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SEBI tightens norms on independent directors

On June 29, 2021, Securities Exchange Board of India (SEBI) made several crucial decisions regarding independent directors on boards of listed companies.

An independent director being a non-executive director aids the company in revamping the governance standards and corporate credibility. The concept of independent directors was added in The Companies Act, 2013 (Act) after the need was felt of having an autonomous voice to speak on behalf of minority shareholders. Section 149 of the Act (to be read along with Rule 4 and Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014), showcases the provisions for appointment of directors, including the code of conduct to be adhered by them. The provision of the Act mandates the requirement of one-third of the total directors to be independent in all the listed public companies.

A consultation paper (Consultation Paper on Review of Regulatory Provisions related to Independent Directors) was released by SEBI on March 1, 2021, to review the provisions with respect to the independent directors. Considering the same, major amendments have been done in the rules governing the appointment, removal, re-appointment, resignation of the independent directors.

Key amendments announced by SEBI

- **Appointment of directors:** Applicable for all entities, a special resolution with 75% of votes in support must be passed for the appointment, reappointment, and removal of the independent directors. Furthermore, instead of the existing requirement of a majority, there will be a Nomination Committee and a Remuneration Committee having 2/3rd independent directors. The selection of the candidate as an independent director will be done by this committee only, which shall also disclose the skillset of the candidate, thereby justifying the selection.
- **Cooling-off period:** Key managerial personnel and their relatives or the promoter group's employees will have to necessarily undergo a three-year cooling off period before getting appointed as an independent director. Similarly, an independent director transitioning into a full-time director in the same company/subsidiary/any company that belongs to the promoter group, will have to observe a cooling period of one year.
- **Resignation of independent directors:** If an independent director resigns from the board, the company must disclose the complete resignation letter, including a list of his/her present membership and directorship in the board committees.
- **Audit Committee:** The Audit Committee should have 2/3rd members as independent directors. It is further stipulated that approval regarding every related party transaction must be given by the independent directors on the Audit Committee.

Independent directors play a crucial role in taking an unambiguous and independent stand to check and balance the minority shareholders and thereby reduce the exposure of unwanted risks. The regulator has defined the role and responsibilities of an independent director quite elaborately, including the requirement that the person, apart from receiving director's remuneration should not have any pecuniary or financial relations of any kind with the company for two preceding financial years. The changes, which will be applicable from January 1, 2022, will certainly boost the independence of independent directors and ensure transparency on a more holistic level. The changes shall.

E-RUPI: A new digital payment solution

Prime Minister Narendra Modi on August 2, 2021 launched E-RUPI, a digital payment system for India. The system is developed by National Payments Corporation of India (NPCI) in collaboration with the Department of Financial services, Ministry of Health & Family Welfare and National Health Authority. NPCI is the brains behind the Unified Payments Interface (UPI) which was launched in 2016 and has since gained significant traction in India's digital payment ecosystem – the platform crossed 3 billion transactions mark recently with transactions worth INR 6.06 lakh crore in July 2021.

E-RUPI is a person and purpose specific voucher-based system, wherein the transaction will be done electronically directly to the beneficiary's mobile phone number. The platform does not require the beneficiary to have a bank account. Since it is purpose specific, it ensures that the QR code or the SMS-based e-voucher will be used for that purpose only. This will ensure a leak-proof transfer of money and incentives without the interference of the middleman, thereby minimizing transaction costs traditionally associated with such transfers.

Currently, the E-RUPI platform has partnered with two banks - Punjab National Bank and Bank of Baroda. There are 11 banks enlisted with the NPCI and more client banks will be added to the platform to gain access to the E-RUPI features.

This platform is expected to play a pivotal role in strengthening the Direct Bank Transfer (DBT) scheme announced by Ministry of Finance in 2013 with the aim of bringing transparency in the distribution of welfare funds and benefits from the Central government. In the first iteration, E-RUPI will be extensively used in the healthcare welfare for the purpose of providing drugs and nutritional support under the women and child welfare schemes, TB eradication programs, amongst others.

Maharashtra State Electric Vehicle Policy 2021 – Key highlights

The Government of Maharashtra announced a revised draft Electric Vehicle (EV) Policy on July 13, 2021, with an outlay of INR 930 crore. The policy will be valid till March 31, 2025 from the date of its notification. Maharashtra was one of the first states in the country to design and notify an EV policy in February 2018.

