requires high quality professionals. SEBI therefore needs to follow regulators across the world in utilising specialist hires. It may even consider creating a revolving door policy between employees at SEBI and in the private sector, allowing SEBI to hire laterals.

B. Use of Data Science and Risk Prediction

Form a data science department within SEBI: The Committee recommends that a separate department be set up to focus on review of the financial statements and filings to detect reporting, disclosure and audit failures. The principal goal of the department will be to create a robust data processing framework which can form the basis of further investigation, detection of violations involving misleading financial statements and disclosures. The department will also focus on identifying and exploring areas susceptible to fraudulent reporting, including ongoing review of information and use of data analytics.

A sub-unit for assessing accounting quality: The Committee recommends that SEBI set up a sub-unit for reviewing quality of audit (including forensic audit) to investigate any potential red flags in a timely manner. This sub-unit should make extensive use of modern technological tools including text analytics and artificial intelligence. Further, this sub-unit should also be responsible for conducting review of audited accounts and filings by listed entities, with at least a certain percentage of listed entities being covered every year. This percentage should increase to cover more entities over a period of time.

C. Greater collaboration between SEBI and Other Agencies

The Committee recognises that SEBI has worked on investigations in coordination with other regulatory agencies, and believes that there is substantial scope to develop cross-regulator coordination to ensure effective enforcement. In addition to domain-specific regulators like tax authorities, SEBI can work extensively with MCA and leverage stock exchanges to ensure effective investigations, not only by mining information and expertise available with a cross-section of regulators but also piecing together discrete pieces of information/evidence (which individually may not be sufficient) to build a strong case for enforcement. Gradually, cross-regulatory platforms may be built and harmonised with the use of sophisticated technology tools to ensure that an effective monitoring mechanism is established.

SEBI may consider examining the above recommendations in greater detail.

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ANNEXURES

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ANNEXURE 1: LETTER OF THE MINISTRY OF CORPORATE AFFAIRS

अमरदीप सिंह भाटिया
संयुक्त सचिव
Amardeep S Bhatia
Joint Secretary



भारत सरकार
कारपोरेट कार्य मंत्रालय
नई दिल्ली
Government of India
Ministry of Corporate Affairs
New Delhi

D.O. No. 11/15/2017 -CL. V

Dated: 3rd October, 2017

Dear Sir,

Please refer to the discussions held in the Committee meetings that I had the pleasure to attend wherein inter alia concerns were expressed in extending the jurisdiction through SEBI Listing Obligations and Disclosure Requirements (LODR) over provisions which are already covered under the Companies Act, 2013 (the Act). The draft report of the Committee has been examined and comments on the recommendations were also shared during the last meeting of the Committee by the representative of Ministry of Corporate Affairs.

2. While it is clearly understood that SEBI has the powers to prescribe stringent norms, over and above those prescribed for listed companies, it is felt that such prescription should only be made in exceptional circumstances where inter alia these requirements cannot be covered through the subordinate legislation under the Companies Act, 2013, are required only for listed companies and not for all companies and after examining whether the costs involved justify the benefits on account of the more stringent requirements. Reasons such as improving public accessibility through disclosures may not be sufficient enough reasons for extending jurisdiction as the disclosures made under either of the jurisdictions are publicly available.

3. It is felt that many of the proposed changes involve prescription of higher standards primarily aim at creation of jurisdiction, where there is none at the moment, through SEBI LODR and some changes also propose to extend the jurisdiction over unlisted companies (which are associates or subsidiaries). It would be pertinent to note that, in keeping with the stated Government objective of facilitating ease of doing business and reducing regulatory burden, Government has proposed changes in the Act, which are contained in the Companies (Amendment) Bill, 2017 passed by the Lok Sabha and with the Rajya Sabha for consideration, that are aimed at reducing multiple jurisdictions, where possible. To be noted are the proposed omissions of certain filings by listed companies, the prescriptive powers through Rules under the Act relating to prospectuses and provisions relating to insider trading. It is important, therefore, that in keeping with the emphasis of the Government to facilitate ease of doing business, providing for multiple jurisdictions should be avoided.

कमरा नं. 505, 'ए' विंग, शास्त्री भवन, डॉ. राजेन्द्र प्रसाद रोड, नई दिल्ली-110001
Room No. 505, 'A' Wing, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001
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4. It is also noted that the Committee proposes to make recommendations, which, inter alia, seek to empower SEBI to prescribe a number of additional requirements (through LODR) on matters which have been core company law principles and finds place, rightly so, under the Companies Act only. It is felt that the core company law principles for which specific provisions have been provided in the Act and which should be applicable to all companies uniformly should not be proposed for modification for listed companies. Kind attention is also drawn to section 24 of the Companies Act, 2013 which empowers SEBI to administer certain provisions of the Act with regard to issue and transfer of securities and non-payment of dividend only, and it would be in keeping with the intention of law makers that administration of other provisions specifically provided are not brought under SEBI through LODR.

5. A statement showing proposed recommendations of the Committee and the comments of the Ministry is enclosed. It is assumed that further comments will also be sought by SEBI, allowing for detailed examination, where required.

6. It is understood that it may be difficult to change the recommendations at this stage. In such circumstances, I would request that the comments contained in this letter are taken on record and shared with SEBI either as a part of the report or separately.

With regards,

Yours sincerely,

Handwritten signature in blue ink, appearing to read 'Amardeep S. Bhatia', with a date '03/10/17' written below it.

(Amardeep S. Bhatia)

Enclo.: As above

**Shri Uday Kotak,
Executive Vice Chairman and Managing Director,
Kotak Mahindra Bank Limited and
Chairman, SEBI Committee on Corporate Governance,
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051
Fax Number - 91-22-67082213**

Sl. No.	Chapter No./recommendation No./Title	Remarks of MCA
1.	Ch I:1:Minimum Number of Directors on a Board	Minimum number of directors for a public company has already been prescribed in the CA, 2013. This will be an additional cost to the company. Before prescribing any such limits a study of the top companies may be conducted.
2.	Ch I: 2: Gender Diversity on the Board	The woman director may not be restricted to ID only. The issue can be addressed if a provision is made whereby there may be one woman director who is not a relative.
3.	Ch I: 3: Attendance of Directors	No comments
4.	Ch I: 4: Disclosure of Expertise/ Skills of Directors	No comments
5.	Ch I: 5: Approval for Non-executive Directors on Attaining a Certain Age	This will unduly impinge upon the freedom of the management of the company to decide its non-executive directors
6.	Ch I: 6: Minimum Number of Board Meetings	There is no need to increase the minimum number of Board meetings. There is a provision under proviso to section 173 whereby the Central Government may change the requirement of minimum number of Board meetings for a certain class of companies. Necessary changes if required can be brought under the Companies Act, 2013 through issue of a notification.
7.	Ch I: 7: Updation of Knowledge of the Board Members	No comments
8.	Ch I: 9: Quorum for Board meetings	This would directly conflict with the provisions of the CA, 2013. LODR is not required to prescribe the quorum.
9.	Ch I: 10: Separation of the Roles of Non-executive Chairperson and Managing Director/CEO	No comments
10.	Ch I: 11: Matrix Reporting Structure	No comments
11.	Ch I: 13: Disclosures on Board Evaluation	No comments
12.	Ch II: 1: Minimum Number of Independent Directors	No comments
13.	Ch II: 2: Eligibility Criteria for Independent Directors	Ideally, all requirements for IDs should be covered under the Act provisions (including the Schedule) rather than under two statutes.
14.	Ch II: 3: Minimum Compensation to Independent Directors	There is no need to fix the lower limit of compensation to be received by the IDs
15.	Ch II: 4: Disclosures on Resignation of Independent Directors	There is a clarity required as to what would be the consequence of saying that there was no material reason for resignation, when there was actually a material reason. This can be in the form of a guidance since the matter is already covered in the Act.
16.	Ch II: 5: Directors and Officers Insurance for Independent Directors	No comments
17.	Ch II: 6: Induction and Training of Independent Directors	No comments
18.	Ch II: 7: Alternate Directors for Independent Directors (IDs)	The requirement of alternate director cannot be done away as it would conflict with existing

		provisions of the Companies Act, 2013. There is no need for a separate prescription under LODR.
19.	Ch II: 8: Lead Independent Director in Companies with Non-independent Chairperson	No comments
20.	Ch II: 9: Exclusive Meeting of Independent Directors	No comments
21.	Ch II: 10: Casual Vacancy of Office of Independent Director (ID)	No comments
22.	Ch III: 1: Minimum Number of Committee Meetings	No comments
23.	Ch III: 2: Role of Audit Committee	No comments.
24.	Ch III: 3: Composition of Nomination and Remuneration Committee	Such amendment in the LODR will have an effect of making the provision in the Companies Act, 2013 completely non-est. This will not be desirable.
25.	Ch III: 5: Composition and Role of Stakeholders Relationship Committee	No comments
26.	Ch III: 6: Quorum for Committee Meetings	No comments
27.	Ch III: 7: Applicability and Role of Risk Management Committee	No comments
28.	Ch III: 8: Membership and Chairpersonship Limit	No comments
29.	Ch IV: 1: Obligation on the Board of the Listed Entity with Respect to Subsidiaries	This would amount to an encroachment into the unlisted space which is regulated by the MCA. The intent and object of the review is also not clear.
30.	Ch IV: 2: Group Governance Unit/ Committee and Policy:	This would amount to an encroachment into the unlisted space which is regulated by the MCA. It is an extension of jurisdiction over unlisted companies indirectly.
31.	Ch IV: 3: Secretarial Audit	If any changes are required then the same may be done only through Companies Act, 2013. The Committee may recommend the changes in the Companies Act, 2013
32.	Ch V: 1: Sharing of Information with Controlling Promoters/ Shareholders with Nominee Directors	No comments
33.	Ch V: 2: Re-classification of Promoters /Classification of Entities as ProfessionallyManaged	No comments
34.	Ch V: 3: Disclosure of Related Party Transactions	In case of half-yearly disclosures there is no objection. LODR and Companies Act, 2013 thresholds should be harmonized.
35.	Ch V: 5: Royalty and Brand Payments to Related Parties	The Committee may consider bringing down the threshold to 2% from 5%
	Ch V: 6. Remuneration to Executive Promoter Directors	The proposed amendment should be subject to the over-arching requirement of section 197 r/w Schedule V.
	Ch V: 7. Remuneration of Non-Executive Directors	The proposed amendment should be subject to the over-arching requirement of section 197 r/w Schedule V.

