Corporate Governance Norms: Steps in the Right Direction

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The first voluntary code of corporate governance (CG) was initiated by the Confederation of Indian Industry (CII) way back in 1998. The next year, SEBI set up a committee under Kumar Mangalam Birla and introduced a related provision under the listing agreement, which was made mandatory for companies of certain sizes. To develop and promote strong CG, SEBI has time and again constituted various committees under the Chairmanship of individuals such as Naresh Chandra and Narayana Murthy. In late 2009, the Ministry of Corporate Affairs came out with its own set of voluntary CG guidelines.

Recently, the ouster of Cyrus Mistry from the Tata Group of companies, and the governance-related complaints raised by the promoters have cast a spotlight on the quality of CG in Board-managed companies. SEBI, in June 2017, constituted yet another committee under the Chairmanship of Uday Kotak to advise it on issues relating to governance in Indian firms. The committee has submitted its recommendations, and seeks public opinion by November 4th, 2017.

Key asks are to raise the minimum Board strength, have more IDs - including at least one female ID - and change the norms for attendance and for quorum-formation

Key Recommendations of the Kotak Committee

Dual positions for Board members

Several companies, including large ones, have a single Board member to look after the dual position of Chairman and MD. The committee has addressed the issue by suggesting a separation of the roles of the Chairperson and the CEO/MD for listed entities. This would tilt the present situation in several companies.

Constitution of the Board

One of the committee's major recommendations relates to the constitution of the Board of Directors of listed companies. These recommendations are meant not only to change the existing provisions of the Listing Obligations and Disclosure Requirements, but also to overrule the relevant provisions of the Companies Act, 2013.

The panel recommends increasing the minimum Board strength of

SEBI's recent measures are a step in the right direction, but the Commerce and Finance ministries have raised certain red-flags with regard to the latest recommendations.

listed firms to six members, and the appointment of at least one woman as Independent Director. The existing norms require having at least one woman on the Board, irrespective of whether she is an Independent or an Executive Director. The panel also calls for having at least half of the Board as Independent Directors, up from one-third currently.

Quorum and attendance

The Kotak Committee report also acknowledges the importance of Independent Directors by suggesting new norms for forming a quorum for a Board meeting. The Companies Act discourages the practice of Directors skipping Board meetings by taking a leave of absence. Now, Directors of listed firms have to attend a minimum number of meetings each year. Such recommendations are a welcome move in the overall interest of stakeholders.

In conclusion

In the last few years, SEBI, in an effort to enhance shareholder activism and protection, has made several changes to improve CG in listed companies. Its measures on related-party transactions, audit standards, and the recent revamp of the constitution of Board are all steps in the right direction. However, such rules need to be incorporated mandatorily, given that promoters and managers play a major role in governance. The Ministry of Corporate Affairs and the Ministry of Finance have already raised a red flag on the recommendations of the Committee. Let us hope that good sense prevails in every corner, helping to enhance the quality of governance in Indian companies. ■