

# ANALYSIS BEYOND CONSENSUS

## The ESG Way: A governance shift gets underway



While we at Edelweiss have always been focusing on governance (refer to our conference treatise *Seeking Growth – The ESG Way*), India Inc. will start taking some hard steps now with implementation of the Uday Kotak Committee's recommendations, effective Q1FY20. We detail the changes and focus on the most relevant: a) mandatory shareholders' approval for royalty/ brand payments of >2%; b) half yearly related-party disclosures & cash flow statement; c) mandatory quarterly consolidated results; d) utilisation of QIP proceeds; e) restriction on treasury shares' voting rights (details awaited); and f) disclosure of credit ratings, reasons for auditor's resignation, increased role of audit committee, among others. While the governance premia for India's high quality businesses have only been rising, the bar is now being raised on the letter of India's governance norms. We look forward to the spirit to follow as we take you through the details and potential impacts.

### Shareholders' approval for royalty/ brand payments

Payments made by listed companies towards royalty, brand and trademark usage will now require shareholders' approval (majority of minority) for expenses above 2% of consolidated revenue (5% recommended by Kotak Committee). This change was initially applicable w.e.f. April 01, 2019; the effective date has been recently extended to July 01, 2019. A few companies have already started the process (Nestle, ABB India).

### Half yearly related party transactions (RPT), cash flow statement

Currently, disclosure on RPT is available with a lag in the annual report. From H2FY19 onwards, listed entities will have to disclose transactions with related parties on the website on half yearly basis within 30 days of publication of results. We expect to see these disclosures coming from large conglomerates with material RPTs (across oil & gas, metals, ports, pharma and auto sector). Further companies will also have to report cash flow statement on half yearly basis w.e.f. H1 FY20.

### Significant overhaul of disclosures

Key changes from the disclosure perspective include: a) mandatory consolidated results on quarterly basis w.e.f. FY19-20; b) enhanced obligations with regards subsidiaries; c) disclosure of all credit ratings obtained on outstanding instruments; d) disclosure regarding utilisation of funds raised through QIP/ preferential issue; e) increased role of audit committee in scrutinising the end utilisation of funds; and f) several changes pertaining to auditors, board & independent directors (details inside).

### Restriction on voting rights on treasury stock in a limbo

The Kotak Committee has recommended that no voting rights be attached to existing treasury shares (prior to Companies Act, 2013) w.e.f. April 1, 2021. However, SEBI has referred the matter to MCA, which is expected to issue pertinent guidelines. Companies with significant treasury shares include Escorts, M&M, Tech M, Inox Leisure and RIL.

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### Timeline: Major amendments kicking in from April 01, 2019

#### For year ending FY19

- Half yearly disclosure on related party transactions within 30 days on the website - refer to details in the report
- Disclosure of credit ratings (including revisions if any) in annual report
- Disclose key financial indicators where change is 25% or more in a particular financial year
- Disclosure of utilisation of proceeds from QIP/ preferential issues
- Directorship in listed companies, disqualification of directors, etc
- AGMs to be held within five months from the end of financial year and live webcast required for top 100 listed entities

#### Starting 01 April/ 01 July 2019

- Royalty and brand payments to related parties >2% of revenue (recently, timeline has been extended to 01 July 19).
- Half yearly cash flow statement
- Quarterly consolidated financial results
- Disclose RPT materiality thresholds and permit negative voting by related parties
- Subsidiary accounts on website at least 21 days before AGMs
- Auditors to conduct audit/ limited review of 80% of financial information of the group (i.e. consol revenue, assets and profits) for quarterly results perspective.
- Detailed reasons for auditors resignation submitted to stock exchanges within 24 hours
- Minimum board of directors to be increased to six (from three currently) for top 1,000 listed companies
- Shareholder approval required if remuneration to single promoter director > INR50mn or 2.5% of net profit (whichever is higher) or if all executive promoter's salary exceeds 5% of net profit
- Audit committee to scrutinise the end utilisation of funds where loans/advances/investment from the holding company to the subsidiary exceeds INR1.0bn or 10% of the assets of the subsidiary, whichever is lower. Also applicable to existing loans/ advances as on 1 April 2019.

