

# Sebi Board to Focus on Independent Directors Next Wk

Market regulator will also look at easing ownership norms for entities keen to set up bourses, depositories

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**Mumbai:** The board of the Securities and Exchange Board of India (Sebi) is set to discuss rules overhauling all aspects pertaining to the role an independent director plays at a listed company. These include norms governing eligibility for appointment and reappointment, removal, resignation, remuneration and the participation of independent directors on board committees.

The Sebi board, which will meet on June 29, will also discuss a liberalised ownership framework to allow new entrants to set up stock exchanges and depositories.

"Sebi has received a huge number of comments on the independent director proposals. The board will take a final view on these proposals based on the public comments," said a person familiar with the development.

Sebi board will meet on June 29 to discuss proposals on



## INDEPENDENT DIRECTORS

Dual-approval system for their appointment, removal

3-year cooling-off period for appointment of managerial personnel or staff of promoter group cos to post

Esops with 5-yr vesting period

Disclosure of full text of resignation letter to stock exchanges

## New Exchanges, Depositories

Entry of foreign exchanges in India via JV with new local co, mergers with existing bourses

Shareholding cap for local and foreign promoters



## UK-like Structure Proposed

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If approval thresholds are not met, the company would have to propose a new candidate or the same person can be put forward after a cooling-off period of 90-120 days.

The dual-voting structure has been adopted in countries such as the UK for premium listed companies that have a controlling shareholder. "The process as proposed however can create an atmosphere of potential conflict between the majority and minority shareholders," said Suhail Nathani, managing partner, Economic Laws Practice. "Given the recent experiences pertaining to management remuneration and minority shareholder voting patterns, the construct of this methodology should permit the minority shareholder to have a voice, but not make it an adversarial process."

The proposed methodology appears to make independent directors answerable only to minority shareholders — that can never be the intention, he said.

"Also, while rolling it out, the regulator should consider different categories of companies differently based on the shareholding by the majority shareholder — like the UK does," Nathani said.

## 'CONTROVERSIAL PLAN'

Prime Database chairman Prithvi Haldea said approval by a majority of minority shareholders is fraught with controversy and the possibility of unintended outcomes.

"There are many companies where the public shareholding is very small, and the promoters shall be loath to the idea that the independent directors that they want can be rejected by the minority shareholders," Haldea said.

On the eligibility criteria for independent directors, Sebi had proposed that key managerial personnel and employees of promoter group companies cannot be appointed as independent directors in a company unless there is a cooling-off period of three years. This restriction will also apply to relatives of such managerial personnel.

The regulator has also suggested that the nomination and remuneration committee (NRC) can use the services of external agencies to shortlist candidates as independent directors. Companies must also disclose the channels used to look for candidates. If one of the channels is "recommendation from a person," the category of such a person — whether promoter, institutional shareholder or director — should be disclosed.

"We have been tinkering with the independent director regulations for over 15 years, without any vi-

sible positive results," Haldea said. "The key problem lies in the appointment. While we may continue to strengthen the NRC, the reality is that NRC acts only at the behest of the promoter, as the members of the NRC in the first place have been appointed by the promoter. The independent directors are an oxymoron... they are appointed and paid by the very person whose excesses they are supposed to guard against."

The independent director concept was introduced by Sebi in 1999, based on the recommendations of the Kumar Mangalam Birla committee on corporate governance.

## REMUNERATION RULES

Sebi has also suggested changes in the remuneration structure for independent directors by allowing long-term stock options to be awarded to them. Independent directors are currently paid sitting fees of a maximum of Rs 1 lakh and profit-linked commission within an overall limit — they cannot be given stock options.

The regulator has proposed ESOPs for independent directors with a five-year vesting period in place of profit-linked commission.

"The cap on sitting fees should be done away with and should be left to each company. Instead of commission, ESOPs may be considered, with long vesting periods," Haldea said.

The regulator has also suggested that in case an independent director steps down, the full text of the resignation letter should be disclosed to the stock exchanges. Independent directors resigning, citing preoccupations, other commitments or personal reasons must wait for a year before joining the board of another company.

## NEW EXCHANGES, DEPOSITORIES

The Sebi board may also discuss a proposal to ease ownership norms for entities that plan to start new stock exchanges and depositories in India.

"The Indian securities market has been characterised by dominant level of market concentration by a single entity in the trading and depository space," Sebi had said in a consultation paper in January. "Since stock exchanges and depositories fundamentally represent the intersection of technology and markets, there is a concern that excessive concentration may lead to abuse of one's dominant position in the business as well as institutional tardiness in responding in a timely manner to the changing dynamics of capital markets ecosystem."

The country has three nationwide bourses — the National Stock Exchange, the BSE and the Metropolitan Stock Exchange.

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