Key objectives of the draft policy

- Accelerate the adoption of battery-powered electric vehicle (BEVs) so that they contribute 10% of new vehicle registrations by 2025
- Aim for 25% electrification of the state public transport and last-mile delivery fleet in 6 urban centres: Mumbai, Pune, Nagpur, Aurangabad, Amravati, and Nashik
- Set up 2,500 charging stations in urban areas and highways
- Target of at least 10% of two-wheelers, 20% of three-wheelers and 5% of four-wheelers to be electric vehicles by 2025
- Make the State of Maharashtra the top BEV producer in India, in terms of annual production capacity
- 15% of Maharashtra State Road Transport Corporation's bus fleet to be electric

Salient aspects

- **Exemption:** EVs will be exempted from road tax and registration charges.
- **Incentive for EV buyers:** Incentives will be given to buyers of electric vehicles.
 - The policy will subsidize the first 100,000 electric two-wheelers, which will be eligible to receive an incentive of INR 5,000 per kWh of battery capacity up to INR 10,000
 - The maximum threshold of the incentives has been increased from INR 5,000: for e2Ws with a 3 kWh battery pack bought this year by December 31, 2021, there is an early bird incentive of up to INR 15,000; three-wheelers will have an incentive of INR 30,000; four-wheelers will have an incentive of INR 1,50,000 and for e-buses, this will be INR 20 lakh
- **Demand incentives for non-battery vehicles:** Vehicles sold without battery will be eligible for 50% of the demand incentive, while the remaining incentive amount will be given to the energy operator. The incentives disbursement system will be made digital.
- **Timeline:** Starting April 2022, all new government vehicles (owned/ leased) operating in the major cities will be electric.
- **Industry benefits:** The policy offers industries all the benefits under the 'D+' category of mega projects (this category denotes industries in the least developed parts of the State) irrespective of the location of the manufacturing unit in the State.
- **State EV Fund:** Aims to create a 'State EV Fund' which will be used to promote EV adoption including providing incentives for EVs and EV infrastructure.

- **Property tax rebates:** Urban local bodies will be encouraged to provide property tax rebates to residential owners for installing private charging infrastructure within their premises.
- **Budgetary provision:** Maximum budgetary provision for 'demand side' and 'charging infra' incentives is INR 930 crore for four years. The policy implementation can be funded through a green tax levied on re-registration of old vehicles and fuel cess.
- **Usage of batteries:** The policy emphasises the requirement of batteries for EVs and aims to set up at least one Gigafactory for manufacturing advanced chemistry cell batteries in the State.
- **R&D:** It will also allocate money for promoting research and development, innovation, and skill development in the State's electric vehicle ecosystem.

SEBI initiates guidelines on valuation of securities with multiple put options

On July 9, 2021, SEBI announced a new set of regulations for valuation of securities with multiple put options, held by mutual funds. The circular will come into effect from October 1, 2021.

Salient aspects

- **Valuation of securities:** In respect of valuation of securities with multiple put options present *ab initio*, wherein put option is factored into valuation of the security by the valuation agency, the following will be decided based on the recommendation of Mutual Fund Advisory Committee:
 - If the put option is not exercised by a Mutual Fund, while exercising the put option would have been in favour of the scheme, a justification for not exercising the put option shall be provided by the Mutual Fund to the Valuation Agencies, Board of AMC and Trustees on or before the last date of the notice period.
 - The Valuation Agencies shall not consider the remaining put options for the purpose of valuation of the security.
- **Yield of valuation:** The put option shall be considered as 'in favor of the scheme' if the yield of the valuation price, ignoring the put option under evaluation, is more than the contractual yield/coupon rate by 30 basis points.
- **Protection of investor interest:** This Circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interest of investors in securities and to promote the development of the securities market.

Section 24A offences: Supreme Court holds that SEBI's consent is not mandatory

On July 23, 2021, the Supreme Court held that SEBI's consent is not obligatory for compounding offences under section 24A of the SEBI Act, but the market regulator's views must be considered for securities stability and investor protection. Section 24A in The Securities and Exchange Board of India Act, 1992 implies that 'Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.'

A bench headed by Justice D Y Chandrachud said that even though SEBI was not conferred with any authority to veto a decision for proceedings in trial offences, it is a regulatory and prosecuting agency, and the courts must obtain its views since it is an expert body. The bench also stated that SEBI's consent cannot be mandatory before the Court for exercising the power of compounding under Section 24A.

SEBI unveils norms on processing of scheme-related applications by AMCs

On July 23, 2021, SEBI came out with a new framework for processing scheme-related applications filed by Asset Management Companies (**AMCs**) to ease business and establish uniformity in the timelines. All applications received on or after September 1, 2021, will be subjected to this new framework.

Under this framework, the application filed by AMCs for certain matters may be deemed to be taken on record in case no modifications are suggested, or no queries are raised by SEBI within 21 working days. These timelines will be adhered only if the application is complete and compliant with relevant norms.