#### Starting 01 April 2020

- Minimum board of directors to be increased to six (from three currently) for top 2000 listed companies
- Separate role of MD/ CEO and Chairman (should be a non-executive director not related to MD/ CEO) for Top 500 listed companies

#### Recommendations accepted with modifications/ referred to other regulators

- No voting rights to be attached to existing treasury stock/ shares w.e.f .01 April 2021 (issue has been referred to MCA)
- Full implementation of IND AS without extensions to banks, insurance, etc. (matter referred to MCA/RBI/ IRDA)
- Audit quality indicators, role of ICAI etc (matter referred to ICAI/NFRA)
- Disclosure in valuation reports in schemes of amalgamations/ mergers
- Detailed reporting on commodity risks (SEBI to issue format and decide on periodicity of disclosure)

## Overview

The Kotak Committee (or panel) on Corporate Governance was constituted on June 2, 2017, under the chairmanship of Mr. Uday Kotak and represented by many stakeholders (government, industry, stock exchanges, proxy advisors, professionals, lawyers, etc). Its primary objective was improving standards concerning corporate governance of listed companies in India.

The 25-member committee was requested to give recommendations on diverse issues such as ensuring independence in spirit of independent directors and their active participation in the functioning of a company, related party transactions, accounting & auditing practices of listed companies, board evaluation practices, disclosure & transparency related issues and address issues faced by investors on voting and participation in general meetings. The committee submitted its report on October 5, 2017. After this, comments were invited from the public and stakeholders.

Of the 81 recommendations by the Kotak panel, SEBI (in its meeting held on March 28, 2018) accepted 40 without any modifications, 15 with modifications, 18 were rejected and eight have been referred to other agencies.

**Table 1: Snapshot of key recommendations**

Key proposals accepted by SEBI board without any modifications	Recommendations accepted with modifications
<ul style="list-style-type: none"> <li>• Mandatory disclosure of consolidated quarterly results with effect from FY 2019-20</li> <li>• Enhanced disclosure of related party transactions (RPTs) and related parties to be permitted to vote against RPTs</li> <li>• Enhanced obligations on listed entities with respect to subsidiaries</li> <li>• Disclosure of utilisation of funds from QIP/preferential issue</li> <li>• Disclosures of auditor credentials, audit fee, reasons for resignation of auditors, etc.</li> <li>• Disclosure of expertise/skills of directors</li> </ul>	<ul style="list-style-type: none"> <li>• Shareholder approval (majority of minority) for royalty/brand payments to related party exceeding 2% of consolidated turnover (instead of the proposed 5%).</li> <li>• Minimum 6 directors in the top 1,000 listed entities by market capitalisation by April 1, 2019 and in the top 2000 listed entities by April 1, 2020</li> <li>• At least one woman independent director in the top 500 listed entities by market capitalisation by April 1, 2019 and in the top 1,000 listed entities by April 1, 2020</li> <li>• Separation of CEO/MD and Chairperson (to be initially made applicable to the top 500 listed entities by market capitalisation w.e.f. April 1, 2020)</li> </ul>
<ul style="list-style-type: none"> <li>• Reduction in the maximum number of listed entity directorships from 10 to 8 by April 01, 2019 and to 7 by April 1, 2020</li> <li>• Expanding the eligibility criteria for independent directors</li> <li>• Enhanced role of the Audit Committee, Nomination and Remuneration Committee and Risk Management Committee</li> <li>• Secretarial Audit to be mandatory for listed entities and their material unlisted subsidiaries under SEBI Listing Obligations and Disclosure Requirements (LODR) Regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Top 100 entities to hold AGMs within 5 months after the end of FY 2018-19 i.e. by August 31, 2019</li> <li>• Webcast of AGMs will be compulsory for top 100 entities by market capitalisation w.e.f. FY 2018-19</li> <li>• Quorum for board meetings (1/3rd of the size of the board or three members, whichever is higher) in the top 1,000 listed entities by market capitalisation by April 1, 2019 and in the top 2,000 listed entities by April 1, 2020</li> </ul>

Source: SEBI, Edelweiss research

The board decided to refer certain recommendations to various agencies (i.e., government, other regulators, professional bodies, etc.), considering that the issues involved relate to

them. Such recommendations, inter-alia, include strengthening the role of ICAI, internal financial controls, adoption of Ind-AS, treasury stock, among others.