36.	Ch V: 8: Materiality Policy	Changes in such policies should not have the effect of increasing the limits of RPT provided in the Companies Act, 2013 and rules made thereunder
37.	Ch VI: 1: Submission of Annual Reports	Suggestions may be given for incorporation of similar provisions in the Companies Act, 2013 or the Rules thereunder.
38.	Ch: VI:2: Disclosures Pertaining to Holders of Depository Receipts	The Companies (Amendment) Bill, 2017 contains a provision for maintenance of a register of 'significant beneficial ownership'. The proposed provision may be kept in mind while suggesting newer provisions for disclosure under LODR
39.	Ch VI: 3: Disclosures Pertaining to Credit Rating	No comments
40.	Ch VI: 4: Searchable Formats of Disclosures	No comments
41.	Ch VI: 5: Harmonization of Disclosures	Suggestions may be made so that all disclosures may be made at one place only, for example on MCA21.
42.	Ch VI: 6: Disclosures Pertaining to Analyst/Institutional Investor Meets	No comments
43.	Ch VI: 7: Disclosures of Key Changes in Financial Indicators	There is a need for convergence of reporting requirements under LODR and Companies Act, 2013, as it creates more confusion for the shareholders.
44.	Ch VI: 8: Utilisation of Proceeds of Preferential Issue and Qualified Institutional Placement	No comments
45.	Ch VI: 9: Disclosures in Valuation Reports in Schemes of Arrangement.	The disclosures pertaining to schemes of arrangement and the valuation thereto should be covered by the Companies Act, 2013.
46.	Ch VI: 10 Disclosures Pertaining to Directors	Details of directorship of all directors based on their DIN is freely available on the MCA portal.
47.	Ch VI: 11 Disclosures Pertaining to Disqualification of Directors	No comments
48.	Ch VI: 14 Disclosures on Long-term and Medium-term Strategy	No comments
49.	Ch VI: 15 Prior Intimation of Board meeting to Discuss Bonus Issue	No comments
50.	Ch. VII: 1: Audit Qualifications	No comments
51.	Ch. VII: 2: Independent External Opinion by Auditors	It is not clear as to how it would be ensured that the auditor will appoint an independent expert. In fact there may be inherent incentive for the auditor not to do so. It needs to be ensured that such independent expert is independent of the management as well of the auditor/audit firm.
52.	Ch VII:3: Group Audits	No comments
53.	Ch VII:4: Quarterly Financial Disclosures	No comments
54.	Ch VII: 5: Internal Financial Controls	No comments
55.	Ch VII: 6: Disclosure of Reasons of Resignation of	No comments

	Auditors	
56.	Ch VII: 7: Disclosures on Audit and Non-audit Services Rendered by the Auditor	No comments
57.	Ch VII: 8: Audit Quality Indicators	No comments
58.	Ch VII: 11: Strengthening Monitoring, Oversight and Enforcement by SEBI	Once NFRA is established, it will provide for review. There is no need to include this in the LODR
59.	Ch VII: 11B: Powers of SEBI with Respect to Auditors and Other Statutory Third Party Fiduciaries for Listed Entities	This issue is required to be examined.
60.	Ch. VII:12: Strengthening the Role of ICAI	No comments
61.	Ch: VIII-:1:Timeline for Annual General Meetings of Listed Entities	There is a need to align this requirement with the Companies Act, 2013 as prosecutions are launched against defaulting companies based on these timelines.
62.	Ch VIII: 2: E-voting and Webcast of Proceedings of the Meeting	<p>Recommendation was given: E-voting cannot go beyond the closure of AGM. The proposed amendment in any case would violate rule 20(4)(vi) of the Companies (Management & Administration) Rules, 2014.</p> <p>This provision has been dropped at this stage by the Committee.</p>
63.	Ch VIII:3: Stewardship Code	No comments
64.	Ch VIII: 4: Treasury Stock	Suggestions may be given so that a sunset provision may be introduced in the Companies Act, 2013 or the Rules thereunder so as to cover all classes of companies or to provide further clarity, as required.
	<p>Ch VIII: 5. Resolutions sent to Shareholders without Board's Recommendation</p> <p>Many resolutions are sent for approval of the shareholders without obtaining any previous approval of the Board. The proposed amendment requires that the statement under section 102 of the CA, 2013 sent to the shareholders should spell out the recommendation of the Board for each resolution. However in exceptional circumstances to be explained in writing, the Board may not suggest its view on the resolution.</p>	This provision may not be required as the contours of "exceptional circumstances" has not been provided clearly. Such changes, if required should be applicable to all companies and should be covered under the Companies Act, 2013 or the Rules thereunder. Needs further deliberations.
66	Ch XI: Capacity building in SEBI for Enhancing Corporate Governance in Listed Entities	No comments

ANNEXURE 2: LETTER OF THE MINISTRY OF FINANCE

MOST IMMEDIATE
BY SPEED POST/E-MAIL

F. No. 11/08/2017-PM
Ministry of Finance
Department of Economic Affairs
Financial Markets Division

Room No.63, North Block, New Delhi
Dated: the 3rd October, 2017

To,

Shri UdayKotak
Executive Vice Chairman and Managing Director,
Kotak Mahindra Bank Limited and
Chairman, SEBI Committee on Corporate Governance,
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (E), Mumbai-400051

Subject:SEBI's Committee on Corporate Governance

Sir,

Kind reference is invited to the above subject.

2. In this regard, I am directed to enclose herewith the observation/comments of Joint Secretary (Financial Markets) on the report of the above-mentioned committee (copy enclosed). The same may be appropriately incorporated in the report. In case the Committee is not able to incorporate any of the suggestion/observation, it should be included as observation note in the report.

3. This issues with the approval of Joint Secretary (Financial Markets)

Yours faithfully,



(Deepak Ranjan)

Deputy Director (Primary Markets)

Tele: 011-23092300

Copy to: Ms. Nila Khanolkar, Assistant General Manager (AGM), Corporate Finance Department, SEBI Bhawan, Plot No. C-4A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051.

Observations/ comments of Joint Secretary (Financial Markets) on the revised report of the Committee on Corporate Governance set up by Securities and Exchange Board of India (SEBI)

Chapter 1: Composition and Role of the Board of Directors

1: Minimum number of Directors on the Board

It has been recommended by the committee that for any listed entity, a minimum of six directors may be required on the Board of Directors. At present, the Companies Act, 2013 requires a minimum of three directors in a public limited company.

While this recommendation is agreeable in principle, it is suggested that this change in the composition of the board of directors of Indian companies should be brought about in a phased manner and compliance of the six director requirement should be made applicable only to the top 500 listed companies initially and subsequently to all companies. With the help of such incremental iterations, the small and medium sized companies will get adequate time to realign their internal compliances.

4: Disclosure of expertise/skills of directors

It was recommended by the committee that the board of directors 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.

While agreeing with the recommendation, it is suggested that in case of a mismatch in the skill set of the directors, the reasons as to why it does not match should be mentioned/disclosed by companies.

Chapter 2: The Institution of Independent Directors

5. Directors and Officers Insurance for Independent Directors

It is not mandatory under the Companies Act, 2013 for a company to undertake such D&O insurance. It was recommended by the committee that it may initially be made mandatory for Top 500 companies by market capitalization, to undertake D&O insurance for its IDs, which may be subsequently extended to all listed entities. However, it may be left to the board of directors of the listed entity to determine the quantum of and types of risks covered under such insurance.

While we agree with the recommendation of the committee, it is suggested that the types of risks covered under such insurance may be predetermined for companies. Quantum may be left to the decision of the board of directors.

7. Alternate Directors for Independent Directors (IDs)

Companies Act, 2013 permits alternate directors (alternate for a director during his absence for a period of not less than three months from India) for all directors including IDs. It also

states that no person shall be appointed as an alternate director for an ID unless he is qualified to be appointed as an ID under the provisions of this Act. The committee was of the opinion that it may not be in the spirit of law to permit alternate directors for IDs.

The recommended amendment would create practical difficulties. On the one hand, the committee recommends requirement of at least 50% attendance for independent directors, and on the other hand, it is suggesting that no alternate director may be permitted in place of an independent director. This will create a situation where crucial decisions would have to be taken without the presence of IDs. Section 161 of Companies Act, 2013 prescribes the eligibility for Alternate Directors that may be followed.

Further, it is suggested that an individual may not be appointed as an alternate director for more than one director in the same company at the same time.

Therefore, we do not agree with the current recommendation.

Chapter V- Promoters/Controlling Shareholders and Related Party Transactions

2. Re-classification of Promoters /Classification of Entities as Professionally Managed

Presently, the Companies Act, 2013 is silent on reclassification of promoters, while the SEBI LODR Regulations permit reclassification of promoters in limited circumstances. The Committee has recommended that for where there are multiple promoters/promoter groups and where there is only one specific promoter/ promoter group who wishes to be re-classified can go for reclassification as per the recommendations of the report that where there is no identifiable promoter/promoter group, the existing 1% threshold to be able to classify the entity as professionally managed is too low and merits an increase to 10% for the stated reasons. It is suggested that this threshold may be decreased to 5% instead of the proposed 10% to protect the interest of the investors.

Chapter VI- Disclosures and Transparency

2. Disclosures pertaining to Holders of Depository Receipts

In respect of the recommendation on disclosures pertaining to holders of depository receipts, there is a Working group under Joint Secretary (Financial Markets) comprising of Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), Central Board of Direct Taxes (CBDT), Ministry of Corporate Affairs (MCA) looking into the issues relating to Depository Receipts including Beneficial Owners. As the issue is being deliberated upon by the Ministry of Finance and SEBI, any recommendation by in this report prior to the outcome of the working group would not be acceptable.

Chapter VII- Accounting and Audit related issues

3. Group Audits

The recommendation that for listed entities in India, the auditor of the holding company should be made responsible for audit opinion of all material unlisted Indian subsidiaries is acceptable to the extent that the term 'responsible' is more specifically defined in the report particularly for the purpose of its legal implications.

Chapter XI- Capacity building in SEBI for Enhancing Corporate Governance in Listed Entities

Since inception of SEBI there is already provision in SEBI Act, 1992 for strengthening the staff strength of SEBI. Under Section 9 of SEBI Act, 1992 the Board has been empowered to appoint such officers and employees as it considers necessary for the efficient discharge of its functions under this Act. SEBI is independent regulator and may appoint officers as it may deem fit.

Moreover, it is not the mandate of the Committee. This committee that has been mandated to report on ways to improve the Governance Standards of listed entities and it is the administrative matter for SEBI to examine and take appropriate steps to enhance capacity of SEBI.

ANNEXURE 3: DETAILED REGULATORY PROVISIONS

1. Minimum Number of Directors on a Board

Companies Act, 2013

Sec 149: Company to have Board of Directors.—

(1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—

- (a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and
- (b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

SEBI LODR Regulations

No specific provision.

(Back to [Recommendation](#))

2. Gender Diversity on the Board

Companies Act, 2013

Second Proviso to Sec 149.

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

Companies (Appointment and Qualification of Directors) Rules, 2014

Rule 3: Woman director on the Board.-

The following class of companies shall appoint at least one woman director-

- (i) every listed company;

SEBI LODR Regulations

Reg 17(1)(a)

Board of directors shall have an optimum combination of executive and nonexecutive directors with at least one woman director and not less than fifty percent. of the board of directors shall comprise of non-executive directors;

(Back to [Recommendation](#))

3. Attendance of Directors

Companies Act, 2013

Section 167(1) The office of a director shall become vacant in case-

- (b) He absents himself from all the meetings of the Board of Directors held during the period of twelve months with or without seeking leave of absence of the Board

SEBI LODR Regulations

No specific provision.

(Back to [Recommendation](#))

4. Disclosure of Expertise/Skills of Directors

Companies Act, 2013

Sec 152(5) of Companies Act, 2013:

A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

Rule 5 of Companies (Appointment and Qualification of Directors) Rules, 2014:

Qualifications of independent director.-

An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business

SEBI LODR Regulations

Reg 36(3)- Documents & Information to shareholders.

