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Analysing developments impacting business

SEBI MAKES SEPARATION OF CHAIRPERSON-MD/CEO VOLUNTARY

29 March 2022

The role of a Chairman of the Board of Directors appears to have an inherent conflict with that of a Managing Director (MD) / Chief Executive Officer (CEO). In order to resolve this conflict, the Kotak Committee Report¹ had recommended separation of the post of the Chairman and MD/CEO. It was also intended to reduce the concentration of authority in a single individual and promote a balanced corporate governance structure. Based on the above recommendation, the Securities and Exchange Board of India (“SEBI”) amended ² the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulations, 2015 (“LODR”) (“**2018 Amendment**”) to mandate top 500 listed companies to separate the roles of Chairman and MD / CEO. Further, the Chairman was required to be a non-executive director and not ‘related’ to the MD or CEO.

The 2018 Amendment was initially to come into effect on 1 April 2020. However, in January 2020 ³, this was extended up to 1 April 2022 due to unsatisfactory compliance level and industry representations seeking deferral of implementation.

Recently, in February 2022, SEBI, in its board meeting⁴ took a note of the fact that as of 31 December 2021, only 54% of the top 500 companies had complied with the MD / CEO split requirement.

Considering the compliance levels, industry representations and constraints posed by the pandemic, SEBI decided to revert the split as a voluntary action to enable the companies to plan for a smoother transition. SEBI vide its amendment to LODR dated 22 March 2022 (“**2022 Amendment**”) gave effect to the same making the split a discretionary requirement under LODR⁵.

Comment:

Indian businesses are largely driven by promoter groups. Consequently, the proposition of splitting the office of Chairman and MD / CEO had limited efficacy. The existing regulations provide for adequate checks and balances and underscore the fiduciary responsibility of the directors and enforcement of corporate democracy.

¹ https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html

² https://www.sebi.gov.in/legal/regulations/may-2018/sebi-listing-obligations-and-disclosure-requirement-amendment-regulations-2018_38898.html

³ https://www.sebi.gov.in/sebi_data/meetingfiles/mar-2020/1583404295538_1.pdf

⁴ https://www.sebi.gov.in/media/press-releases/feb-2022/sebi-board-meeting_56076.html

⁵ https://www.sebi.gov.in/legal/regulations/mar-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2022_57098.html

While the split has become a voluntary requirement by virtue of the 2022 Amendment, the proxy advisory firms will continue to advocate for a higher standard of corporate governance and seek companies to institutionalise the split of the office of the Chairman and MD / CEO through their voting recommendations.

It would be interesting to see how India Inc responds to this in the years to come, especially in view of the shareholder activism and expectations of adherence to higher corporate governance standards from all stakeholders.

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