**Refer Annexure 2 for recommendations not accepted by SEBI.**

### Proposals accepted by SEBI

**Table 2: Royalty/ brands payments to related parties**

Current regulation	Recommendation of Uday Kotak Committee	Effective date	
		Upto FY 2019	1 April 2019 onwards
No specific provisions in the SEBI LODR Regulations pertaining to payments made pertaining to brand and royalty to related parties	Payments made by listed entities with respect to brands usage/royalty amounting to more than 2% of consolidated turnover (as against 5% recommended by the Committee) of the listed entity may require prior approval from the shareholders on a "majority of minority" basis	-	01-Jul-19

Source: SEBI, Edelweiss research

**Table 3: Payments towards royalty, brand, trademark or license fees (INR bn)**

Company Name	Mkt Cap.	Sales	Royalty/ brand/ license/ trademark payments	As % of sales
Colgate-Palmolive (India)	329	42	2.1	4.9
Procter & Gamble	342	25	1.2	4.9
Maruti Suzuki	2,127	798	37.7	4.7
Nestle	1,053	113	4.9	4.4
ABB India	315	109	4.6	4.2
Wabco India	119	26	0.8	3.0
GSK Consumer Healthcare	303	43	1.3	3.0
SKF India	99	28	0.8	2.9
Castrol India	156	39	1.1	2.9
Akzo Nobel India	80	30	0.8	2.8
Navneet Education	26	12	0.3	2.7
GE T&D India (previously Alstom T&D)	65	43	1.0	2.4
Johnson Controls - Hitachi	51	22	0.5	2.2
Timken India	43	12	0.3	2.0
Schaeffler India	175	46	0.9	1.9
Hindustan Unilever	3,768	356	6.5	1.8
3M India #	283	26	0.3	1.2

Source: SEBI, Company annual report, Edelweiss research

Note: Details as per FY18 annual report related party disclosures

# Over and above Royalty of INR302mn, 3M also paid corporate management fee of 1,052mn (4% of revenue)

Table 4: Half yearly and other disclosures on RPTs

Particulars	Current regulation	Recommendation of Uday Kotak committee	Effective date	
			For year ending FY 2019	1 April 2019 onwards
<b>Disclosure of RPT</b>	Companies Act requires disclosure of RPTs in the board's report as per accounting standards and approval of shareholders in certain cases	<p>- Amend the definition of 'related party' by including all promoters/promoter group entities holding 20% or more in a listed entity</p> <p>- Disclosure of transactions with promoters / promoter group entities holding 10% or more shareholding annually even if not classified as related party in the annual report</p> <p>- Half yearly disclosure of RPTs on a consolidated basis, in the disclosure format required for RPT in the annual accounts as per the accounting standards, on the website of the listed entity within 30 days of publication of the half yearly financial results</p>	<p>Half yearly disclosure of RPT on consolidated basis – starting half year ending <b>31 March 2019</b></p> <p>Disclosure of transactions with promoters / promoter group entities - <b>FY ending 31 March 2019</b></p>	-
<b>Approval of RPTs</b>	Material RPTs require shareholder approval and a related party would not vote on it irrespective of whether he/ she is party to the transaction	Related parties would be allowed to cast a negative vote as it wouldn't be in conflict of interest.	-	01-Apr-19
<b>Materiality Policy</b>	SEBI LODR Regulations require listed entities to formulate a policy on materiality of RPTs and on dealing with RPTs	Clear threshold limits as considered appropriate by the BoD would be required to be disclosed; it should be reviewed once every 3 years	-	01-Apr-19

