

# Decision of SEBI on recommendations of Kotak Committee

## Report on Corporate Governance

June 2018

### Corporate Governance Framework

The Corporate Governance refers to the minimum governance standards which every corporate need to follow to protect the interests of all stakeholders.

Over the past decade, policymakers in India have been acutely conscious of the importance of corporate governance – several committees, including those under the chairmanship of Mr. Kumar Mangalam Birla, Mr. Narayana Murthy and Mr. Naresh Chandra, have made valuable recommendations which have been largely adopted. Yet, governance practices even in some of the most reputed publicly listed Indian companies have come under question on several dimensions.

Given recent trends of lapses of corporate governance norms on many counts which took place in varied forms, not surprisingly, there's been a renewed focus on improved corporate governance: better structures, more rigorous checks and balances, and greater independence of all key gate-keepers including boards and auditors. Some of such improved corporate governance measures taken in past have started seeing the light of the day and seemingly benefiting the stakeholders. One such measure is mandatory rotation of statutory auditors in listed companies. Increasingly, in recent time, there have been many instances wherein statutory auditors, who were appointed for the first time by the auditee client under mandatory auditor rotation, have expressed concerns over the financial state of affairs of the listed auditee client and have tendered their resignation.

From regulatory perspective, the corporate governance norms are contained in various provisions of the Companies Act, 2013 and

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR").

### Formation of Committee on Corporate Governance

On June 02, 2017, SEBI had set up a committee ("Kotak Committee") under the Chairmanship of Shri Uday Kotak, Executive Vice Chairman and Managing Director of Kotak Mahindra Bank to advise on issues relating to corporate governance. The other members in the Kotak Committee included the representatives of government, industry, Corporate India, stock exchanges, professional bodies (including Mr. Nilesh Shivji Vikamsey, President of ICAI), Investor groups, chambers of commerce, law firms (including Ms. Zia Mody, Managing Partner of AZB & Partners and Mr. Cyril Shroff, Managing Partner of Cyril Amarchand Mangaldas), accounting firms (including Mr. N Venkatram, Managing Partner and CEO of Deloitte India and Mr. Arun M Kumar, Partner & CEO of KPMG India), academicians and research professionals and SEBI.

### Terms of the reference of the Kotak Committee

With the aim of improving standards of Corporate Governance of listed companies in India, the Kotak Committee was requested to make recommendations to SEBI on the following issues:

1. Ensuring independence in spirit of Independent Directors and their active participation in functioning of the company;

2. Improving safeguards and disclosures pertaining to Related Party Transactions;
3. Issues in accounting and auditing practices by listed companies;
4. Improving effectiveness of Board Evaluation practices;
5. Addressing issues faced by investors on voting and participation in general meetings;
6. Disclosure and transparency related issues, if any;
7. Any other matter, as the Committee deems fit pertaining to corporate governance in India.

### Report of the Kotak Committee

In order to take into consideration the views of various stakeholders, the report of the Kotak Committee was placed on the SEBI website for public comments, which were required to be submitted by November 4, 2017. Comments were received from a variety of stakeholders including industry, government, global associations, institutional investors, lawyers, etc.

Finally, SEBI in its board meeting held on March 28, 2018, considered the Kotak Committee recommendations and the public comments received thereon. SEBI adopted threefold approach in dealing with the recommendations of the Kotak Committee viz.

- a) certain recommendations accepted without any modifications ("**Complete Acceptance**");
- b) certain recommendations accepted with modifications ("**Partial Acceptance**"); and
- c) certain recommendations have been referred to various agencies (i.e. government, other regulators, professional bodies etc.) considering that the matters involved related to them. Such recommendations, inter-alia, include strengthening the role of ICAI, internal financial controls, adoption of Ind-AS,

As the Kotak Committee was requested to submit its report within four months, it submitted its report on October 5, 2017 containing the exhaustive recommendations on the burgeoning issues in the Corporate Governance in India, which is indicative of the enormous time and efforts devoted by the Kotak Committee members during the short span of four months. The report had set out the recommendations along with the rationale and the expected timeline for implementation of such recommendations. Kotak Committee Report contains a total of 78 broad recommendations concerning the corporate governance requirements for all listed companies grouped under 8 chapters apart from other specific recommendations contained in other 3 chapters.

treasury stock, governance aspects of PSEs, etc.

