Over 100 firms flout norms on directors

6% of NSE-listed firms short of legally mandated no. of independent directors

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There seem to be quite a few empty chairs in the boardrooms of India Inc. Both the Securities and Exchange Board of India's (Sebi's) listing regulations and the Companies Act of 2013 mandate that a certain proportion of a company's board be composed of independent directors. The presence of such directors is said to provide better oversight and help improve governance.

Currently, as many as 104 listed companies have fewer independent directors than mandated by the regulations, according to the figures from Prime Database. Some of the vacancies are because of resignations and retirements.

The number of boards that have fewer than the required independent directors accounts for around 6 per cent of the companies listed on the National Stock Exchange (NSE), which forms the universe of the data under consideration. There are over 1,600 listed companies on the NSE.

Some of the companies with fewer than the mandated number of independent directors are Bank of Baroda, Interglobe Aviation, and Canara Bank. E-mails sent to them didn't elicit a response.

Sebi requires at least half of the board of directors to be independent in listed companies, if the person heading the board is someone in an executive capacity, or is related to the promoters. Otherwise, one-third of the board has to be independent.

"Every listed public company shall have at least one third of the total number of directors as independent directors and the central government may prescribe the minimum number of independent directors in case of any class or classes of public companies," according to the Companies Act.

BIG HOLE IN THE BOARDROOM

- Regulations require that half to one-third of the board should be independent directors
- Over 100 listed companies currently don't follow this norm
- Companies include InterGlobe Aviation, Bank of Baroda and Canara Bank
- Some other public sector banks don't have independent directors too

Public sector companies also have fewer than the required number of independent directors, especially public sector banks.

One banking source claimed that the board composition under the Companies Act was not applicable since banks had to form a board under the Banking Companies (Acquisition and transfer of Undertakings) Act, 1970. However, there appears to be a difference of opinion on how this would apply. Experts say that they are also required to follow rules on the minimum independent directors criterion.

Vacancies have to be filled in three months or in the next board meeting, whichever is later

Shriram Subramanian, founder and managing director of corporate governance advisory firm InGovern, said that strictly speaking they were required to adhere to the regulations if they were listed.

"In the case of banks whose shares are listed on stock exchanges, such banks also need to comply with the Sebi Listing Regulations (including appointment of independent directors), whereas under the Banking Regulations Act, 1949, there is no such requirement to appoint independent directors," said Pavan Kumar Vijay, founder and managing director at legal and financial consulting firm Corporate Professionals India.

Vacancies typically have to be filled in three months or in the next board meeting, whichever is later. There are penalties if companies don't fill up vacancies. These range from ₹1,000 to ₹5,000 a day, under various regulations. The officers in default can also face a similar fine.

Independent directors can play a role in multiple key areas of corporate governance, including looking at key issues through their role in the audit committee.

"(Independent directors) are required to safeguard the interests of all stakeholders, particularly minority shareholders, balance the conflicting interest of the stakeholders and bring an objective view to the evaluation of the performance of the board and management," said Sebi's October 2017 report of the committee on corporate governance.