



## Amendments to Corporate Governance code

April 17, 2014

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The Companies Act, 2013 was enacted on August 30, 2013 which provides for a major overhaul in the Corporate Governance norms for all companies. The rules pertaining to Corporate Governance were notified on March 27, 2014. The requirements under the Companies Act, 2013 and the rules notified there under would be applicable for every company or a class of companies (both listed and unlisted) as may be provided therein. Thus

SEBI reviewed the Listing Agreement with the objective to :

- Align with the provisions of the Companies Act, 2013
- Adopt best practices on corporate governance
- To make the corporate governance framework more effective.

This Precursor analyses, at a high level, the amended clauses of listing agreement vis-a-vis the corresponding provisions of the Companies Act, 2013.

# At a Glance

## Provisions Aligned with the Companies Act

- Nominee Director is Excluded from definition of Independent director
- Tenure of Independent Director
- Appointment of Woman Director
- Performance Evaluation of ID and Board
- Separate meeting for IDs
- Approval of RPTs
- Constitution of Various Committees like Stakeholder Relationship Committee, Nomination and remuneration Committee
- Whistle Blower Policy

## New Provisions

- Disinvestment in Subsidiary requires holding company shareholder approval
- Sell or Lease in Subsidiary requires holding company shareholder approval
- Constitution of Risk Management Committee
- Plans for Succession for appointment to the Board
- Rights of Shareholders and Role of Shareholders explicitly provided



## Key changes in Corporate Governance Norms-Independent Director

Sr. No	Changes in Listing Agreement	Position vis-a-vis Companies Act, 2013
1	Exclusion of Nominee Director from definition of Independent Director	This is aligned to Section 149(6) of the Companies Act, 2013
2	Separate Meeting of Independent Director atleast once a year	This is aligned to Schedule IV to Companies Act, 2013. All Independent Directors should strive to attend.
3	Maximum limit of Independent Directorship capped at 7 listed companies or 3 companies if Whole Time Director in any listed company.	The Companies Act 2013 specifies for Maximum 20 companies out of which not exceeding 10 public companies. The Act does not specify any limit for Independent Directors per se .
4	Restriction of Tenure of Independent Director to 2 terms of 5 years each. However if a person who has already served as an Independent Director for 5 years or more in a listed company as on 1 <sup>st</sup> October, 2014, he shall be eligible for appointment for 1 term of 5 years only. Cooling off period of 3 years after completion of two terms.	This is in line with section 149(10) and (11)of Companies Act, 2013 except that the section is prospectively effected whereas SEBI circular provides leeway for a single term of 5 years.
5	Performance Evaluation of Independent Director and Board of Directors	This is aligned to Schedule IV to the Companies Act, 2013 which specifies performance evaluation of Independent Director and also to section 134 which specifies annual evaluation of the Board.
6	Prohibition of stock option to Independent Directors	This is aligned to section 149(9) of the Companies Act, 2013.
7	Formal letter of appointment to be given to the Independent Director, which shall along with the details of the Director be put on the company's website	This is aligned to Schedule IV to the Companies Act, 2013
8	Mandatory training to Independent Directors (no more optional)	
9	The definition of 'independence' is widened	This is aligned to section 149 of Companies Act, 2013

## Key changes in Corporate Governance Norms-Subsidiary Co. & RPTs

Sr. No	Changes in Listing Agreement	Position vis-a-vis Companies Act, 2013
	<b>Subsidiary company</b>	
1	Requirement of special resolution in general meeting when disposal of shares in material subsidiary resulting its shareholding (either on its own or together with other subsidiaries) to fall below 50% or cessation in exercise of control	
2	Prior approval of shareholders of holding company by special resolution for selling, disposing and leasing of assets of material subsidiary amounting to more than 20% of the latter.	

Sr. No	Changes in Listing Agreement	Position vis-a-vis Companies Act, 2013
	<b>Related Party Transactions</b>	
1	Approval of all Related Party Transaction (RPTs) by audit committee	This is aligned to section 177(4) of the Companies Act, 2013.
2	Approval of dis-interested shareholders through Special resolution for all <b>material</b> RPTs .For existing transactions which are likely to continue beyond 31 <sup>st</sup> March 2015, approval will be required to be taken latest in the first general meeting to be held post October 01, 2014.	Under section 188 of the Companies Act 2013 it is specified that pre-approval of related party transactions are necessary where such transactions are not in the ordinary course of business and which are not at arm's length basis. The SEBI requirement is more onerous in the sense that approval of material RPTs even in ordinary course and at arm's length are covered.

# Key changes in Corporate Governance Norms-Board Governance & Board Committees



Sr. No	Changes in Listing Agreement	Position vis-a-vis Companies Act, 2013
1	Constitution of Stakeholder Relationship Committee (Replacing Shareholders/ Investors Grievance Committee)	This is aligned to section 178(5) of the Companies Act, 2013 which is applicable to companies which consist of more than 1000 shareholders, debenture holder, deposit holder and any other security holder.
2	Constitution of Risk Management Committee by top 100 companies by market cap as at the end of immediate previous financial year	According to section 134 (4)(n) of the Companies Act, 2013 a Risk Management Policy needs to be implemented by all the companies. However the SEBI Amendment specifies about formation of Risk Management Committee by top 100 companies by market cap.
3	Mandatory Constitution of Nomination and Remuneration Committee. Chairman of the Committee to be independent	This is aligned to section 178(1) of the Companies Act, 2013.
4	Woman Director to be appointed mandatorily	This is aligned to section 149(1) of Companies Act 2013. (The Woman Director Can be Independent or Non Independent).
5	Whistle Blower Policy	This is aligned to section 177(9) of the Companies Act, 2013
6	Enhanced disclosures to be made with respect to remuneration of directors	
7	Boards of Companies to satisfy themselves that plans are in place for orderly succession for appointment to the Board and senior management	
8	<b>Suggests</b> separation between Chairman and CEO	This is aligned to section 203 (1) of the Companies Act, 2013 which specifies that the Chairperson shall be different from MD/CEO unless the article provides or the company has no multiple Business

# Key changes in Corporate Governance Norms-Shareholder Rights & E-voting

Sr. No	Changes in Listing Agreement	Position vis-a-vis Companies Act, 2013
	<b>Shareholder rights</b>	
1	Equitable treatment of all shareholders, including minority and foreign shareholders	
2	The rights of shareholders and the role of stakeholders now explicitly specified	

Sr. No	Changes in Listing Agreement	Position vis-a-vis Companies Act, 2013
	<b>E-voting</b>	
1	E-voting facility available for all resolutions passed at general meetings or through postal ballot. Earlier clause 35B allowed E-voting for resolutions passed through postal ballot.	







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