SEBI Press Release dated March 28, 2018 announcing the decisions taken in the SEBI Board Meeting held on March 28, 2018 just mentioned few details regarding the decision of SEBI on recommendations of the Kotak Committee. Subsequently, SEBI notified SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018 on May 9, 2018 to formally enforce the recommendations of Kotak Committee.

In this article, we have restricted coverage of 2 critical chapters namely i) Composition and Role of the Board of Directors; and ii) Accounting and Audit Related Issues, each chapter containing 13 broad recommendations. These are the two crucial components for the existence of good corporate governance practices. It is to be noted that all recommendations are in the context of a listed company. The recommendations made by the Kotak Committee vis-à-vis the existing regulatory requirements, the rationale for the recommendations and the corresponding amendment in SEBI LODR are summarised hereinafter.

## I. Composition and the Role of the Board of Directors

The basic principle underlying the governance of a corporate entity is that the superintendence, control and direction of its business and affairs lie with its board of directors, with the executive management being delegated powers for smooth and efficient operational functioning. Accordingly, the board of directors as a whole is responsible

to all stakeholders for meeting the requisite standards of corporate governance.

Accordingly, the recommendations herein seek to address aspects relating *inter-alia* to the size of the board and its diversity, separation of the roles of chairperson and executive management, attendance of directors at board meetings, ongoing updation of knowledge of directors and disclosure of their skills/expertise.

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
<b>1) Minimum number of Directors on a Board</b>			
<p><u>Companies Act</u>: minimum 3 directors in case of a public company</p> <p><u>SEBI LODR</u>: no specific provision</p>	Board should consist of <b>minimum of 6 directors</b>	Sufficient number of directors with diverse backgrounds and skill sets are available on the board to ensure that it is able to carry out its functions effectively	<b>Partial Acceptance:</b> Minimum 6 directors in the top 1000 listed entities by market capitalization w.e.f. April 1, 2019 and in the top 2000 listed entities, w.e.f. April 1, 2020
<b>2) Gender Diversity on Board</b>			
At least one-woman director on the board	At least one <b>independent</b> woman director on the board	<ul style="list-style-type: none"> <li>Diversity, including gender diversity, is often seen to have a positive impact on the decision-making processes of corporate boards</li> <li>To further improve gender diversity<sup>1</sup></li> </ul>	<b>Partial Acceptance:</b> At least one <b>independent woman director</b> on the board in the top 500 listed entities by market capitalization by April 1, 2019 and in the top 1000 listed entities, by April 1, 2020
<b>3) Attendance of Directors</b>			
<u>Companies Act</u> : the automatic vacation of the office of director if a director is absent from all meetings of the board of directors held during a 12 months period	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	<p>Directors should attend all scheduled / minimum number of meetings</p> <ul style="list-style-type: none"> <li>to carry out their fiduciary duties appropriately</li> <li>to enhance their contribution of skill, time and value towards serving</li> </ul>	Nothing mentioned about this in SEBI Press Release and no amendment has been made in SEBI LODR as of now.

<sup>1</sup> It seems that as many companies inducted a relative of the promoter group or the existing executive board members as a woman director on the board to comply with the requirement of having at least one woman director, the Committee has recommended appointment of an independent woman director to achieve the true intent of having gender diversity on the board as often related woman director may not effectively participate or impartially provide her views during deliberations in the board meeting.