(3) In case of the appointment of a new director or re-appointment of a director, the shareholders must be provided with the following information:

- (a) a brief resume of the director;
- (b) nature of his expertise in specific functional areas;
- (c) disclosure of relationships between directors inter-se;
- (d) names of listed entities in which the person also holds the directorship and the membership of Committees of the board; and
- (e) shareholding of non-executive directors.

(Back to [Recommendation](#))

5. Approval for Non-executive Directors on Attaining a Certain Age

While no specific provision exists for approval for non-executive directors on attaining a certain age, the following provisions are in relation to approval for executive directors on attaining a certain age:

Companies Act, 2013

Sec 196(3)

No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —

- (a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

SEBI LODR Regulations

No specific provision.

(Back to [Recommendation](#))

6. Minimum Number of Board Meetings

Companies Act, 2013

Sec 173(1):

Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board:

Provided that the Central Government may, by notification, direct that the provisions of this subsection shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

SEBI LODR Regulations

Reg 17(2)

The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.

(Back to [Recommendation](#))

7. Updation of Knowledge of the Board Members

Companies Act, 2013

Schedule IV (III)(1):

The independent directors shall undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company.

SEBI LODR Regulations

Reg (4)(2)(f)(iii)(4)

The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

Reg 17(3)

The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.

Reg 25(7)

The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following:

- (a) nature of the industry in which the listed entity operates;
- (b) business model of the listed entity;
- (c) roles, rights, responsibilities of independent directors; and
- (d) any other relevant information.

(Back to [Recommendation](#))

8. Quorum for Board Meetings

Companies Act, 2013

Sec 174. Quorum for meetings of the Board.

- (1) The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

Relevant provision of the Companies Act (Amendment) Bill, 2017

Where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter which shall not be dealt through video conferencing or other audio visual means.

"In section 173 of the principal Act, in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:—

"Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso".

SEBI LODR Regulations

No specific provision.

(Back to [Recommendation](#))

9. Separation of the Roles of Non-executive Chairperson and Managing Director/CEO

Companies Act, 2013

Proviso to Sec 203.

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) the articles of such a company provide otherwise; or
- (b) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

SEBI LODR Regulations

Schedule II: Corporate Governance:

Part E: Discretionary Requirements

D. Separate posts of chairperson and chief executive officer

The listed entity may appoint separate persons to the post of chairperson and managing director or chief executive officer.

(Back to [Recommendation](#))

10. Matrix Reporting Structure

Companies Act, 2013

Sec 179. Powers of the Board

- (1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:
- (3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—
 - (a) to make calls on shareholders in respect of money unpaid on their shares;
 - (b) to authorise buy-back of securities under section 68;
 - (c) to issue securities, including debentures, whether in or outside India;
 - (d) to borrow monies;
 - (e) to invest the funds of the company;
 - (f) to grant loans or give guarantee or provide security in respect of loans;
 - (g) to approve financial statement and the Board's report;
 - (h) to diversify the business of the company;
 - (i) to approve amalgamation, merger or reconstruction;
 - (j) to take over a company or acquire a controlling or substantial stake in another company;
 - (k) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:

SEBI LODR Regulations

Reg 4(2)(f)

(ii) Key functions of the board of directors-

- (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.
 - (2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.
 - (3) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.
 - (4) Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.
 - (5) Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.
 - (6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
 - (7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
 - (8) Overseeing the process of disclosure and communications.
 - (9) Monitoring and reviewing board of director's evaluation framework.
- (iii) Other responsibilities:
- (1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

- (2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.
- (3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.
- (4) The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.
- (5) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.
- (6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.
- (7) The board of directors shall exercise objective independent judgment on corporate affairs.
- (8) The board of directors shall consider assigning a sufficient number of nonexecutive members of the board of directors capable of exercising independent judgment to tasks where there is a potential for conflict of interest.
- (9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.
- (10) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.
- (11) When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.
- (12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.
- (13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.
- (14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

(Back to [Recommendation](#))

11. Maximum Number of Directorships

Companies Act, 2013

Sec 165. Number of directorships.

(1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation.— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

Relevant provisions of the Companies Act (Amendment) Bill, 2017

For reckoning the limit of directorships, the directorship in a dormant company shall not be included.

In section 165 of the principal Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted, namely:—

"Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."

SEBI LODR Regulations

Reg 25. Obligations with respect to independent directors.

(1) A person shall not serve as an independent director in more than seven listed entities:

Provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than three listed entities.

(Back to [Recommendation](#))

12. Disclosures on Board Evaluation

Companies Act, 2013

Sec 134(3)

There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

Sec 178(2)

The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

SCHEDULE IV: CODE FOR INDEPENDENT DIRECTORS

II. Role and functions. (2) The independent directors shall bring an objective view in the evaluation of the performance of board and management;

V. Re-appointment: The re-appointment of independent director shall be on the basis of report of performance evaluation.

VII. Separate meetings:

(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(2) All the independent directors of the company shall strive to be present at such meeting;

(3) The meeting shall: (a) review the performance of non-independent directors and the Board as a whole; (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors; (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

(1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Companies (Accounts and Audit) Rules, 2014

Rule 8 (4)

Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Relevant provisions of the Companies Act (Amendment) Bill, 2017

In section 134 of the principal Act, in sub-section (3), in clause (p) the language proposed to be changed.

For the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted.

SEBI LODR Regulations

Reg 4(2)(f)(ii): Key functions of the board of directors-

(9) Monitoring and reviewing board of director's evaluation framework.

Reg 17(10):

The performance evaluation of independent directors shall be done by the entire board of directors: **Provided that** in the above evaluation the directors who are subject to evaluation shall not participate:

Reg 25:

(3) The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.

(4) The independent directors in the meeting referred in sub-regulation (3) shall, inter-alia- (a) review the performance of non-independent directors and the board of directors as a whole; (b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors; (c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

Schedule II (PART D) (A) ROLE OF NOMINATION AND REMUNERATION COMMITTEE:

Role of committee shall, inter-alia, include the following:

(2) formulation of criteria for evaluation of performance of independent directors and the board of directors;

(4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.

(5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

Schedule V: Corporate Governance Report.

The following disclosures shall be made in the section on the corporate governance of the annual report.

(4) Nomination and Remuneration Committee:

(d) performance evaluation criteria for independent directors

(Back to [Recommendation](#))

13. Minimum Number of Independent Directors

Companies Act, 2013

Sec 149 (4): Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

Companies (Appointment and Qualification of Directors) Rules, 2014:

Rule 4: The following class or classes of companies shall have at least two directors as independent directors -

- (i) the Public Companies having paid up share capital of ten crore rupees or more; or
- (ii) the Public Companies having turnover of one hundred crore rupees or more; or
- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:

Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

SEBI LODR Regulations

Reg 17(1) (b):

Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation.-For the purpose of this clause, the expression “related to any promoter” shall have the following meaning: (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it; (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

(Back to [Recommendation](#))

14. Eligibility Criteria of Independent Directors

Companies Act, 2013

Sec 134 (3)(d):

There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include a statement on declaration given by independent directors under sub-section (6) of section 149.

Sec 149 (6):

An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (e) who, neither himself nor any of his relatives—
 - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of -
 - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
 - (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
 - (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or
- (f) who possesses such other qualifications as may be prescribed.

Sec 149 (7):

Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

Relevant provisions of the Companies Act (Amendment) Bill, 2017

Some changes in definition of Independent Director have been proposed.

In section 149 of the principal Act, (ii) in sub-section (6), for clause (d)⁵, the following clause shall be substituted, namely:—

"(d) none of whose relatives—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);"

Schedule IV: Code for Independent Directors

IV. Manner of Appointment

(3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

SEBI LODR Regulations

Reg 16(1)(b):

"independent director" means a non-executive director, other than a nominee director of the listed entity:

⁵ none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

- (i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;
- (ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company;
- (iii) who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;
- (iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (v) none of whose relatives has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (vi) who, neither himself, nor whose relative(s) —
 - (A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (B) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —
 - (1) a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or
 - (2) any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
 - (C) holds together with his relatives two per cent or more of the total voting power of the listed entity; or
 - (D) is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity;
 - (E) is a material supplier, service provider or customer or a lessor or lessee of the listed entity;
- (vii) who is not less than 21 years of age.

(Back to [Recommendation](#))

15. Minimum Compensation to Independent Directors

Companies Act, 2013

Sec 197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits

(1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits: Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V: Provided further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent of the net profits of the company and if there is more than one such

director remuneration shall not exceed ten per cent of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent of the net profits in any other case.

(2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section

(5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board: Provided that the amount of such fees shall not exceed the amount as may be prescribed: Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

Rule 4: Sitting Fees

A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof:

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

SEBI LODR Regulations

No specific provision.

(Back to [Recommendation](#))

16. Disclosure on Resignation of Independent Directors

Companies Act, 2013

Proviso to Section 168(1): Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

Companies (Appointment and Qualification of Directors) Rules, 2014:

Rule 16: Where a director resigns from his office, he shall within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form DIR-11 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

SEBI LODR Regulations

No specific provision.

SEBI circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 (Annexure I)

7. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), Auditor and Compliance Officer:

- 7.1.reason for change viz. appointment, resignation, removal, death or otherwise;
- 7.2.date of appointment/cessation (as applicable) & term of appointment;
- 7.3.brief profile (in case of appointment);
- 7.4.disclosure of relationships between directors (in case of appointment of a director).

(Back to [Recommendation](#))

17. Directors and Officers Insurance for Independent Directors

Companies Act, 2013

Sec 197(13):

Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel:

Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

Schedule IV: Code for Independent Directors

Para (IV)(4)(d): The appointment of independent directors shall be formalised through a letter of appointment, which shall set out provision for Directors and Officers (D and O) insurance, if any;

SEBI LODR Regulations

No specific provision.

(Back to [Recommendation](#))

18. Induction and Training of Independent Directors

Companies Act, 2013:

Schedule IV (III)(1):

The independent directors shall undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company.

SEBI LODR Regulations:

Reg (4)(2)(f)(iii)(4)

The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

Reg 25(7)

The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following:

- (a) nature of the industry in which the listed entity operates;
- (b) business model of the listed entity;
- (c) roles, rights, responsibilities of independent directors; and
- (d) any other relevant information.

(Back to [Recommendation](#))

19. Alternate Directors for Independent Directors

Companies Act, 2013

Section 161 (2)

The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate

directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India:

Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act:

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India:

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

SEBI LODR Regulations

No specific provision.

(Back to [Recommendation](#))

20. Exclusive Meeting of Independent Directors

Companies Act, 2013

Schedule IV: Code for Independent Directors

VII. Separate Meetings:

- (1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;
- (2) All the independent directors of the company shall strive to be present at such meeting;
- (3) The meeting shall:
 - c) review the performance of non-independent directors and the Board as a whole;
 - d) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - e) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

SEBI LODR Regulations

Reg 25

- (3) The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.
- (4) The independent directors in the meeting referred in sub-regulation (3) shall, inter alia-
 - (a) review the performance of non-independent directors and the board of directors as a whole;
 - (b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors;
 - (c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

(Back to [Recommendation](#))

21. Casual Vacancy of Office of Independent Director

Companies Act, 2013

Section 161(4)

In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board:

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Schedule IV: Code for Independent Directors

VII. Resignation or Removal :

(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.