Source: SEBI, Edelweiss research

**Table 5: Top 20 companies\* with material RPTs in the order of market cap**

Company Name	Mkt Cap. (INR bn)
Reliance Industries	8,642
Maruti Suzuki India	2,127
Sun Pharmaceutical Industries	1,124
Adani Ports and Special Economic Zone	810
JSW Steel	697
Vedanta	649
Hero MotoCorp	527
Bosch	529
Siemens	416
Glaxosmithkline Consumer Healthcare	303
3M India	283
Adani Transmission	236
Sun TV Network	229
Glaxosmithkline Pharmaceuticals	219
Future Retail	213
Cummins India	204
Apollo Hospitals Enterprise	173
Bayer CropScience	143
Amara Raja Batteries	116
Reliance Infrastructure Ltd.	31

Source: Company annual report, Edelweiss research

Note: \*Universe - BSE200, list is indicative

**Refer Annexure 1 for a detailed comparative analysis of current regulatory framework around RPT**

**Also refer our ARA Compendium ([Connecting the DOTS](#)) for analysis of RPT on some of the above companies**

**Table 6: Voting rights on treasury shares**

Particulars	Current regulation	Recommendation of Uday Kotak Committee	Remarks
<b>Treasury Stock</b>	Companies Act specifically prohibits the creation of treasury stock. However, there is no requirement for cancelling/extinguishing treasury stock which existed prior to notification of provisions of the Act	In case a listed entity holds its own shares in its name or in the name of any trust either on its behalf or on behalf of any of its subsidiaries or associates (i.e. treasury stock), no voting rights attached to such shares shall be exercisable with effect from April 1, 2021	Issue has been referred to MCA to make appropriate amendments to Companies Act

Source: SEBI, Edelweiss research

**Table 7: Indicative list of companies with material treasury shares (>2% of Equity)**

Company Name	Treasury shares as % of total shares (a)	Promoter holding % (b) #	Net promoter holding % (b - a)	As % of promoter holding (a/b)
Escorts	27.5	40.1	12.6	<b>68.6</b>
Tech Mahindra	9.8	35.9	26.1	<b>27.2</b>
Mahindra & Mahindra	8.3	21.5	13.2	<b>38.8</b>
Inox Leisure	4.5	51.9	47.4	<b>8.7</b>
Reliance Industries	3.9	47.3	43.4	<b>8.2</b>

Source: Company annual report, Edelweiss research

# Promoter holding includes treasury shares as per BSE filings

**Table 8: Quarterly and half yearly financial results**

Particulars	Current regulation	Recommendation of Uday Kotak Committee	Effective date
<b>Quarterly Financial Disclosures</b>	Companies Act requires consolidated financial results to be provided on annual basis  Listed entities are regulated by SEBI LODR Regulations for the submission of quarterly financial results. However, does not mandate for quarterly consolidated results	Disclosure of: - <b>Consolidated financial statements</b> mandatory for all listed entities on a quarterly basis alongwith standalone results - Mandatory <b>cash flow statement</b> on a half-yearly basis  For all listed entities, for every quarter, financial information of the group, accounting for at least 80% of each of the consolidated revenue, assets and profits, respectively, should have undergone <b>limited review/audit</b>  Any material adjustments made in the results of the last quarter which pertain to earlier periods should be disclosed by the listed entity as a note in the financial results	01-Apr-19

Source: SEBI, Edelweiss research

**Table 9: Companies\* not filing quarterly consolidated results – in the order of m.cap**

Company Name	Mkt Cap. (INR bn)
Oil & Natural Gas Corporation	2,063
Mahindra & Mahindra	826
Hindalco Industries	450
Info Edge (India)	235
Bharat Forge	227
Exide Industries	186
Max Financial Services	116
ElH	110
Gujarat State Petronet	107
Bombay Burmah Trading Corporation	88
Mahindra CIE Automotive	85
Kalpataru Power Transmission	75
Sundaram-Clayton	59
ISGEC Heavy Engineering	41
Shoppers Stop	40
Sadbhav Engineering	39
Ashoka Buildcon	36
Gayatri Projects	33
Mahindra Holidays & Resorts India	32