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
<u>SEBI LODR</u> : no specific provision	by the shareholders at the next AGM	the long-term interests of all stakeholders	
<b>4) Disclosure of Expertise / Skills of Directors – Competency or Expertise Matrix</b>			
<b>Disclosure</b> of a brief profile of a director <b>on his / her appointment</b> , including expertise in specific functional areas. However, <b>no specific requirement</b> to disclose the required and available expertise of <b>the board on a regular basis</b> .	Companies should list the competencies / expertise that it believes its directors should possess vis-à-vis what they actually possess.  Initially, disclosure of competencies of board members against every identified competency / expertise without disclosing individual names in the annual report for FY 2019 shall be required. However, detailed disclosures of competencies of every board member, along with their names, should be required w.e.f. March 31, 2020 viz. in Annual Report for FY 2020 onwards.	<ul style="list-style-type: none"> <li>Given the collective responsibility and the need for the board to make informed business judgement, a balanced wholesome board with complementary skill-sets amongst the directors is imperative</li> <li>Typically, these skill-sets would comprise technical / academic skills, general management, global business, technology, manufacturing / operations, risk management, etc.</li> <li>Recognizing this, board members should collectively have a wide set of skill-sets appropriate for the relevant business</li> </ul>	<b>Complete Acceptance.</b> In Schedule V “Annual Report” under Clause (C) Corporate Governance Report, this disclosure requirement has been included.
<b>5) Approval for Non-executive Directors (“NED”) on Attaining a Certain Age</b>			
<u>Companies Act</u> : a person may be appointed / continue as Managing Director, whole-time director or manager on attaining the age of 70 years by passing a special resolution  No such specific provision for non-executive directors.	A special resolution on a similar basis should be inserted for listed entities for the appointment / continuation of NEDs on attaining the age of 75 years for the relevant term.	While age itself may not be a determinant of efficiency or capability of a person or the basis for disqualification of a director, a higher level of shareholder endorsement may be required for directors to continue in their position beyond a certain age.	<b>Complete Acceptance.</b> Regulation 17(1A): No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy-five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
<b>6) Minimum Number of Board Meetings</b>			
At least 4 meetings of the board every year with a maximum gap of 120 days between any 2 meetings	The minimum number of meetings of board of directors be <b>increased to 5 every year</b> and at least once a year, <b>the board shall specifically discuss</b> strategy, budgets, board evaluation, risk management, ESG (environment, sustainability and governance) and succession planning	<ul style="list-style-type: none"> <li>• 4 meetings of the board tend to focus primarily on financial results and other matters relating to regular compliance</li> <li>• Boards may be required to meet more frequently to focus on other critical aspects such as its management and corporate governance in order to ensure that there is adequate attention paid thereto</li> </ul>	Nothing mentioned about this in SEBI Press Release and no amendment has been made in SEBI LODR as of now
<b>7) Updation of Knowledge of the Board Members</b>			
<p><u>Companies Act:</u> General provisions pertaining to the induction of independent directors.</p> <p><u>SEBI LODR:</u> require familiarization of the independent directors relating to certain specified matters and that the board periodically reviews compliance reports pertaining to all laws applicable to the listed entity as well as steps taken to rectify instances of non-compliances</p>	At least once every year, the board of directors should be updated on regulatory and compliance changes by undertaking a formal updation programme on changes in applicable laws, regulations and compliance requirements	<ul style="list-style-type: none"> <li>• Ever-evolving and changing regulatory environment requires constant upgradation in knowledge base and ignorance of the law is no excuse</li> <li>• Board's supervisory role holds it ultimately accountable for unlawful actions of the company</li> <li>• Therefore, in order for the directors to exercise their judgement and discharge their duties with sufficient knowledge, the directors need to be kept abreast of changes in laws and compliance requirements</li> </ul>	Nothing mentioned about this in SEBI Press Release and no amendment has been made in SEBI LODR as of now.  Apparently, SEBI has not made any changes as current regulatory requirement under Regulation 17(3) addresses this aspect to certain extent.
<b>8) NED Engagement with the Management</b>			
No specific provisions requiring mandatory engagement of the NEDs with the management	At least once every year, a company should undertake a formal interaction between the NEDs and senior management	Interactions between the NEDs and the management is critical for a better understanding by NEDs of the company's business and of the managerial capacity and capability of the company	Nothing mentioned about this in SEBI Press Release and no amendment has been made in SEBI LODR as of now.
<b>9) Quorum for Board Meetings</b>			
<u>Companies Act:</u> a quorum of <b>1/3<sup>rd</sup> of the</b>	The quorum for every board meeting should be	<ul style="list-style-type: none"> <li>• In view of the increased obligations of the boards</li> </ul>	<b>Partial Acceptance:</b> Regulation 17(2A): The

