

SEBI

CA Jayant Thakur; CA. BhaveshVora

Recent developments in Corporate/Securities Laws

Consultation paper on changes to provisions relating to Independent Directors

SEBI has released a consultation paper on 1st March 2021 whereby it has proposed several changes to the rules relating to corporate governance, mainly to strengthen the status of Independent Directors. The major proposals include giving a bigger role to minority shareholders in appointment/removal of such directors, proposing higher remuneration to them, strengthening the Audit Committee/Nomination and Remuneration Committee (“NRC”) even further, etc. Views are sought from the public at large.

The central principle appears to be to give a greater say to non-promoter/public shareholders in matters of Independent Directors which would also mean distancing the Promoter shareholders further than what is presently the case. This should, it is expected, make the Independent Directors less susceptible to influences from the Promoters and management and can thus even expect support from public shareholders.

The major changes proposed are as follows:

Greater say to public shareholders in appointment/ removal of Independent Directors

Independent Directors are, by definition, generally expected to be unrelated and unconnected with the Promoters. However, still, through voting rights and otherwise, Promoters play a decisive role in their appointment/removal.

An interesting change is proposed whereby minority shareholders will have a greater and even decisive say. Now, there will be two levels of approvals for appointment of Independent Directors. First is approval by majority of all shareholders including promoter shareholders. Second will approval by “majority of minority” – i.e., votes only of non-promoters will be seen and only if majority of this non-promoter shareholders approve, then the appointment will be confirmed. If, however, the Independent Director does not get appointed in this manner, a fresh person can be proposed. Alternatively, the same person can be proposed after a specified cooling period, but now, a special resolution would be required.

NRC/Audit Committee to have a higher proportion of Independent Directors

The Nomination and Remuneration Committee (“NRC”) reviews and recommends Independent Directors for appointment. It makes sense that the NRC itself has more say to Independent Directors and less to Promoters. Hence, it is now proposed that instead of the present majority, a higher two-thirds of the number of directors of this Committee should be Independent Directors.

Further, Audit Committee now will not be allowed to have any promoter director or executive director.

Independent Directors to be now appointed only by shareholders, Board’s powers to be taken away

It is felt that the present scheme of provisions would still leave a lacuna and effectively allow the Promoters to have greater role in appointment of Independent Directors. The Board can appoint a person as Independent Director and he would hold office till the next AGM when his appointment would be confirmed. This could be several quarters away. Now it is proposed that Independent Directors should be appointed only by shareholders in general meeting, even if this is to fill a vacancy that has arisen on account of resignation, etc. of an Independent Director.

Higher responsibility placed on Independent Director if they desire to leave

It is noted that resignation by Independent Directors is offered on cryptic or generic grounds. This does not help if there were reasons that the shareholders and even the incoming person ought to know. Reasons like pre-occupation or commitments are also offered. Several changes are proposed. If reasons like pre-occupation are offered, then such person will have to wait for one year before joining another board. Interestingly, if an Independent Director wants to join the same company as executive director, he will now have to wait for one year from date of his resignation.

There are a few other changes proposed including a vital proposal to increase compensation payable to Independent Directors. It is hoped that corporate governance standards should improve after such changes.