However, in cases where the subject matter of approval requires a policy review or presents a unique situation which needs deliberation, the timelines might not be complied with. The matters which can be considered are as follows:

- Change in the fundamental attributes of a scheme
- Merger of schemes
- Roll-over of close-ended schemes
- Conversion of close-ended schemes to open-ended schemes

SEBI declares framework to segregate and monitor client collateral

In an endeavour to protect client collateral from misuse by brokers, SEBI came up with a framework to segregate and monitor client collateral. Segregation implies identification and protection of client collateral from misuse by trading or clearing member and protection from default of such member or other clients. The reporting mechanism will be effective from October 1, 2021.

The framework is classified into two major procedures:

- **First procedure:** Trading member will report disaggregated information on collaterals to the clearing member which will be further escalated to the Exchanges and Clearing Corporation. In case securities are provided through margin pledge or re-pledge in the depository system, the Clearing Corporation has visibility of the client to whom such securities belong, and accordingly it will assign the value of the securities collateral, based on applicable haircut, to that client's account.
- **Second procedure:** For other forms of collateral placed with the Clearing Corporation, it will provide a facility to the clearing members for upfront segment-wise allocation to ensure that the collateral allocated to a client is used towards the margin obligation of that client solely. Collaterals provided to the client must be sufficient for their margin requirements. However, if the same exceeds in a particular segment, then the proprietary collateral of the trading and clearing member will be blocked.

SEBI has also laid down guidelines on collateral deposit and allocation, collateral valuation, blocking of margin, withdrawal of collateral and default management process. Besides, a web portal facility would be provided by the Clearing Corporations to allow clients to view the disaggregated collateral.

Amendments to continuous disclosures in compliances by REITs and InvITs

SEBI on July 22, 2021 has amended the guidelines for Grievance Redressal Mechanism for Real Estate Investment Trusts (**REITs**) and Infrastructure Investment Trusts (**InvITs**) dated November 29, 2016. As per the amendment, all complaints including SCORES complaints received by the REITs and InvITs shall be disclosed in the format mentioned in Annexure-A on the website of the REITs and InvITs and filed with the recognized stock exchange(s) where its units are listed within 21 days from the end of financial year or end of quarter, as the case may be.

Parliament passes Inland Vessels bill

On August 2, 2021, the Parliament passed the landmark Inland Vessels Bill, 2021 (**Bill**). The Bill seeks to repeal and replace the existing Inland Vessels Act, passed in 1917.

The proposed legislation seeks to promote economical, safe and sound cargo transportation via inland waterways and uniform application of rules and regulations across this sector. The Bill also provides a platform for State government to regulate the non-mechanically propelled vessels. Some of the salient features proposed in the Bill are:

- Higher standards to ensure safety to ensure safety of navigation, protection of life and cargo, prevention of environmental pollution, constitution of welfare fund, transparency, and accountability of administrative mechanism as well as training and development of efficient workforce
- E-portal for registration/crew database in line with the goal of Digital India Campaign
- Introduction of provisions regarding healthier trade practices, principles of liability and limitation of the liability
- Concept of insurance improvised and expanded to ensure security trade and adopt best practices
- Revamped provisions regarding wreck and salvage as well as casualties and investigation
- Regulation of future developments and technological advancements in vessel construction and usage as well as technologically advanced vessels, identified as 'Special Category Vessels'

Companies (Incorporation) Fifth Amendment Rules, 2021

MCA on July 22, 2021 notified the Companies (Incorporation) Fifth Amendment Rules, 2021 to further amend the Companies (Incorporation) Rules, 2014. As per the amendment, if a company fails to change its name or new name in accordance with the direction issued under Section 16(1) of the Companies Act, 2013 within a period of three months from the date of issue of such direction, the letters 'ORDNC' (Order of Regional Director Not Complied), the year of passing of the direction, the serial number and the existing Corporate Identity Number of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new name in the Register of Companies and issue a fresh Certificate of Incorporation in Form No. INC-11C.

Extension of time for holding the AGM by top 100 listed entities by market capitalization

SEBI on July 23, 2021, extended the timeline for conduct of Annual General Meeting (**AGM**) by top-100 listed entities by market capitalization. Accordingly, such entities shall hold their AGM within a period of six months from the date of closing of the financial year for 2020-21.

Spending of CSR Funds for Covid-19 vaccination

Ministry of Corporate Affairs (**MCA**) on July 30, 2021, clarified that spending of CSR funds for Covid-19 vaccination for persons other than the employees and their families, is an eligible CSR activity under Schedule VII of the Companies Act, 2013.

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