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
<p><b>total strength</b> of the board of directors or <b>2 directors</b>, whichever is higher, for every board meeting</p> <p>SEBI LODR: no specific provision</p>	<p>a minimum of <b>1/3<sup>rd</sup> of the total strength</b> of the board of directors or <b>3 directors</b> or, whichever is higher, including <b>at least 1 independent director</b></p>	<p>of listed entities, a higher quorum is required</p> <ul style="list-style-type: none"> <li>In the interest of all stakeholders, especially minority shareholders, the presence of at least one independent director is required</li> </ul>	<p>quorum for every meeting of the board of directors of <b>the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020</b> shall be one third of its total strength or three directors, whichever is higher, including at least one independent director.</p>
<b>10) Separation of the Roles of Non-executive Chairperson and MD / CEO</b>			
<p><u>Companies Act:</u> An individual shall not be appointed / reappointed as the chairperson of a company as well as its MD / CEO at the same time unless the articles provide otherwise or the company does not undertake multiple businesses</p> <p>SEBI LODR: A discretionary requirement of separation of the posts of chairperson and CEO</p>	<ul style="list-style-type: none"> <li>Listed entities <b>with more than 40% public shareholding</b> should separate the roles of Chairperson and MD / CEO with effect from April 1, 2020</li> <li>After 2020, SEBI may examine extending the requirement to all listed entities with effect from April 1, 2022</li> </ul>	<ul style="list-style-type: none"> <li>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</li> <li>reducing excessive concentration of authority in a single individual</li> <li>creating a board environment that is more egalitarian and conducive to debate</li> </ul>	<p><b>Partial Acceptance:</b> Regulation 17(1B): With effect from April 1, 2020, <b>the top 500 listed entities shall ensure</b> that the Chairperson of the board of such listed entity shall -</p> <p>(a) be a non-executive director;</p> <p>(b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013.</p> <p>→ This requirement is not applicable to companies which do not have any identifiable promoters.</p>
<b>11) Matrix Reporting Structure</b>			
<p>Board of directors of a listed entity to exercise authority and assume responsibility for the overall business and affairs of that entity and provide a detailed report (popularly referred to</p>	<p>a confirmation be provided by the board of a listed entity as a part of the corporate governance report that it has been responsible for the business and overall affairs of the listed entity in the</p>	<ul style="list-style-type: none"> <li>informal matrix reporting structures may dilute the powers and the role of the board of a listed entity</li> <li>many companies (including global conglomerates) follow matrix reporting</li> </ul>	<p>Nothing mentioned about this in SEBI Press Release and no amendment has been made in SEBI LODR as of now.</p>

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
as the Director's Report) that sets forth details in relation to the company's business, financial performance and certain other aspects	relevant financial year and that the reporting structures of the listed entity, formal and informal, are consistent with the above	structures to meet their internal functional reporting requirements, whereby reporting happens along functional lines to relevant heads who operate at a group level (including in other jurisdictions)	
<b>12) Maximum Number of Directorships</b>			
<p><u>Companies Act:</u> maximum number of public companies in which a person can be appointed as a director shall not exceed 10</p> <p><u>SEBI LODR:</u> a person shall not serve as an independent director in more than 7 listed entities and if the director is a whole-time director in one listed entity, then he / she can't serve as an independent director in more than 3 listed entities</p>	<p>Maximum number of directorships in listed entities should be reduced to 7 (irrespective of whether the person is appointed as an independent director or not).</p> <p>However, in the interest of providing adequate transition time, the maximum number of listed entity directorship held by a person be brought down to 8 by April 1, 2019 and to 7 by April 1, 2020</p>	<ul style="list-style-type: none"> <li>multiple directorships beyond a reasonable limit may lead to a director not being able to allocate sufficient time to a particular company, thus hindering their ability to play an effective role</li> <li>In light of the increasing responsibilities of corporate boards and thereby increased requirement of time from directors, the maximum number of directorships should be reduced</li> </ul>	<p><b>Complete Acceptance.</b> Regulation 17A prescribes that a person shall not be a director in more than 8 listed entities w.e.f. April 1, 2019 and in not more than 7 listed entities w.e.f. April 1, 2020. Further provided that a person shall not serve as an independent director in more than 7 listed entity. <i>For this purpose, listed entity means an entity whose equity shares are listed.</i></p>
<b>13) Disclosures on Board Evaluation</b>			
Broad provisions on board evaluation i.e. evaluation of the performance of: (i) the board as a whole, (ii) individual directors (including independent directors and Chairperson) and (iii) various committees of the board	A guidance note in the nature of a circular should be issued by SEBI, requiring disclosures on the following: a) <i>Observations of board evaluation carried out for the year</i> b) <i>Previous year's observations and actions taken</i> c) <i>Proposed actions based on current year observations."</i>	In order to strengthen disclosures on board evaluation, a guidance should be issued specifying, in particular, the certain disclosures to be made as a part of the disclosures on board evaluation.	SEBI has issued a circular no. SEBI/HO/CFD/CMD/CIR /P/2018/79 dated May 10, 2018, inter alia, prescribing this requirement.