Companies (Appointment and Qualification of Director) Rules, 2014

Second Provisio to Rule 4:

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later

Relevant provisions of the Companies Act (Amendment) Bill, 2017

The approval of members will be required to fill the casual vacancy of IDs.

*The casual vacancy in the office of Independent Director shall be filled by the Board of Directors at a meeting of the Board **which shall be subsequently approved by members in the immediate next general meeting.***

SEBI LODR Regulations

Reg 25(6)

An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later:

Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.

(Back to [Recommendation](#))

22. Minimum Number of Committee Meetings

Companies Act, 2013

No specific provision on meetings of Audit Committee.

SEBI LODR Regulations

Reg 18(2)(a)

The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.

(Back to [Recommendation](#))

23. Role of Audit Committee

Companies Act, 2013

Sec 177. Audit Committee

- (4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include,—
- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - (iii) examination of the financial statement and the auditors' report thereon;
 - (iv) approval or any subsequent modification of transactions of the company with related parties:
Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;
 - (v) scrutiny of inter-corporate loans and investments;
 - (vi) valuation of undertakings or assets of the company, wherever it is necessary;
 - (vii) evaluation of internal financial controls and risk management systems;
 - (viii) monitoring the end use of funds raised through public offers and related matters.
- (5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
- (6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

SEBI LODR Regulations

Reg 18(2)(c):

The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

Schedule II Part C: Role of The Audit Committee And Review Of Information By Audit Committee

A. The role of the audit committee shall include the following:

- (1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
- (2) recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;
- (3) approval of payment to statutory auditors for any other services rendered by the statutory auditors;
- (4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:
 - (a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;
 - (b) changes, if any, in accounting policies and practices and reasons for the same;
 - (c) major accounting entries involving estimates based on the exercise of judgment by management;
 - (d) significant adjustments made in the financial statements arising out of audit findings;
 - (e) compliance with listing and other legal requirements relating to financial statements;
 - (f) disclosure of any related party transactions;
 - (g) modified opinion(s) in the draft audit report;
- (5) reviewing, with the management, the quarterly financial statements before submission to the board for approval;
- (6) reviewing, with the management, the statement of uses/application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter;
- (7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;
- (8) approval or any subsequent modification of transactions of the listed entity with related parties;
- (9) scrutiny of inter-corporate loans and investments;
- (10) valuation of undertakings or assets of the listed entity, wherever it is necessary;
- (11) evaluation of internal financial controls and risk management systems;
- (12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
- (13) reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
- (14) discussion with internal auditors of any significant findings and follow up there on;
- (15) reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;
- (16) discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;
- (17) to look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
- (18) to review the functioning of the whistle-blower mechanism;
- (19) approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;

(20) Carrying out any other function as is mentioned in the terms of reference of the audit committee.

B. The audit committee shall mandatorily review the following information:

- (1) management discussion and analysis of financial condition and results of operations;
- (2) statement of significant related party transactions (as defined by the audit committee), submitted by management;
- (3) management letters/letters of internal control weaknesses issued by the statutory auditors;
- (4) internal audit reports relating to internal control weaknesses; and
- (5) the appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee.
- (6) statement of deviations:
 - (a) quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1).
 - (b) annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7).

(Back to [Recommendation](#))

24. Composition of Nomination and Remuneration Committee

Companies Act, 2013

Sec 178(1)

The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors.

Relevant provision of the Companies Act (Amendment) Bill, 2017

The word “public” is proposed to be added.

*Every listed **public** company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee*

SEBI LODR Regulations

Reg 19(1)(c)

- (1) The board of directors shall constitute the nomination and remuneration committee as follows:
 - (c) at least fifty percent of the directors shall be independent directors.

(Back to [Recommendation](#))

25. Role of Nomination and Remuneration Committee

Companies Act, 2013

Sec 178

(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a

policy, relating to the remuneration for the directors, key managerial personnel and other employees.

(4) The Nomination and Remuneration Committee shall, while formulating the policy under subsection (3) ensure that—

- (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
- (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- (c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals:

Provided that such policy shall be disclosed in the Board's report.

SEBI LODR Regulations

Schedule II: Corporate Governance

Part D (A): Role of Nomination And Remuneration Committee:

Role of committee shall, inter-alia, include the following:

- (1) formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;
- (2) formulation of criteria for evaluation of performance of independent directors and the board of directors;
- (3) devising a policy on diversity of board of directors;
- (4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.
- (5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

(Back to [Recommendation](#))

26. Composition and Role of Stakeholders Relationship Committee

Companies Act, 2013

Sec 178

(5) The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a nonexecutive director and such other members as may be decided by the Board.

(6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

SEBI LODR Regulations

Reg 20

(1) The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

(2) The chairperson of this committee shall be a non-executive director.

(3) The board of directors shall decide other members of this committee.

(4) The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II.

Schedule II: Corporate Governance

Part D (B): Stakeholders Relationship Committee

The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.

(Back to [Recommendation](#))

27. Quorum for Committee Meetings

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

The provision for quorum for Audit Committee meetings are specified hereunder:

Reg 18(2)(b):

The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.

(Back to [Recommendation](#))

28. Applicability and Role of Risk Management Committee

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Regulation 21: Risk Management Committee.

(5) The provisions of this regulation shall be applicable to top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

(Back to [Recommendation](#))

29. Membership and Chairpersonship Limit

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Regulation 26.

(1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows:

....

(b) for the purpose of determination of limit, chairpersonship and membership of the audit committee and the Stakeholders' Relationship Committee alone shall be considered.

(Back to [Recommendation](#))

30. Obligation on the Board of the Listed Entity with Respect to Subsidiaries

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Reg 24. Corporate governance requirements with respect to subsidiary of listed entity.

- (1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India.
- (2) The audit committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary.
- (3) The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.
- (4) The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

Explanation.-For the purpose of this regulation, the term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.

- (5) A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.
- (6) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.
- (7) Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

(Back to [Recommendation](#))

31. Secretarial Audit

Companies Act, 2013

Section 204: Secretarial audit for bigger companies.

- (1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board’s report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.
- (2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.
- (3) The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).
- (4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in

practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Companies (Appointment and Remuneration Of Managerial Personnel) Rules, 2014

Rule 9. Secretarial Audit Report.--

(1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under-

(a) every public company having a paid-up share capital of fifty crore rupees or more; or

(b) every public company having a turnover of two hundred fifty crore rupees or more.

(2) The format of the Secretarial Audit Report shall be in Form No. MR.3.

SEBI LODR Regulations

No specific provision.

(Back to [Recommendation](#))

32. Sharing of Information with Controlling Promoters/Shareholders with Nominee Directors

SEBI PIT Regulations

Regulation 3(1):

No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purpose, performance of duties or discharge of legal obligations.

Regulation 3(2):

No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

SEBI LODR Regulations

Regulation 4(1)(f)

The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles: Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.

Regulation 4(2)(c)(i)

Equitable treatment: The listed entity shall ensure equitable treatment of all shareholders, including minority and foreign shareholders, in the following manner:.... All shareholders of the same series of a class shall be treated equally.

Regulation 4(2)(e)(ii)

Disclosure and transparency: The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:.... Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.

(Back to [Recommendations](#))

33. Re-classification of Promoters /Classification of Entities as Professionally Managed

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Reg 31A:

(2) The stock exchange, specified in sub-regulation (1), shall allow modification or reclassification of the status of the shareholders, only upon receipt of a request from the concerned listed entity or the concerned shareholders along with all relevant evidence and on being satisfied with the compliance of conditions mentioned in this regulation.

(3) In case of entities listed on more than one stock exchange, the concerned stock exchanges shall jointly decide on the application of the entity/shareholders, as specified in sub-regulation(2).

(5) When a new promoter replaces the previous promoter subsequent to an open offer or in any other manner, re-classification may be permitted subject to approval of shareholders in the general meeting and compliance of the following conditions:

(a) Such promoter along with the promoter group and the Persons Acting in Concert shall not hold more than ten per cent of the paid-up equity capital of the entity. (b) Such promoter shall not continue to have any special rights through formal or informal arrangements. All shareholding agreements granting special rights to such entities shall be terminated. (c) Such promoters and their relatives shall not act as key managerial person for a period of more than three years from the date of shareholders' approval: Provided that the resolution of the said shareholders' meeting must specifically grant approval for such promoter to act as key managerial person.

(6) Where an entity becomes professionally managed and does not have any identifiable promoter the existing promoters may be re-classified as public shareholders subject to approval of the shareholders in a general meeting.

Explanation.- For the purposes of this sub-regulation an entity may be considered as professionally managed, if-

- (i) No person or group along with persons acting in concert taken together shall hold more than one per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts: Provided that any mutual fund, bank, insurance company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts.
- (ii) The promoters seeking reclassification and their relatives may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval.
- (iii) The promoter seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall be terminated.

(7) Without prejudice to sub-regulations (5) and (6), re-classification of promoter as public shareholders shall be subject to the following conditions:

- (a) Such promoter shall not, directly or indirectly, exercise control, over the affairs of the entity.
- (b) Increase in the level of public shareholding pursuant to re-classification of promoter shall not be counted towards achieving compliance with minimum public shareholding requirement under rule 19A of the Securities Contracts (Regulation) Rules, 1957, and the provisions of these regulations.

- (c) The event of re-classification shall be disclosed to the stock exchanges as a material event in accordance with the provisions of these regulations.
- (d) Board may relax any condition for re-classification in specific cases, if it is satisfied about non-exercise of control by the outgoing promoter or its persons acting in concert.

(Back to [Recommendation](#))

34. Disclosure of Related Party Transactions

Companies Act, 2013

Sec 188. Related Party Transactions

(2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

Sec 189. Register of contracts or arrangements in which directors are interested.

(1) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

SEBI LODR Regulations

Reg 2(1)(zc)

"related party transaction" means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:

Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);

Reg 27 (2)

(a) The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within fifteen days from close of the quarter.

(b) Details of all material transactions with related parties shall be disclosed along with the report mentioned in clause (a) of sub-regulation (2).

Reg 46(2)(g)

The listed entity shall disseminate the following information on its website: ... policy on dealing with related party transactions.

Schedule V: Annual report

The annual report shall contain the following additional disclosures:

A. Related Party Disclosure:

1. The listed entity shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures".

2. The disclosure requirements shall be as follows:

Sr.No	In the accounts of	Disclosures of amounts at the year end and the maximum amount of loans/advances/Investments outstanding during the year.
1.	Holding Company	<ul style="list-style-type: none"> • Loans and advances in the nature of loans to subsidiaries by name and amount. • Loans and advances in the nature of loans to associates by name and amount. • Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount.
2.	Subsidiary	Same disclosures as applicable to the parent company in the accounts of subsidiary company.
3.	Holding Company	Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

For the purpose of above disclosures directors' interest shall have the same meaning as given in Section 184 of Companies Act, 2013.

3. The above disclosures shall be applicable to all listed entities except for listed banks.

C. Corporate Governance Report

The following disclosures shall be made in the section on the corporate governance of the annual report.

