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## Analysis of 10 Key Recommendations of Kotak Committee on Corporate Governance

SEBI Committee on Corporate Governance was formed on June 2, 2017 under the Chairmanship of Mr. Uday Kotak ('Kotak Committee') with the aim of improving standards of corporate governance of listed companies in India. Kotak Committee has submitted its Report on October 5, 2017. SEBI has sought comments in prescribed tabular format by November 4, 2017. The terms of reference of the Committee were to make recommendations on the following issues:

- (a) Ensuring independence in spirit of Independent Directors and their active participation in functioning of the company;
- (b) Improving safeguards and disclosures pertaining to Related Party Transactions;
- (c) Issues in accounting and auditing practices by listed companies;
- (d) Improving effectiveness of Board Evaluation practices;
- (e) Addressing issues faced by investors on voting and participation in general meetings;
- (f) Disclosure and transparency related issues, if any;
- (g) Any other matter, as the Committee deems fit pertaining to corporate governance in India.

Kotak Committee has recommended changes in the composition and role of board of directors, Institution of Independent Directors, Board Committees, Monitoring of Group Entities, Promoters/ Controlling shareholders and Related Party Transactions, Discourses and Transparency, Accounting and Audit related issues, investor participation in meetings of listed entities. At various places in the Report, the Committee has emphasized the role of Company Secretary. This article is an analysis of some important Recommendations of the Committee on Corporate Governance.

1. **Minimum No. of Directors on Board:** Kotak Committee observed that the company should have sufficient number of directors on its board of directors to ensure that it is able to carry out its functions effectively. In view of the additional functions and obligations of the board of directors of listed entity, the Committee stated that it is crucial that a sufficient number of directors with diverse backgrounds and skill sets are available on the boards of listed entities to fulfill the functions and obligations. With this background, the Committee recommended minimum 6 directors on the Board of listed entity.
2. **Gender Diversity:** The Committee noted that diversity, including gender diversity, is often seen to have a positive impact on the decision making processes of corporate boards. Post implementation of Cos. Act, 2013 and SEBI Listing Regulations, the Committee, in its Report, stated that women representation on the boards of NIFTY 500 companies, which was at 5% as on March 31, 2012, increased to 13% as on March 31, 2017. With an objective to further improve gender diversity on corporate boards, the Committee has recommended that every listed entity have at least one independent woman director on its board of directors.
3. **Attendance of Directors:** Kotak Committee, in its Report, stated that it is important for all directors to attend a minimum number of meetings in order to enhance their contribution of skill, time and

value towards serving the long-term interests of all stakeholders. Accordingly, the Committee

recommended that if a director does not attend at least half of the total number of board meetings over two Financial Years on a rolling basis, his/her continuance on the board should be ratified by the shareholders at the next annual general meeting. In the recommendation, the criterion of leave of absence is irrelevant, which is the case under the Companies Act, 2013. This will ensure more accountability of the directors towards the board and shareholders.