## II. Accounting and Audit Related Issues

Financial statements are the primary document that all stakeholders rely upon. These statements are intended and expected to depict the true nature of the business and foretell its longevity. A good audit and appropriate levels of disclosures are pre-

requisites for reliable financial statements. After careful consideration, the Kotak Committee made the following recommendations with a view to improving disclosures and enhancing the quality of financial statements and audit.

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
<b>1) Audit Qualifications</b>			
<ul style="list-style-type: none"> <li>no restriction on an auditor qualifying the accounts of a company</li> <li>detailed disclosures including quantification of the audit qualification by the auditor <b>and if not possible,</b> the management shall make an estimate which is to be reviewed by the auditor</li> </ul>	<p>To strengthen disclosures by requiring <b>quantification of audit qualifications to be mandatory,</b> with the exception being only for matters like going concern or sub-judice matters, wherein, the management will be required to provide reasons, which will be reviewed by the auditors and reported accordingly</p>	<ul style="list-style-type: none"> <li>several jurisdictions across the world forbids a listed company from filing a set of financial results / statements ('FSs') on which the auditor has issued a qualified opinion</li> <li>FSs not in conformity with GAAP are presumed to be inaccurate or misleading, notwithstanding explanatory disclosures</li> <li>it may be early to entirely forbid the filing of FSs with audit qualifications in India and therefore, recommended quantification of audit qualifications to be mandatory</li> </ul>	<p><b>Complete Acceptance.</b> Necessary amendments made in Schedule IV to SEBI LODR.</p>
<b>2) Independent External Opinion by Auditors (at the cost of the auditee entity)</b>			
<p>No specific provision.</p>	<p>In case an auditor is not satisfied with the views of the management or of an expert whose services have been availed by the management, the auditors shall have <b>the right to independently obtain external opinions from experts appointed by the auditors themselves</b> and any expenditure incurred for such purpose shall be borne by the listed entity</p>	<p>It is felt that in cases where the auditor does not concur with the opinion of an expert appointed by the listed entity, the auditors should have a right to obtain independent external opinions as deemed fit, at the cost of the listed entity <b>which will help boost the independence of the auditors</b></p>	<p>Nothing mentioned about this in SEBI Press Release and no amendment has been made in SEBI LODR as of now.</p>
<b>3) Group Audits</b>			
<p>No specific provision exists with respect to group audits under the Companies Act or SEBI LODR.</p>	<p>For listed entities in India, the auditor of the holding company should be made responsible for the audit</p>	<ul style="list-style-type: none"> <li>Auditing standards in India (SA 600) differ from International Standards on Auditing by allowing holding company auditor to place</li> </ul>	<p>Nothing mentioned about this in SEBI Press Release.</p>



Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
<p>However, provisions for group audits are covered under the Standards on Auditing (SA) issued by ICAI which <b>permit the holding company auditor to place reliance on the audit performed by the auditor of the subsidiaries</b> and provide an audit opinion on the consolidated financial statements based on the audit report provided by the other auditors</p>	<p>opinion of <b>all material unlisted subsidiaries</b>.</p> <p>SEBI may consider recommending to ICAI to introduce amendments to the relevant accounting / auditing standards to implement above</p>	<p>reliance on the audit performed by the auditor of the subsidiaries</p> <ul style="list-style-type: none"> <li>• In such a case, an auditor is not fully responsible for the direction, supervision and performance of the group audit engagement as in other jurisdictions, which is the only provision in which Indian auditing standards differed from their international counterpart</li> <li>• As a step in the right direction, but keeping in mind the concerns that may arise, the recommendations have been made</li> </ul>	<p>As per recommendation, no amendment in SEBI LODR required.</p>
<b>4) Quarterly Financial Disclosures</b>			
<p><u>Companies Act:</u> no specific provision.</p> <p><u>SEBI LODR:</u> The detailed provisions are stated in Regulation 33 for the submission of quarterly financial results by a listed entity to the stock exchanges.</p>	<p>In order to strengthen periodic financial disclosures, it is recommended:</p> <ul style="list-style-type: none"> <li>• Mandatory submission of <b>consolidated financial results on a quarterly basis</b> apart from standalone results</li> <li>• Mandatory <b>publishing a cash flow statement on a half-yearly basis</b></li> <li>• for every quarter, <b>financial information of the group, accounting for at least 80%</b> of each of the consolidated revenue, assets and profits, respectively, <b>should have undergone limited review/audit</b></li> <li>• any <b>material adjustments made in the results of the last quarter which pertain to earlier periods</b> should be disclosed as a note in the financial results</li> </ul>	<ul style="list-style-type: none"> <li>• In the interest of greater transparency at the group level, disclosure of consolidated financial results should be made mandatory on a quarterly basis</li> <li>• Publishing of a cash flow statement will provide timely financial information to stakeholders which are otherwise not available in quarterly financial results</li> <li>• Audit/limited review of the listed entity does not often take into account a substantial portion of the group business since the accounts of the underlying subsidiaries often do not undergo limited review / audit</li> <li>• The figures of the last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to date figures up to the third quarter, therefore, any material adjustments made</li> </ul>	<p><b>Complete Acceptance.</b> Necessary amendment made in Regulation 33 of SEBI LODR.</p>