(10) Other Disclosures:

(a) disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large;

(f) web link where policy on dealing with related party transactions;

(Back to [Recommendation](#))

35. Approval of Related Party Transactions

Companies Act, 2013

Sec 188. (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

(a) sale, purchase or supply of any goods or materials;

(b) selling or otherwise disposing of, or buying, property of any kind;

(c) leasing of property of any kind;

(d) availing or rendering of any services;

(e) appointment of any agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution:

Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

SEBI LODR Regulations

Reg 23(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

(Back to [Recommendation](#))

36. Remuneration to Executive Promoter Directors

Companies Act, 2013

Sec 197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

(1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent of the net profits in any other case.

SEBI LODR Regulations

No specific provision.

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37. Remuneration of Non-executive Directors

Companies Act, 2013

Sec 197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

(1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent of the net profits in any other case.

SEBI LODR Regulations

Reg. 17 Board of directors

(6) (a) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.

(b) The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

(c) The approval of shareholders mentioned in clause (a), shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

(d) Independent directors shall not be entitled to any stock option.

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38. Materiality Policy

Companies Act, 2013

No specific provisions.

SEBI LODR Regulations

Reg 23(1):

(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:

(3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-

(a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;

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39. Submission of Annual Reports

Companies Act, 2013

Companies (Accounts) Rules, 2014

Rule 11: Manner of circulation of financial statements in certain cases.-

In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-

- (a) by electronic mode to such members whose shareholding is in dematerialised format and whose email Ids are registered with Depository for communication purposes;
- (b) where Shareholding is held otherwise than by dematerialised format, to such members who have positively consented in writing for receiving by electronic mode; and
- (c) by dispatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

SEBI LODR Regulations

Reg 34. Annual Report.

(1) The listed entity shall submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013

Reg 36. Documents & Information to shareholders.

- (2) The listed entity shall send the annual report in the following manner to the shareholders:
- (a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) for the purpose;
 - (b) Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered;
 - (c) Hard copies of full annual reports to those shareholders, who request for the same.
- (3) The listed entity shall send annual report referred to in sub-regulation (1), to the holders of securities, not less than twenty-one days before the annual general meeting.

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40. Disclosures Pertaining to Credit Rating

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Reg 52(4): The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:

- (a) credit rating and change in credit rating (if any);

Reg 55:

Each rating obtained by the listed entity with respect to non-convertible debt securities shall be reviewed at least once a year by a credit rating agency registered by the Board

Reg 56(1)(c):

The listed entity shall forward the following to the debenture trustee promptly-intimations regarding :

- (i) any revision in the rating

Reg 84:

- (1) Every rating obtained by the listed entity with respect to securitised debt instruments shall be periodically reviewed, preferably once a year, by a credit rating agency registered by the Board.
- (2) Any revision in rating(s) shall be disseminated by the stock exchange(s)

SCHEDULE III: PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

3. Revision in Rating(s).

SEBI circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 (Annexure I)

3. Revision in Rating(s)

The listed entity shall notify the stock exchange(s), the details of any new rating or revision in rating assigned from a credit rating agency to any debt instrument of the listed entity or to any fixed deposit programme or to any scheme or proposal of the listed entity involving mobilization of funds whether in India or abroad. In case of a downward revision in ratings, the listed entity shall also intimate the reasons provided by the rating agency for such downward revision.

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41. Disclosures Pertaining to Analyst/Institutional Investor Meets

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Reg 46. Website

- (2) The listed entity shall disseminate the following information on its website:
 - (o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;

SCHEDULE III, PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s):

A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

15. Schedule of Analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors;

SCHEDULE V: ANNUAL REPORT

C. Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.

8. Means of communication:

- (e) presentations made to institutional investors or to the analysts.

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42. Disclosure of Key Changes in Financial Indicators

Companies Act, 2013

No specific provisions.

SEBI LODR Regulations

Regulation 52

(4) The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:

- (a) credit rating and change in credit rating (if any);
- (b) asset cover available, in case of non convertible debt securities;
- (c) debt-equity ratio;
- (d) previous due date for the payment of interest/ dividend for non-convertible redeemable preference shares/ repayment of principal of non-convertible preference shares /non convertible debt securities and whether the same has been paid or not; and,
- (e) next due date for the payment of interest/ dividend of non-convertible preference shares /principal along with the amount of interest/ dividend of non-convertible preference shares payable and the redemption amount;
- (f) debt service coverage ratio;
- (g) interest service coverage ratio;
- (h) outstanding redeemable preference shares (quantity and value);
- (i) capital redemption reserve/debenture redemption reserve;
- (j) net worth;
- (k) net profit after tax;
- (l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non banking financial companies registered with the Reserve Bank of India.

Provided further that the requirement of this sub- regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities

SCHEDULE V: ANNUAL REPORT

B. Management Discussion and Analysis:

1. This section shall include discussion on the following matters within the limits set by the listed entity's competitive position:

- (a) Industry structure and developments.
- (b) Opportunities and Threats.
- (c) Segment-wise or product-wise performance.
- (d) Outlook
- (e) Risks and concerns.
- (f) Internal control systems and their adequacy.
- (g) Discussion on financial performance with respect to operational performance.
- (h) Material developments in Human Resources / Industrial Relations front, including number of people employed.

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43. Utilisation of Proceeds of Preferential Issue and Qualified Institutional Placement

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

No specific provision.

SEBI ICDR Regulations

Monitoring agency.

16. (1) If the issue size, excluding the size of offer for sale by selling shareholders, exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer:

Provided that nothing contained in this clause shall apply to an issue of specified securities made by a bank or public financial institution or an insurance company.

(2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a quarterly basis, till at least ninety five percent of the proceeds of the issue, excluding the proceeds under offer for sale and amount raised for general corporate purposes, have been utilized.

(3) The Board of Directors and the management of the company shall provide their comments on the findings of the monitoring agency as specified in Schedule IX.

(4) The issuer shall, within forty five days from the end of each quarter, publically disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.

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44. Disclosures on Website

SEBI LODR Regulation

Regulation 46: Website.

(1) The listed entity shall maintain a functional website containing the basic information about the listed entity.

(2) The listed entity shall disseminate the following information on its website:

- (a) details of its business;
- (b) terms and conditions of appointment of independent directors;
- (c) composition of various committees of board of directors;
- (d) code of conduct of board of directors and senior management personnel;
- (e) details of establishment of vigil mechanism/ Whistle Blower policy;
- (f) criteria of making payments to non-executive directors , if the same has not been disclosed in annual report;
- (g) policy on dealing with related party transactions;
- (h) policy for determining 'material' subsidiaries;
- (i) details of familiarization programmes imparted to independent directors including the following details:-
 - (i) number of programmes attended by independent directors (during the year and on a cumulative basis till date),

- (ii) number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date), and
 - (iii) other relevant details
 - (j) the email address for grievance redressal and other relevant details;
 - (k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
 - (l) financial information including:
 - (i) notice of meeting of the board of directors where financial results shall be discussed;
 - (ii) financial results, on conclusion of the meeting of the board of directors where the financial results were approved;
 - (iii) complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc;
 - (m) shareholding pattern;
 - (n) details of agreements entered into with the media companies and/or their associates, etc;
 - (o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;
 - (p) new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;
 - (q) items in sub-regulation (1) of regulation 47 .
- (3) (a) The listed entity shall ensure that the contents of the website are correct.
- (b) The listed entity shall update any change in the content of its website within two working day from the date of such change in content.

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45. Disclosures of Subsidiary Accounts

Companies Act, 2013

Sec 136. (1) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

Provided that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

Provided further that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed:

Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:

Provided also that every company having a subsidiary or subsidiaries shall,—

- (a) place separate audited accounts in respect of each of its subsidiary on its website, if any;
- (b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

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46. Prior Intimation of Board Meeting to Discuss Bonus Issue

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Reg 29. (1) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered:

- (f) the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers:

Provided that in case the declaration of bonus by the listed entity is not on the agenda of the meeting of board of directors, prior intimation is not required to be given to the stock exchange(s).

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47. Views of Committees Not Accepted by the Board of Directors

Companies Act, 2013

Sec 177. Audit Committee

(8) The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

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48. Commodity Risk Disclosures

Companies Act, 2013

No specific provision.

SCHEDULE V: ANNUAL REPORT

C. Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.

9. General Shareholder Information:

- (n) commodity price risk or foreign exchange risk and hedging activities.

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49. Audit Qualifications

Companies Act, 2013

Sec 134. Financial statement, Board's report, etc.

(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include-

(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—

(i) by the auditor in his report;

Sec 143. Powers and duties of auditors and auditing standards.

(3) The auditor's report shall also state—

(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

Sec 145. Auditor to sign audit reports, etc.

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

SEBI LODR Regulations

Reg 33- Financial results.

(3)(d)The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(4) The applicable formats of the financial results and Statement on Impact of Audit Qualifications (for audit report with modified opinion) shall be in the manner as specified by the Board.

(6) The Statement on Impact of Audit Qualifications (for audit report with modified opinion) and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) shall be reviewed by the stock exchange(s)

Reg 34- Annual report.

(2) The annual report shall contain the following:

(a) audited financial statements i.e. balance sheets, profit and loss accounts etc. and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable;

Reg 95- Statement on Impact of Audit Qualifications accompanying Annual Audit Report.

The recognised stock exchange(s) shall review the Statement on Impact of Audit Qualifications and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) of regulation 33 and clause (a) of sub-regulation (3) of regulation 52.

Schedule IV, Part A: Disclosure in Financial Results

The listed entity shall disclose the following while preparing the financial results:-

B. If the auditor has expressed any modified opinion(s) in respect of audited financial results submitted or published under this para, the listed entity shall disclose such modified opinion(s) and cumulative impact of the same on profit or loss, net worth, total assets, turnover/total income, earning per share, total expenditure, total liabilities or any other financial item(s) which may be impacted due to modified opinion(s), while publishing or submitting such results.

BA. If the auditor has expressed any modified opinion(s), the management of the listed entity has the option to explain its views on the audit qualifications and the same shall be included in the Statement on Impact of Audit Qualifications (for audit report with modified opinion).

BB. With respect to audit qualifications where the impact of the qualification is not quantifiable:

- i. The management shall make an estimate and the auditor shall review the same and report accordingly; or
- ii. If the management is unable to make an estimate, it shall provide the reasons and the auditor shall review the same and report accordingly.

The above shall be included in the statement on impact of audit qualifications (for audit report with modified opinion)

C. If the auditor has expressed any modified opinion(s) or other reservation(s) in his audit report or limited review report in respect of the financial results of any previous financial year or quarter which has an impact on the profit or loss of the reportable period, the listed entity shall include as a note to the financial results –

- (i) how the modified opinion(s) or other reservation(s) has been resolved; or
- (ii) if the same has not been resolved, the reason thereof and the steps which the listed entity intends to take in the matter.

SEBI Circular No. CIR/CFD/CMD/56/2016 dated May 27, 2016

4.2. For audit reports with modified opinion, a statement showing impact of audit qualifications shall be filed with the stock exchanges in a format as specified in Annexure I.