Source: BSE, Edelweiss research

Note: \*Only companies with material subsidiaries have been considered and list is indicative

**Table 10: Credit ratings, financial indicators, QIP proceeds & subsidiaries**

Particulars	Current regulation	Recommendation of Uday Kotak committee	Effective date	
			Upto 31 March 2019	01-Apr-19
<b>Disclosures Pertaining to Credit Rating</b>	SEBI LODR Regulations require the disclosure of revisions in credit ratings	Listed entity to disclose all credit ratings obtained by the entity for all its outstanding instruments annually to stock exchanges and also on its website which shall be updated on a regular basis as and when there is any change	Uploaded on website – 1 October 2018	-
<b>Disclosures of Key Changes in Financial Indicators</b>	No specific provision	Certain key financial ratios (or sector-specific equivalent ratios), as applicable, wherever there is a change of 25% or more in a particular financial year, along with detailed explanations thereof, including: <ul style="list-style-type: none"> <li>- Debtors Turnover</li> <li>- Inventory Turnover</li> <li>- Interest Coverage Ratio</li> <li>- Current Ratio</li> <li>- Debt Equity Ratio</li> <li>- Operating Profit Margin (%)</li> <li>- Net Profit Margin (%)</li> </ul>	Disclose in Annual Report starting FY ending 31 March 2019	-
<b>Utilisation of Proceeds of Preferential Issue and QIP</b>	SEBI ICDR Regulations require disclosures on IPO proceeds	Appropriate disclosures may be required on utilisation of proceeds of preferential issues and QIPs till the time such proceeds are utilised	FY ending March 2019	-
<b>Disclosures of Subsidiary Accounts</b>	Companies Act requires subsidiary audited accounts to be placed on its website	Audited financial statements of each of the subsidiaries must be available on its website at least 21 days before the date of the AGM	-	01-Apr-19

Source: SEBI, Edelweiss research



**Table 11: Auditors related regulations**

Particulars	Current regulation	Recommendation of Uday Kotak committee	Effective date
<b>Audit Qualifications</b>	SEBI LODR Regulations require quantification of the audit qualification by the auditor and if not possible, the management shall make an estimate which is to be reviewed by the auditor	Quantification of audit qualifications has been made mandatory and auditor would have to review and report with exception being only for matters like going concern or sub-judice matters	01-Apr-19
<b>Group Audits</b>	No specific provision exists. However, provisions for group audits are covered under the Standards on Auditing issued by ICAI which permit the holding company auditor to place reliance on the audit performed by the auditor of the subsidiaries	Statutory auditor of listed entity would be required to undertake limited reviews of all entities whose accounts are to be consolidated	01-Apr-19
<b>Disclosure on credentials of Auditors and proposed fees</b>	No specific disclosure requirements	Listed entities shall disclose :- - Basis of recommendation for appointment including credentials of proposed auditor - Proposed fees along with terms of appointment	01-Apr-19
<b>Disclosures on Audit and Non-audit Services Rendered by the Auditor</b>	No specific disclosure requirements	Total fees for all services paid by the listed entity and its subsidiaries (i.e. on a consolidated basis) to the statutory auditor and its network firm/ network entity of which the auditor is a part	01-Apr-19
<b>Disclosure of resignation of auditors</b>	While a disclosure is required on resignation to exchanges, there is no specific provision for disclosure of detailed reasons of resignation under SEBI LODR norms	Listed entities are required to give detailed reasons for auditor resignation and it should be submitted to the stock exchange within 24 hours of receipt of such reasons from auditor	01-Apr-19

Source: SEBI, Edelweiss research

India has recently set up an independent regulator of audit profession, National Financial Reporting Authority (NFRA), to oversee the quality of services rendered by chartered accountants. This marks a significant shift from the existing self-regulatory organisational model driven by ICAI.