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
		in 4 <sup>th</sup> quarter pertaining to earlier periods should invariably be disclosed for better understanding.	
<b>5) Internal Financial Controls</b>			
<p><u>Companies Act:</u> requires the auditor to report on Internal Financial Controls ('IFC')</p> <p>Section 129(4) of the Companies Act states that the provisions of the Act applicable to the preparation, adoption and audit of the FSs of a holding company shall, <i>mutatis mutandis</i>, apply to the consolidated financial statements</p> <p>However, ICAI, through a guidance, has restricted the reporting requirements for an auditor of the consolidated financial statements, to the IFC at the Indian subsidiaries only.</p>	<ul style="list-style-type: none"> <li>• IFC reporting requirements be made applicable to the entire operations of the group and not just to the Indian operations</li> <li>• Initially, this be made applicable only to listed entities with net-worth of Rs. 1000 Cr. &amp; above</li> <li>• No amendments required to SEBI LODR Regulations, but SEBI should take up above recommendation with ICAI</li> </ul>	<ul style="list-style-type: none"> <li>• While reporting on the consolidated financial statements, the auditors of companies in India are required to report on the IFCs for Indian companies only and their foreign subsidiaries are exempt <b>unlike in other markets, where the requirement applies to the entire group</b></li> <li>• Measure to tighten the reporting requirements with a view to achieve better governance and transparency in disclosures</li> </ul>	<p>Referred recommendations to various agencies – possibly to ICAI.</p> <p>No amendment in SEBI LODR required.</p>
<b>6) Disclosure of Reasons of Resignation of Auditors</b>			
<p><u>Companies Act:</u> upon the resignation of auditors, reasons for such resignation needs to be filed with the company and the ROC</p> <p><u>SEBI LODR:</u> a change in auditor is a deemed material event and disclosure is required to be made to the exchanges, <b>there is no specific provision for disclosure of detailed reasons for such change</b></p>	<ul style="list-style-type: none"> <li>• For the sake of greater transparency, it is important for companies to disclose the reasons for the resignation of its audit firm</li> <li>• Audit firms too must be encouraged to truthfully disclose the reasons for their resignation as audit firms must see this disclosure as part of their fiduciary responsibility towards the shareholders</li> </ul>	<ul style="list-style-type: none"> <li>• Auditors are critical gatekeepers of corporate governance standards. Their role in ensuring that the financial statements of the entity provide a true and fair view of the affairs of the entity makes them critical to the corporate governance agenda.</li> <li>• The resignation of an auditor before the expiry of the term may be a cause for concern and therefore, detailed disclosure of reasons for such resignation is essential.</li> </ul>	<p>As per SEBI Press release - Complete Acceptance.</p> <p>However, formal amendment in relevant SEBI Circular is awaited as per recommendation of Kotak Committee.</p>
<b>7) Disclosures on Audit and Non-audit Services Rendered by the Auditor along with network firms</b>			