4.3. The management of the listed entity shall have the option to explain its views on the audit qualifications;

4.4. Where the impact of the audit qualification is not quantified by the auditor, the management shall make an estimate. In case the management is unable to make an estimate, it shall provide reasons for the same. In both the scenarios, the auditor shall review and give the comments.

4.5. The aforesaid statements on impact of audit qualifications filed by the listed entities shall be a part of regular monitoring by the stock exchanges as specified in Regulation 97 of the Listing Regulations. In case of non-compliance, the stock exchanges shall take action against such entities as deemed fit and report to SEBI on a regular basis. The stock exchanges shall coordinate with one another in case the scrip is listed on more than one stock exchange

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50. Quarterly Financial Disclosures

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Reg 33:

- (1) While preparing financial results, the listed entity shall comply with the following:
- a) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/ Ind AS 34 – Interim Financial Reporting), as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable.
 - b) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India:
 - c) Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.
 - d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.
 - e) The listed entity shall make the disclosures specified in Part A of Schedule IV.
- (2) The approval and authentication of the financial results shall be done by listed entity in the following manner:
- a) The quarterly financial results submitted shall be approved by the board of directors:
 - b) Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.
 - c) The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.
 - d) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchange(s).
 - e) The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the manner specified in clause (b) of sub-regulation (2).
- (3) The listed entity shall submit the financial results in the following manner:
- a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.
 - b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following:
 - (i) the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year.

Provided that this option shall also be applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.

- (ii) in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.
- c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:
 - (i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.
 - (ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.
 - (a) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.
 - (b) The listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.
 - (c) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.
- (4) The applicable formats of the financial results and Statement on Impact of Audit Qualifications (for audit report with modified opinion) shall be in the manner as specified by the Board.
- (5) For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as "half yearly/half year" and the requirement of submitting 'year-to-date' financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange.
- (6) The Statement on Impact of Audit Qualifications (for audit report with modified opinion) and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) shall be reviewed by the stock exchange(s).

(Back to [Recommendation](#))

51. Internal Financial Controls

Companies Act, 2013

Sec 134

(5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.—For the purposes of this clause, the term —internal financial controls means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

Sec 143

(3) The auditor's report shall also state—

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

Sec 177

(4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include,—

(vii) evaluation of internal financial controls and risk management systems;

Schedule IV: CODE FOR INDEPENDENT DIRECTORS, II. Role and functions:

(4) The independent directors shall satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible

SEBI LODR Regulations

SCHEDULE II: CORPORATE GOVERNANCE

PART B: COMPLIANCE CERTIFICATE

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

D. They have indicated to the auditors and the Audit committee

(1) significant changes in internal control over financial reporting during the year;

(2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

(3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE

A. The role of the audit committee shall include the following:

(11) evaluation of internal financial controls and risk management systems;

(12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;

(15) reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;

B. The audit committee shall mandatorily review the following information:

(4) internal audit reports relating to internal control weaknesses;

SCHEDULE V: ANNUAL REPORT

B. Management Discussion and Analysis:

(f) Internal control systems and their adequacy.

(Back to [Recommendation](#))

52. Disclosure of Reasons of Resignation of Auditors

Companies Act, 2013

Sec 140(2)

The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

Companies (Audit and Auditors) Rules, 2014

Rule 8

Resignation of auditor- For the purposes of sub-section (2) of section 140, when an auditor has resigned from the company, he shall file a statement in Form ADT-3.

SEBI LODR Regulations

No specific provision for disclosure of detailed reasons on change/resignation of auditors.

SEBI circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 (Annexure I)

7. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), Auditor and Compliance Officer:

7.1.reason for change viz. appointment, resignation, removal, death or otherwise;

7.2.date of appointment/cessation (as applicable) & term of appointment;

7.3.brief profile (in case of appointment);

7.4. disclosure of relationships between directors (in case of appointment of a director).

(Back to [Recommendation](#))

53. Disclosures on Audit and Non-audit Services Rendered by the Auditor

Companies Act, 2013

Sec 144. Auditor not to render certain services.—

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company), or its holding company or subsidiary company, namely:—

(a) accounting and book keeping services; (b) internal audit; (c) design and implementation of any financial information system; (d) actuarial services; (e) investment advisory services; (f) investment banking services (g) rendering of outsourced financial services; (h) management services; and (i) any other kind of services as may be prescribed:

Provided that an auditor or audit firm who has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

Explanation.—For the purposes of this sub-section, the term —directly or indirectly shall include rendering of services by the auditor,—

(i) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;

(ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

SEBI LODR Regulations

SCHEDULE II: CORPORATE GOVERNANCE, PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE

The role of the audit committee shall include the following:

(3) approval of payment to statutory auditors for any other services rendered by the statutory auditors;

(Back to [Recommendation](#))

54. Disclosures of Credentials and Audit Fee of Auditors

Companies Act, 2013

Sec 142. Remuneration of auditors.

(1) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein:

Provided that the Board may fix remuneration of the first auditor appointed by it.

(2) The remuneration under sub-section (1) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

102. Statement to be annexed to notice.—(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1),—

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and.....

SEBI LODR Regulations

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles...:

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(Back to [Recommendation](#))

55. Timeline for Annual General Meetings of Listed Entities

Companies Act, 2013

Sec 96. Annual general meeting.—

(1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

SEBI LODR Regulations

No specific provision.

(Back to [Recommendation](#))

56. E-voting and Webcast of Proceedings of the Meeting

Companies Act, 2013

Section 108. Voting through electronic means.—

The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

Companies (Management and Administration) Rules, 2014

Rule 20. Voting through electronic means.-

(2) Every company other than a company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognised stock exchange or a company having not less than one thousand members, shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means.

(4)(vi) the facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

SEBI LODR Regulations

Reg 44.

(1) The listed entity shall provide the facility of remote e-voting facility to its shareholders, in respect of all shareholders' resolutions.

(2) The e-voting facility to be provided to shareholders in terms of sub-regulation (1), shall be provided in compliance with the conditions specified under the Companies (Management and Administration) Rules, 2014, or amendments made thereto.

(3) The listed entity shall submit to the stock exchange, within forty eight hours of conclusion of its General Meeting, details regarding the voting results in the format specified by the Board.

(4) The listed entity shall send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against each resolution.

(Back to [Recommendation](#))

57. Treasury Stock

Companies Act, 2013

Section 233 (10):

A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.

SEBI LODR Regulations

No specific provision

(Back to [Recommendation](#))

58. Leniency Mechanism

SEBI Act, 1992

Sec 24B. Power to grant immunity

(1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity: Provided further that recommendation of the Board under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

SCRA, 1956

Sec 23-O. Power to grant immunity.

(1) The Central Government may, on recommendation by the Securities and Exchange Board of India, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that the recommendation of the Securities and Exchange Board of India under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted

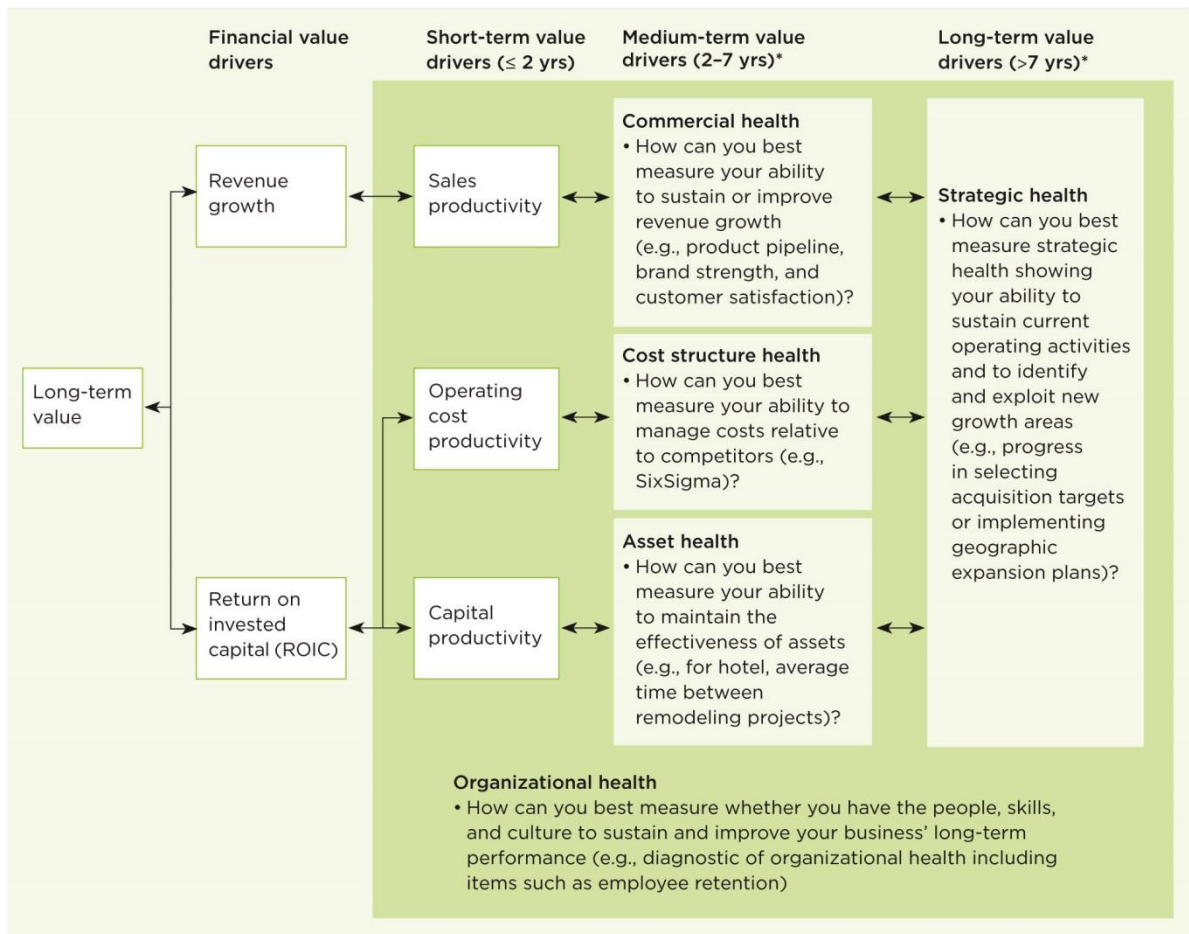
(Back to [Recommendation](#))

ANNEXURE 4: ILLUSTRATIVE PARAMETERS – BOARD SKILL EVALUATION

Industry knowledge/experience
Experience
Industry knowledge
Understanding of relevant laws, rules, regulation and policy
International Experience
Technical skills/experience
Accounting and finance
Marketing
Information Technology
Talent Management
Leadership
Compliance and risk
Behavioural Competencies
Integrity and ethical standards
Mentoring abilities
Interpersonal relations

