

11th October, 2017

PRESS RELEASE

IMPACT OF UDAY KOTAK COMMITTEE RECOMMENDATIONS: PRIME DATABASE GROUP

On 5th October, the Uday Kotak Committee on Corporate Governance released its report.

The implications for the Indian listed corporates are going to be significant. For the **1670 companies listed on NSE**, the impact arising out of some of key recommendations made by the Committee, specially relating to the board of directors, are analyzed below:

No. of Directors

Recommendation: There should be not less than 6 directors on the board.

If the recommendation was to be implemented: 256 companies (15 per cent) would have to increase the size of their board beyond 5. Presently, 154 companies (9 per cent) have 5 directors on their board, 82 companies (5 per cent) have 4 directors on their board, 19 companies (1 per cent) have 3 directors on their board and 1 company has just 2 directors on their board. As such, 379 new directors shall have to be appointed in these companies.

Percent of Independent Directors

Recommendation: At least 50 per cent of the board should comprise of independent directors.

If the recommendation was to be implemented: As many as 326 companies (20 per cent) would have to change the composition of the board to ensure that at least 50 per cent of the total number of directors are independent. Of these 326 companies, there is 1 company which would need to appoint 7 independent directors, 3 companies which would need to appoint 5 independent directors each, 4 companies which would need to appoint 4 independent directors each, 18 companies which would need to appoint 3 independent directors each, 59 companies which would need to appoint 2 independent directors each and 241 companies which would need to appoint 1 independent director each, a total of 451 independent directorship positions.

Woman Independent Directors

Recommendation: Each board should have at least one independent woman director.

If the recommendation was to be implemented: A high 637 companies (38 per cent) would need to appoint a woman independent director.

Executive Chairperson

Recommendation: Chairperson of the board should be a non-executive director.

If the recommendation was to be implemented: Presently, in more than half i.e. 860 companies (51 per cent), the chairperson is an executive director. All these companies would need to change this.

Roles of Chairperson & MD/CEO

Recommendation: Role of Chairperson & MD/CEO should be segregated.

If the recommendation was to be implemented: As many as 640 companies (38 per cent) presently have the same person as Chairperson and MD/CEO and would need to segregate the roles.

Age of Non-Executive Directors

Recommendation: Special resolution has to be passed for appointment of any non executive director who is 75 years or more.

If the recommendation was to be implemented: Presently, there are a very high 1110 non-executive directorship positions out of a total of 9502 non-executive directorship positions which are occupied by directors who are 75 or above. All these would need to go for a special resolution.

Remuneration of Independent Directors

Recommendation: Minimum remuneration should be Rs. 5 lakhs per annum. for all Independent directors.

If the recommendation was to be implemented: In 2016-17, only considering such independent directors who were on the board from 1st April 2016 till 31st March 2017 (as such, excluding all mid-year appointments and cessations), for as many as 3755 of the 5686 independent directorship positions (or 66 per cent), the total remuneration paid to independent directors was less than Rs. 5 lakhs. Had this requirement been implemented in 2016-17, for all NSE-listed companies, an additional Rs. 132.63 crore would have had to be paid to independent directors.

Executive Promoter Director remuneration

Recommendation: Remuneration of executive promoter directors if more than Rs. 5 crore or 2.5% of net profit should be approved by shareholders.

If the recommendation was to be implemented: In 2016-17, there were 171 executive promoter directors in 116 companies who earned a remuneration of more than Rs. 5 crore.

Non-Executive Director remuneration

Recommendation: If remuneration paid to a single non-executive director exceeds 50 per cent of total annual remuneration payable to all non-executive directors combined, then shareholder approval shall be required.

If the recommendation was to be implemented: In 183 companies (11 per cent), the remuneration paid to a single non-executive director exceeded 50 per cent of the total remuneration paid to all non-executive directors combined.

Reason for resignation of Independent Directors

Recommendation: Detailed Reason for resignation should be given by independent directors who resign before expiry of their tenure.

If the recommendation was to be implemented: Since 1st January 2014, in the case of as many as 2046 independent directorship resignations out of a total of 2703 independent directorship resignations (76 per cent), no reason was given.

Number of directorships

Recommendation: The maximum directorships held by a person should be 8.

If the recommendation was to be implemented: Courtesy of the Companies Act and SEBI regulations already in place, there are presently only 2 persons who are holding more than 8 directorships.

Director attendance

Recommendation: Directors not attending at least half the board meetings over 2 financial years, on a rolling basis, should be ratified by shareholders.

If the recommendation was to be implemented: Excluding all cases of mid-year appointments and cessations during 2015-16 and 2016-17 (thus taking into account only such directors who were on the boards for the entire 2 year period), there were 660 directors across 463 companies who attended less than half the board meetings held during these 2 years.

Lead Independent Director

Recommendation: All companies in which Chairperson is not independent should designate a Lead Independent Director.

If the recommendation was to be implemented: In as many as 1330 companies (80 per cent), the chairperson is not independent. As such, a lead Independent Director shall have to be appointed in all these companies.

Composition of Nomination and Remuneration Committee

Recommendation: Two-thirds of the directors on this Committee should be independent.

If the recommendation was to be implemented: There are only 145 companies (9 per cent) in which less than 2/3rd of the committee is independent and would thus need to change the composition.

Composition of Stakeholders Relationship Committee

Recommendation: At least three directors, with at least one being an independent director, shall be members of the Committee.

If the recommendation was to be implemented: There are only 407 companies (24 per cent) which have less than 3 directors with none being independent.

Membership and Chairpersonship Limit

Recommendation: A director shall not be a member in more than ten committees or act as chairperson of more than five committees (Audit Committee, Nomination and Remuneration Committee and Stakeholders' Relationship Committee).

If the recommendation was to be implemented: There is just 1 director across all companies who is in more than 10 committees. Further, there are 33 such directors who are chairperson of more than 5 committees.

No. of Board Meetings

Recommendation: At least 5 board meetings should be held every year.

If the recommendation was to be implemented: There were as many as 409 such companies (24 per cent) which had less than 5 board meetings in the year 2016-17.

AGM Scheduling

Recommendation: AGM should take place within 5 months from end of the year.

If the recommendation was to be implemented: Of companies which got listed before 1st April 2017 and whose financial year ended on 31st March 2017, only 626 out of 1567 such companies had their AGM within 5 months viz. before 1st September 2017. The balance 941 companies (or a huge 60 per cent) had their AGM after 5 months from end of financial year.