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
<p><u>Companies Act:</u> permits auditors to perform only those non-audit services as approved by the board / audit committee and specifically prohibits certain services that can be provided</p> <p><u>SEBI LODR:</u> Audit committee approves payment to statutory auditors for any other services rendered by the statutory auditors</p>	<p>The <b>total fee paid to auditor and all entities on the network firms / network entity of which the auditor is a part shall be disclosed</b> by the listed entity in its annual report on a consolidated basis (i.e. paid by the listed entity and its subsidiaries)</p>	<ul style="list-style-type: none"> <li>To improve transparency and disclosure requirements.</li> </ul> <p><i>Further, this will provide an eye view on the concentration of financial interests of the auditor part of network firms in a particular client group and provide a clue towards existence of possible conflict of interest situation.</i></p>	<p><b>Complete Acceptance.</b> In Schedule V “Annual Report” under Clause (C) Corporate Governance Report, this disclosure requirement has been included.</p>
<b>8) Audit Quality Indicators</b>			
<p>No specific provision.</p>	<p>Public disclosure of certain audit quality indicators of the auditors will enable transparency and comparison of the audit quality of different auditors.</p> <p>There is no specific amendment required to SEBI LODR Regulations. SEBI to take up the above recommendation with ICAI.</p>	<p>The quality of audit / auditors can be judged through various indicators such as workforce metrics, skill-development and training of audit team, quality metrics such as audit restatements, trends in audit metrics such as billable hours and audit fines, legal actions and fines against the firm, independence metrics such as client and group concentration, use of technology, etc., many of the aforesaid indicators are already a part of ICAI’s peer review system.</p>	<p>Nothing mentioned about this in SEBI Press Release.</p> <p>No amendment is required in SEBI LODR.</p>
<b>9) Disclosures of Credentials and Audit Fee of Auditors</b>			
<p><u>Companies Act:</u> No specific provision on the subject matter except disclosure on auditors remuneration in FSs.</p> <p><u>SEBI LODR:</u> No specific disclosures requirement in relation to appointment of auditors, however, Regulation 4(1)(b) imposes an obligation on the listed entity to ensure that the audit is conducted by an</p>	<p>The notice of an AGM which contains an agenda of appointment / re-appointment of the statutory auditor(s) shall include the following disclosures as a part of explanatory statement:</p> <p>(a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material</p>	<ul style="list-style-type: none"> <li>To enable shareholders to take informed decisions on the appointment of auditors</li> <li>As the audit fee charged by some of the firms is not on parity with benchmarks such as percentage of total assets, etc. and in order to improve transparency, the proposed audit fees must be disclosed in the notice and if there is any material change in the fees paid to a new auditor as compared to the current</li> </ul>	<p><b>Complete Acceptance.</b> Regulation 36(5) prescribed this disclosure requirement.</p>

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
independent, competent and qualified auditor.	<p>change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change;</p> <p>(b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.</p>	audit fee, the rationale for the same must be provided	
<b>10) IND-AS Adoption</b>			
MCA and SEBI have specified timelines for listed entities and certain other entities for adoption of Ind-AS. The listed entities ( <b>other than banks, NBFCs and insurance companies</b> ) are currently required to comply with the provisions of IND-AS in preparation of their financial statements and audit.	<p>Recommended full implementation of Ind-AS including to Banks, NBFCs and Insurance Companies as currently scheduled without any permitting or allowing any extension.</p> <p>Therefore, SEBI should take up the above recommendation with the relevant authorities / regulators, as necessary.</p>	<ul style="list-style-type: none"> <li>Listed banks, NBFCs and insurance companies are important financial intermediaries, critical to the sanctity of India's financial markets and its growth; and</li> <li>Given the principle-based rules of IND-AS and resultant disclosures in financial statements, full implementation of Ind-AS for all listed entities is critical</li> </ul>	Referred recommendations to various agencies – possibly to MCA, RBI, and IRDA.
<b>11) Strengthening Monitoring, Oversight and Enforcement by SEBI</b>			
<b>A. Review of Audit Qualifications</b>			
Presently, no specific requirement. Earlier, SEBI LODR had detailed provisions on the review of audit qualifications by the Qualified Audit Report Review Committee (QARC) and further reference of the same to the Financial Reporting Review Board (FRRB) of ICAI.	QARC mechanism may be revived or any other similar mechanism may be devised wherein audit qualifications are examined in greater detail and further process to be followed by such committee should be time bound	Any audit qualification needs detailed scrutiny for placing reliance on such FSs.	Nothing mentioned about this in SEBI Press Release.
<b>B. Powers of SEBI with Respect to Auditors and Other Statutory Third Party Fiduciaries for Listed Entities</b>			
ICAI, as the professional services regulator, regulates the profession of chartered accountants and has a mechanism in place	SEBI should have clear powers to act against auditors and other third party fiduciaries with statutory duties under securities law ( <i>as defined</i>	<ul style="list-style-type: none"> <li>Such powers to SEBI are essential given SEBI's mandate to protect the interests of investors in the securities market and regulating listed entities.</li> </ul>	Nothing mentioned about this in SEBI Press Release.