ANNEXURE 5: STRATEGY - KEY METRICS

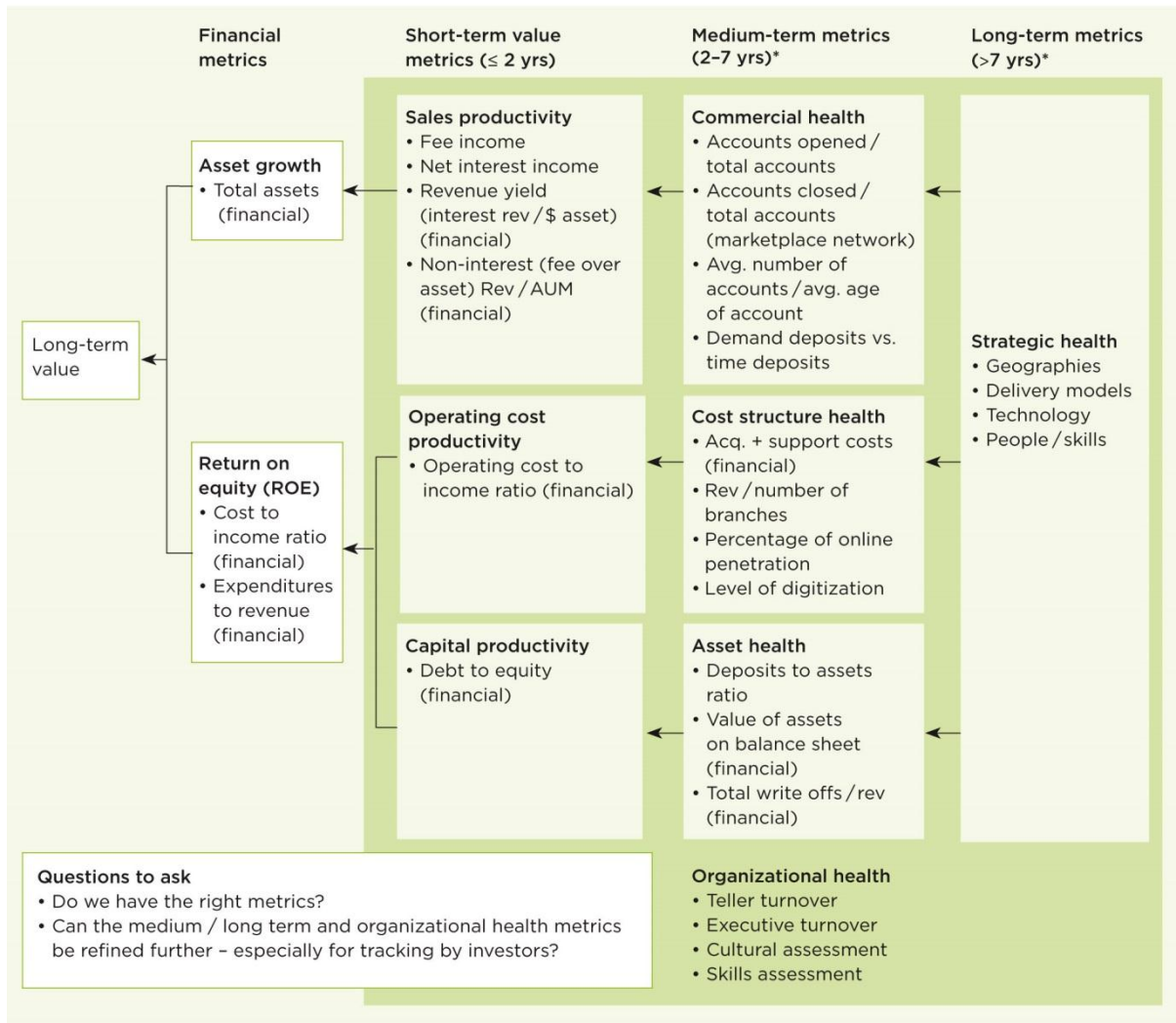
Questions to ask while developing medium and long-term metrics



* Metrics measured today to forecast the performance in the medium and long term

Source: 2015 Report of the Focusing Capital on the Long Term (FCLT)

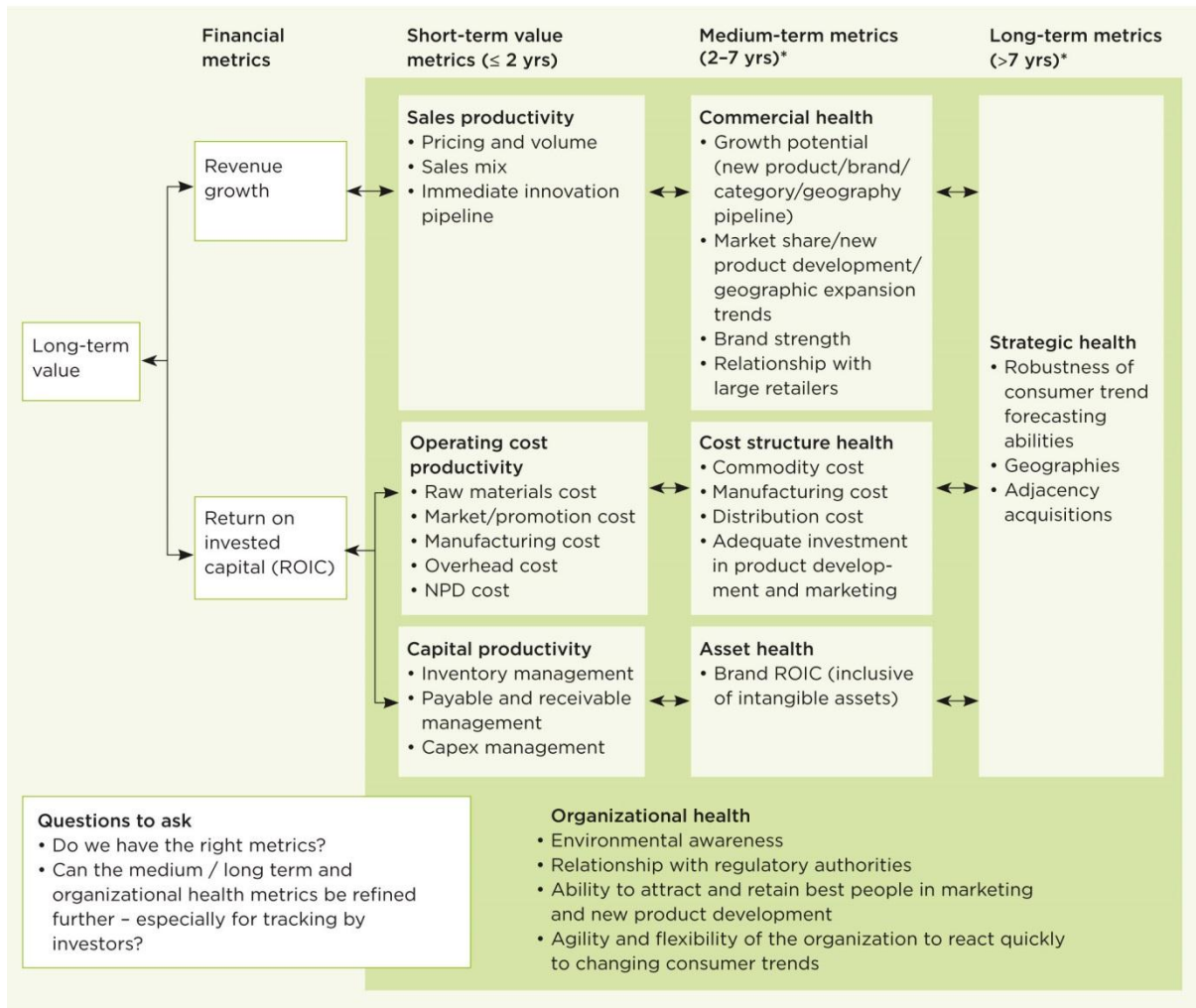
Fundamental value driver tree for a simple retail bank



* Metrics measured today to forecast the performance in the medium and long term

Source: 2015 Report of the Focusing Capital on the Long Term (FCLT)


Fundamental value driver tree for consumer packaged goods



* Metrics measured today to forecast the performance in the medium and long term

Source: 2015 Report of the Focusing Capital on the Long Term (FCLT)

Case Studies

Long-term strategy element	Company	Description
1. Clear statement of purpose, mission and vision	World's second- largest appliance maker by units sold, with net sales of SEK 109.2 billion	Lays out clearly in one page the vision (“who we want to be”), mission (“what we want to achieve”), strategy (“how we want to do it”), and the values (“the base for our work”) of the company. Electrolux defines its mission as four financial goals (operating margin, capital turnover rate, return on assets, average growth), which have remained mostly unchanged over the past few years.
2. How long-term value is created	 <p>One of South Africa’s four largest banking groups by assets and deposits, with total assets of R 750 billion (FY2013)</p>	Links how value is created in the business through three steps (i.e., what we do, flow of money, and value added), and gives detailed explanation and figures for each segment of its businesses (i.e., Lending, deposit-taking and funding activities, Transactional, advisory, trading, investment, insurance and other services, Operations, and Tax and other). The company has also dedicated a website to communicating their long-term strategy (Fairshare 2030).

Long-term strategy element	Company	Description
3. Management’s market view	 <p>A supplier of technology and services to the mining, oil, and gas industries, operating in more than 50 countries, with €3.9 billion in net sales (FY2013)</p>	Provides a table of Metso’s key industries (mining, construction, oil, and gas) detailing the market drivers, market trends, short-term market outlook, organic growth potential, acquisition potential, share of orders received from the industry during the year, and service intensity.
4. Competitive advantage	Turkey’s second-largest private bank, with consolidated assets of \$107 billion (as of September 30, 2014)	<p>Garanti’s annual report dedicates a full page to highlighting its competitive advantages and supporting fact base.</p> <p>For example, one of its competitive advantages is being a single point of contact for all financial needs. The strength of this statement is substantiated by the following:</p> <ul style="list-style-type: none"> • International banking operations in the Netherlands, Russia, and Romania since 1990s • Leader in bancassurance • 18% of all pension participants in Turkey choose Garanti • With TL 9.8 billion business volume, maintains its leading position in factoring • Leader in number of leasing contracts • Turkey’s first asset-management company • Strong presence in capital markets with ~7.5% brokerage market share

5. Strategic goals



An American multinational biopharmaceutical company, with a presence in more than 75 countries and total revenue of \$18.7 billion (FY2013)

At an investor day presentation in April 2011, Amgen outlined the company’s long-term strategy and gave financial guidance for 2015, which was supported by a seven-point plan, including building one of their product franchises to \$3-\$4 billion of worldwide sales by 2015, an operating plan to drive margin improvement and a clear capital-allocation plan. The company then provided clear financial guidance for 2015:

- Revenues of \$16-\$18 billion
- Adjusted net income of \$6-\$7 billion
- Adjusted earnings per share (EPS) of \$7.25-\$8.60, representing a compound annual growth rate of between 7 and 11 percent

6. Detailed execution roadmap



A German multinational conglomerate operating in more than 200 regions worldwide, with revenue of €72 billion (FY2014)

In 2014, Siemens published its new long-term strategy, Vision 2020, in a strategy report independent of its annual reports. It detailed three specific steps to implementation. The focus in the short term was to drive performance through re-tailoring structures and responsibilities. In the medium term, it was to strengthen core businesses through reallocation of resources. Finally in the long-term, it aspired to seize further growth opportunities in new fields.