4. **Approval for Non-executive Directors on Attaining a Certain Age:** Kotak Committee recommended to include a provision in the Regulations requiring Special Resolution for the appointment/continuation of Non-Executive Directors on attaining the age of 75 years. In relation to this, u/s 196 of Companies Act, 2013, approval of shareholders by special resolution is required for appointment or re-appointment of Managing Director, Whole-Time Director or Manager above the age of 70 years;
5. **Minimum Number of Board Meetings:** The Committee stated that 4 meetings of the board of directors tend to focus primarily on financial results and other matters relating to regular compliance. The Committee stated that the board of directors may be required to meet more frequently to focus on other critical aspects of a listed entity such as its management and corporate governance. Accordingly, the Committee has recommended that minimum number of meetings of board of directors be increased to five every year. The Committee recommended that aspects like strategy, succession planning, budgets, risk management, Environment, Sustainability, Governance and Board Evaluation are critical to the medium-term and long-term future of a listed entity and the same should be discussed by the Board of Directors of the listed entity. Though the recommendation is beyond the statutory provisions of the Companies Act, 2013, the same is in the interest of company and its stakeholders.
6. **Separation of the Roles of Non-executive Chairperson & Managing Director/CEO:** In my view, this is one of the most significant recommendations of the Kotak Committee. This recommendation will have a major impact on the working, operations of the listed company along with the powers delegated to the officers of the Company. The Committee stated that the separation of powers of the Chairperson (i.e. the leader of the board) and CEO/MD (i.e. the leader of the management) is seen to provide a better and more balanced governance structure by enabling better and more effective supervision of the management. The Committee recommended that the listed entities with more than 40% public shareholding should separate the roles of Chairperson and MD/CEO w.e.f. April 1, 2020.
7. **Minimum Number of Independent Directors:** This is another significant suggestion by the Kotak Committee on Corporate Governance, whereby every listed entity, irrespective of whether the Chairperson is executive or non-executive, may be required to have at least half its total number of directors as Independent Directors. Kotak Committee recommended that this be applicable to top 500 listed companies by market capitalization by April 1, 2019 and to the rest of listed companies by April 1, 2020. After codification of the recommendation, the board of directors of the listed entity would be required to comply with the provisions and restructure the board composition.
8. **Minimum Compensation to Independent Directors:** Kotak Committee recommended that the minimum total remuneration (where the listed entity has profits or has inadequate profits) and minimum sitting fees for every board meeting/ Audit Committee Meeting/ every other Board Committee Meeting. The Committee linked the remuneration/ sitting fees with the market capitalization of the listed company. Therefore, the listed companies would be required to comply with the provisions (if codified) along with the provisions of the Companies Act, 2013. If there is a specific provision in the Articles of Association of the listed entity, then such provision will also require necessary amendment.

9. **Induction & Training of Independent Directors:** Kotak Committee recommended that formal induction should be mandatory for every newly appointed Independent Directors. The Formal training, whether external/internal, especially w.r.t. governance aspects, should be required for every Independent Directors once every 5 years. The Committee has shifted the onus of such training and induction on the Independent Director. In my view, this a very progressive recommendation, as the Companies Act, 2013 and SEBI's Listing Regulations gives only a passing reference of such induction and training.
10. **Role of Company Secretary:** As discussed above, the Kotak Committee at various places in the Corporate Governance Report has emphasized the role of Company Secretary. Following are the details:
- (i) **Secretarial Audit:** Kotak Committee has recommended that the Secretarial Audit may be made compulsory for all listed entities under the SEBI LODR Regulations in line with the provisions of Companies Act, 2013. The Committee has also recommended that the Secretarial Audit may also be extended to all material unlisted Indian subsidiaries;
  - (ii) **Role of Nomination and Remuneration Committee:** Kotak Committee recommended that a clarification be provided that persons in Senior Management should include all members of management one level below the Chief Executive Officer/Managing Director/Whole Time Director/Manager and shall specifically include Company Secretary and Chief Financial Officer;
  - (iii) **Disclosures Pertaining to Disqualification of Directors:** Kotak Committee noted that the investors are often unaware whether the directors of the company have been debarred from acting as directors of a company. Accordingly, the Committee recommended that disclosures on this basis be made in the annual report as certified by a Practising Company Secretary.

In my view, the Kotak Committee has made some significant recommendations to overhaul the corporate governance standards in India. The codification of these recommendations, will certain bring a paradigm shift in the disclosure and transparency practices in India Inc. The Kotak Committee recommendations, if accepted by SEBI, would also bring in more accountability of the directors towards shareholders. This may also reduce the litigation and disputes in the directors inter-se. The Report has also taken cognizance of the on-going disqualification and vacation of office of directors, and have appropriately included a recommendation w.r.t. the Certificate of Practising Company Secretary in the Annual Report. With respect to the codification of the said recommendations, in my view, wherever there is an apparent conflict in the provisions of Companies Act, 2013 and recommendation, then provisions should be incorporated in SEBI's Listing Regulations after considering its impact/ proposed modification to the Companies Act, 2013. The Ministry of Corporate Affairs or SEBI would be under obligation to provide some clarification for ensuring compliance of both laws.