Current regulatory provisions	Recommendations	Rationale	Amendment in SEBI LODR
<p>for disciplinary proceedings against them.</p> <p>Under the SEBI Act or Regulations framed thereunder, there is no provision which provides specific penal powers to SEBI in relation to auditors.</p>	<p><i>under SEBI LODR Regulations</i>), subject to appropriate safeguards. This power should be provided in case of gross negligence as well, and not just in case of fraud / connivance.</p>	<ul style="list-style-type: none"> <li>Such powers ought to extend to act against the impugned individual(s), as well as against the firm in question with respect to their functions concerning listed entities</li> </ul>	<p>No amendment in SEBI LODR required.</p>
<b>12) Strengthening the Role of ICAI</b>			
<p>ICAI Act permits ICAI to punish a defaulting member or levy a penalty on the member not exceeding Rs. 5 lakh. It does not permit ICAI to punish or impose penalties on firms.</p>	<p>ICAI may be given powers to increase the scope of punishment as well as the penalty amount as follows:</p> <ul style="list-style-type: none"> <li>On the member - penalty of up to Rs. 1 Cr.;</li> <li>On the audit firm-punishment or impose penalties of up to Rs. 5 Cr. in case of repeated violations (that is, where the number of violations exceed 3)</li> </ul> <p>Further, there are certain recommendations like increased disclosure, formation of special teams etc. in relation to the enforcement / disciplinary process of the ICAI.</p>	<ul style="list-style-type: none"> <li>Reliable financial statements are at the core of corporate governance and therefore the fiduciary role of the auditor is crucial. Hence there needs to be sufficient deterrence to ensure this objective in the interest of corporate governance. In this context, the current maximum amount for penalty under the ICAI Act of Rs. 5 lakh is too low to act as a Deterrent.</li> <li>Therefore, in the interest of enhancing governance of listed entities, ICAI may be given powers to increase the scope of punishment as well as the penalty amount.</li> </ul>	<p>Nothing mentioned about this in SEBI Press Release.</p> <p>No amendment in SEBI LODR required.</p>
<b>13) Strengthening the Independent Functioning of Quality Review Board ('QRB')</b>			
<p>No specific provision on QRB under the Companies Act or SEBI LODR Regulations</p>	<ul style="list-style-type: none"> <li>QRB should be further strengthened to meet the independence criteria laid down by the International Forum of Independent Audit Regulators (IFIAR) and should become a member of IFIAR at the earliest</li> <li>Reasons for disagreement between the ICAI and the QRB should be recorded in writing and communicated to QRB for improving transparency in functioning.</li> </ul>	<ul style="list-style-type: none"> <li>Most major economies in the world have implemented systems of independent oversight for the auditors of listed companies that provide confidence to shareholders and stakeholders</li> <li>QRB is mandated to conduct such reviews and has now started carrying out reviews of audits performed by various auditors. Therefore, strengthening the role of QRB assumes significance.</li> </ul>	<p>Nothing mentioned about this in SEBI Press Release.</p> <p>No amendment in SEBI LODR required.</p>

It may be noted that ICAI, represented by its President on the Committee, has objected to recommendations No. 11, 12 and 13.

Given the exhaustive detailing done while giving recommendations on each subject matter, we must appreciate the enormous efforts, valuable time and contributions made by the Kotak Committee in further uplifting the corporate governance standards in India. Given the bold recommendations made by the Kotak Committee on certain aspects, it is bound to invite certain difficulties including certain genuine concerns expressed by interested stakeholders. To conclude, we would like to quote Mr. Uday Kotak which appears in the Preface to the Kotak Committee Report: ***“It is an endeavor to facilitate the true spirit of governance. Under the leadership of a vigilant market regulator - SEBI, and with the persistent efforts of key stakeholders, corporate governance standards in India will continue to improve. A stronger corporate governance code will enhance the overall confidence in Indian markets and in India.”***