**Table 12: Other regulations related to disclosures and transparency**

Particulars	Current regulation	Recommendation of Uday Kotak committee	Effective date	
			Upto 31 March 2019	01-Apr-19
<b>Disclosures pertaining to Directors</b>	At the time of the appointment of a director, the names of listed entities in which the proposed director holds directorship and membership of the committees are to be disclosed to the shareholders	- Corporate governance section of annual report to include separately names of listed entities where a person is director and category of directorship	FY ending March 2019	-
<b>Disclosures pertaining to Disqualification of Directors</b>	No provision for Certificate from Company Secretary (CS)	Require certificate from CS that none of the directors have been debarred or disqualified	FY ending March 2019	-
<b>Views of committees not accepted by directors</b>	No such requirement	If the board of directors chooses not to accept the recommendations of the statutory committees of the board, the same should be disclosed along with reasons to shareholders on an annual basis	FY ending March 2019	-
<b>Searchable Formats of Disclosures</b>	No specific provision	Disclosure on website shall be in a user friendly searchable format and disclosures to stock exchanges to be in XBRL format	09-May-18	-
<b>Prior intimation of a board meeting to discuss bonus issue</b>	Where the declaration of bonus is not on the agenda of board meeting, prior intimation is not required	Prior intimation of a board meeting to discuss bonus issue to be submitted to stock exchanges	01-Oct-18	-
<b>Disclosure on long term &amp; medium term strategy</b>	No specific provision	Disclosure on long term & medium term strategy based on a time frame in MD & A section in the annual report is required	10-May-18	-
<b>Disclosures on Website</b>	A listed entity is required to maintain a functional website containing the basic information about itself	The listed entity shall disseminate all mandated information as per the regulation on its website under a separate section	-	01-Apr-19

## Board, oversight and governance related amendments

**Table 13: Composition and role of the board of directors**

Particulars	Current regulation	Recommendation of Uday Kotak Committee	Effective date	
			01-Apr-19	01-Apr-20
<b>Minimum Number of Directors on a Board</b>	Companies Act, 2013 requires a minimum of three directors on the board of a public limited company	Board of directors shall comprise of not less than six directors	Top 1000 listed companies †	Top 2000 listed companies
<b>Gender Diversity on the Board</b>	Companies Act and the rules prescribed thereunder require at least one woman director on the board of directors of every listed entity	At least one woman as an independent director and not less than 50% of the board of directors shall comprise of non-executive directors	Top 500 listed companies	Top 1000 listed companies
<b>Separation of the Roles of Non-executive Chairperson and Managing Director/CEO</b>	Companies Act states that 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 of such company provide otherwise	Separate the roles of Chairperson and MD/CEO and Chairperson shall not be a 'relative' of the MD/ CEO as defined under the Companies Act, 2013. This provision does not apply to entities who do not have any identified promoters	-	Top 500 listed companies

Source: SEBI, Edelweiss research

Refer below the list of top20 companies with common roles of chairman and MD/CEO.

