

## KOTAK Committee on Corporate Governance

written by Kulin Dave | April 1, 2019

In 2018, The Securities and Exchange Board of India (SEBI) not only approved a host of recommendations made by the Kotak Committee on Corporate Governance (Kotak Committee), but also gave these recommendations the required regulatory propulsion by notifying the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018.

From today, a slew of these amendments (Amendments) will come into effect and all listed entities will be required to ensure their readiness in terms of implementation and compliance.

The Board of Directors

The majority of the Amendments are dedicated to boards and their schemes. To achieve the twin objectives of stopping directors dividing their attention and time amongst too many stakeholders, and increasing the diversity of each board, the Amendments will now place restrictions on the maximum number of directorships (independent and otherwise) that each director can hold in a listed entity.

An additional layer of scrutiny has been added for independent directors, which requires such directors to make declarations to the board on an ongoing basis regarding their independence, and the board to formulate a policy for evaluating the performance of all independent directors. The compliance requirements stretch even after the resignation by an independent director – the board is now required to disclose to stock exchanges the why as well as the when regarding the resignation of the independent director.

The Amendments also talks about managerial remuneration. As a result, for every year in which the annual remuneration payable to a single non-executive director exceeds 50% of the total remuneration payable to all non-executive directors, shareholders' approval will be required.

The Amendments also acknowledge the significance of board-level committees as well as senior management in the day-to-day operation and management of a company, and seek to regulate them appropriately. The roles and responsibilities of nomination and remuneration committees and stakeholder relationship committees are now expanded and better defined. On the other hand, expanding the scope of 'senior management' will now ensure that tools of corporate governance such as succession planning and code of conduct govern a wider array of employees. Shareholder Information Rights

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objective of SEBI remains simple – protection of investors' interest. The same objective remains the running theme of the Kotak Committee recommendations and are reflected in the Amendments as well. A listed entity's website – which will need to include a copy of the annual report, details of board/committee composition, code of conduct, policies, etc. under separate sections – will now be a mini-repository of information for any discerning investor.

#### Annual

reports will also need to be e-mailed to shareholders' registered IDs, and shall mandatorily include, amongst other matters, disclosures in relation to utilisation of funds, transactions with promoter/promoter groups, details of changes in key financial ratios, details of other directorships, a competence matrix of the board, credit ratings, and auditor fees. To sum up, post-Amendments, the shareholders will be afforded a wider and deeper view into the workings of their investee companies.

#### Corporate Governance

##### The

Kotak Committee introduced some Amendments that corporations need to think through well, especially the large ones. For instance, what may at first appear

to be minor typical changes – mandatory submission of quarterly results, limited review of consolidated entities, amended definition of material subsidiary (for certain select aspects only) and half yearly statement of cash

flows – could potentially have wide-ranging implications on group structuring, audit & reporting, and costs.

##### Speaking

of costs, another industry practice that will now become the regulatory norm applicable to all listed entities is the secretarial audit of the listed entities and its material unlisted Indian subsidiaries. The Amendments also specifically recognise the systemic impact that may result from any lapse of governance at large corporates, and as a result there are several changes that

the top 100, 500 and 2,000 listed companies will have to adjust to.

#### Steps Towards Promoter Governance

##### By

placing persons belong to the promoter group and holding a minimum stake within

the definition of 'related parties', the Amendments have sought to subject hitherto unsupervised dealings amongst promoters, companies and their related entities and affiliates, to additional scrutiny at board and shareholder levels. To strengthen this, the Amendments also mandate that no related party shall vote on any related party transactions. Similarly, typical listed entities-promoter arrangements such as brand usage or royalty exceeding prescribed thresholds will now be deemed to be material related party

transactions. The board, on the other hand, is required to formulate a policy for dealing with material related party transactions, and make bi-annual disclosures of related party transactions to the stock exchanges.

Another key change to be introduced by the Amendments on this aspect is the limit on fees/remuneration payable to executive directors who are part of a promoter group, and the requirement to obtain shareholders' approval in case such thresholds are breached.

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