Long-term strategy element

Company

Description

7. Medium- and long-term metrics and targets

Top 5-listed companies by market capitalization on the Australian Securities Exchange Limited, with global assets of A \$677.5 billion (2013)

In 2012, Westpac defined 10 objectives aligned with their three sustainability strategies for 2013-17. In 2013 it introduced a scoreboard for these objectives that included the following for each objective:

- what was done in 2013
- an objective (e.g., help our customers meet their financial goals in retirement)
- a metric to measure (e.g., “Westpac Group customers with Westpac Group super-annuation (%)”)
- 2013 actuals
- 2014 and 2017 targets

8. Capital and non-capital investments



South African energy and chemicals company, one of the top 10 most-valuable companies listed on the Johannesburg Stock Exchange, with turnover of R 202.7 billion (FY2014)

Being a company in a resource-intensive industry and South Africa’s second-biggest emitter of greenhouse gases, Sasol and its disclosures receive close review. Their annual report clearly defines the criteria that Sasol takes into account when allocating resources. The criteria cover six types of capital: natural, human, social and relationship, intellectual, manufactured, and finance. Resource allocation decisions are designed to minimize the negative impact of capital inputs while maximizing positive outcomes. The report gives a detailed explanation of each capital type and outcome (impact on the relevant capital stock), as well as activities conducted to minimize the negative impact for each type of capital.

<p>9. Risks</p> <p>One of the world's leading integrated telecommunications companies, with 143 million mobile customers and revenue of €60.1 billion</p>	<p>Deutsche Telekom segments risks (classified as "Industry, competition and strategy", "Regulation", "Operational", "Brand, communication and reputation", "Litigation as well as anti-trust and consumer protection proceedings" and "Financial") by low, medium, and high risks, assessing them according to the probability of occurrence and potential impact. The company's annual report also provides the change in risk level compared to the prior year.</p>
<p>10. Executive and director compensation</p> <p>A British luxury house builder, with £1.4 billion revenue (FY2013) and voted Britain's Most Admired Company in 2011 across all industries</p>	<p>Berkeley Group developed a long-term incentive plan which extends to 2021. Under the incentive plan, the Executive Directors would receive up to 5 million shares in 2021 if the company were to meet its long-term strategic targets (see Section 2).</p>

Source: 2015 Report of the Focusing Capital on the Long Term (FCLT)

ANNEXURE 6: PSE GOVERNANCE (INTERNATIONAL PRECEDENTS)

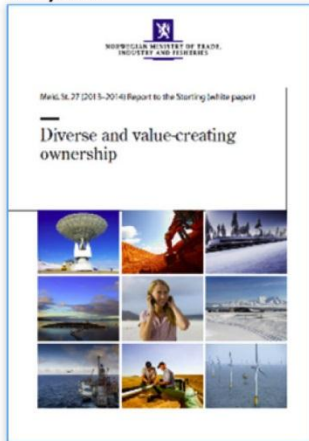
Publish precise rationale for why government owns PSEs; divest those which no longer fulfil this rationale



Norway publishes rationale regularly

and accordingly divests unsuitable PSEs

Ministry of Trade, Industry & Fisheries tables a report to the Storting every 3-4 years



The 2014 report recommended adjusting state shareholding according to the ongoing relevance of the rationale for owning SOEs

Rationale for ownership	Recommendation	# SOEs
Commercial objectives + other specifically defined objectives (to address market failure or control natural resources)	Maintain shareholding	10
Sectoral policy objectives (e.g. to enrich cultural sector)	Maintain shareholding	26
Commercial objectives + maintain HQ in Norway	Reduce stake to 34%	8
Purely commercial objectives	Divest	8

SOURCE: Diverse and Value Creating Ownership, 2013-14 Report to the Storting

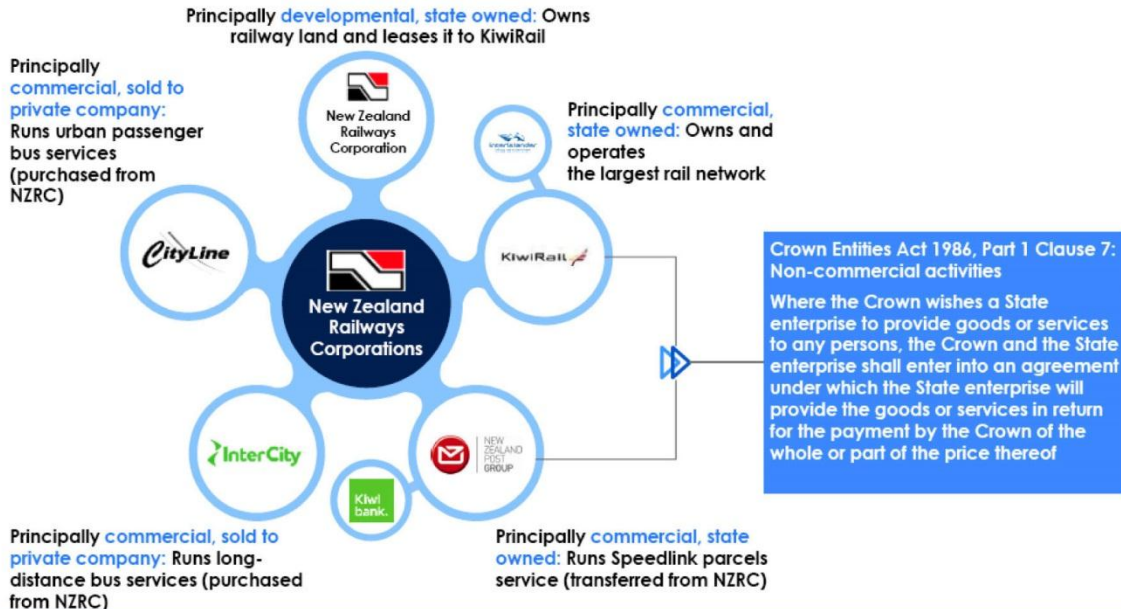
McKinsey & Company |



Make PSE developmental activities transparent by ring-fencing them, by separately funding and reporting them, or by splitting them into a separate PSE

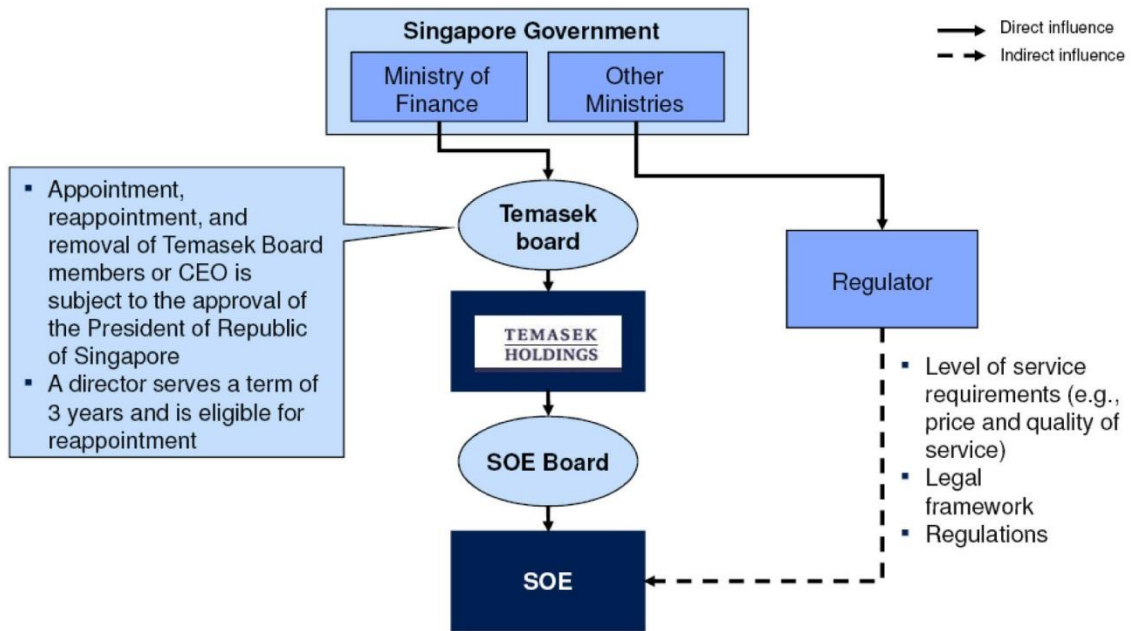
New Zealand split its SOEs into developmental and commercial SOEs

And enacted legislation requiring contracts for developmental activities



SOURCE: KiwiRail Ltd., New Zealand Railway Corporation, New Zealand Post Ltd., InterCity Group Ltd., CityLine New Zealand Ltd, Crown Entities Act 1986 | McKinsey & Company

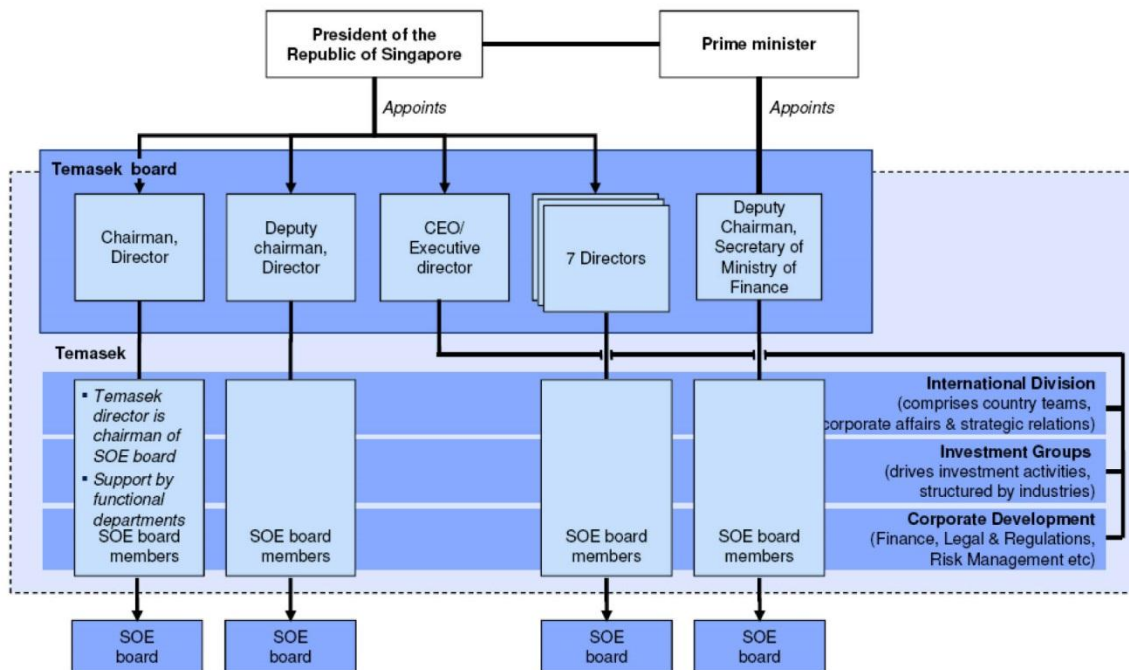
Case example: Temasek only reports to the Ministry of Finance and independently supervises its PSEs



SOURCE: Press search; Team analysis

McKinsey & Company |

Case example: The Temasek structure provides PSE portfolio companies with isolation against direct interference from the State



SOURCE: Temasek website; Interviews

McKinsey & Company |



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

SEBI BHAVAN BKC
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