**Table 14: Top 20 companies (by market cap) with common Chairman and MD/CEO roles (indicative list)**

Company Name	KMP	Designation	Mkt Cap (INR bn)
Reliance Industries	Mukesh D Ambani	Chairman and Managing Director	8,811
Oil & Natural Gas Corporation	Shashi Shanker	Chairman & Managing Director	2,122
Wipro	Azim H Premji	Executive Chairman & Managing Director	1,769
Coal India	AK Jha	Chairman Cum Managing Director	1,567
NTPC	Gurdeep Singh	Chairman & Managing Director	1,324
Nestle India	Suresh Narayanan	Chairman & Managing Director	1,044
Power Grid Corporation Of India	I S Jha	Chairman & Managing Director	1,004
Adani Ports and Special Economic Zone	Gautam S Adani	Chairman and Managing Director	812
GAIL (India)	BC Tripathi	Chairman & Managing Director	779
Bharat Petroleum Corporation	D Rajkumar	Chairman & Managing Director	756
JSW Steel	Sajjan Jindal	Chairman & Managing Director	707
Hero MotoCorp	Pawan Munjal	Chairman, Managing Director & CEO	524
Havells India	Anil Rai Gupta	Chairman & Managing Director	484
UPL	R D Shroff	Chairman & Managing Director	483
Divis Laboratories	Murali K Divi	Chairman & Managing Director	462
General Insurance Corporation of India	Alice G Vaidyan	Chairman cum Managing Director	437
Hindustan Petroleum Corporation	Mukesh Kumar Surana	Chairman & Managing Director	409
Power Finance Corporation	Rajeev Sharma	Chairman and Managing Director	315
NMDC	N Baijendra Kumar	Chairman-cum-Managing Director	314
Container Corporation Of India	V Kalyana Rama	Chairman & Managing Director	307

Source: Company annual report, Edelweiss research

**Table 15: Composition and role of the board of directors (contd....)**

Particulars	Current regulation	Recommendation of Uday Kotak Committee	Effective date		
			Upto FY 2019	01-Apr-19	01-Apr-20
<b>Maximum Number of Directorships</b>	Maximum 10 in case of public companies and as an independent director in not more than 3 listed entities	No person shall hold office as a director, including any alternate directorship, in more than 8 listed entities at the same time and as an independent director in not more than 3 listed entities	-	Reduce to 8	Reduce to 7
<b>Approval for non-exec directors on attaining a certain age</b>	Special resolution for >70 years of age for MD, whole-time director or manager	Approval for appointment of non-executive directors attaining 75 years of age by special resolution is required	-	01-Apr-19	-
<b>Quorum for Board meeting</b>	1/3rd of its total strength or 2 directors, whichever is higher	Higher of 1/3rd of its total strength or 3 directors (including at least one independent director)	-	Applicable to top 1,000 listed entities	Applicable to top 2,000 listed entities
<b>Disclosure of expertise/ skills of directors:</b>	Disclosure of a brief profile of a director on his/her appointment, including expertise in specific functional areas. No specific requirement to disclose the required and available expertise of the board on a regular basis	A chart or a matrix setting out the skills/ expertise/ competence of the board of directors specifying: - List of core skills/expertise/competencies identified - Names of directors who have such skills/expertise/competence	Year ending FY19: List of core skills/ expertise/ competencies identified by the BoD	Year ending FY20: Names of directors who have such skills/ expertise/ competencies	-
<b>Disclosure 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	Listed entities to consider observations of board evaluations carried out for the year, previous year observations and proposed actions	10-May-18	-	-

Source: SEBI, Edelweiss research

**Table 16: Regulations pertaining to Independent Directors (IDs)**

Particulars	Current regulation	Recommendation of Uday Kotak committee	Effective date	
			Upto FY 2019	01-Apr-19
<b>Revised Eligibility Criteria for Independent Directors (ID)</b>	Non-executive director and not a part of the promoter group	Specifically exclude persons who constitute the 'Promoter group' of a listed entity. <b>Exclude 'board-interlocks'</b> ie a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director	01-Oct-18	-
	Directors who are subject to evaluation shall not participate in evaluation by all directors	<b>Evaluation of independent directors</b> shall be done which shall include: - performance of the directors; and - fulfillment of the independence criteria		01-Apr-19
	No specific provision	<b>Confirmation</b> that in the opinion of the board the independent directors fulfill the conditions specified in these regulations	FY ended 31 March 2019	
	No specific provision	Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a <b>declaration</b> that he meets the criteria		01-Apr-19
<b>Alternate Directors for Ids</b>	Companies Act permits alternate directors for all directors including IDs (for a director during his absence for a period of not less than three months from India)	No person shall be appointed as an alternate director for an independent director of a listed entity	01-Oct-18	
<b>Mandatory Directors and Officers (D&amp;O) insurance</b>	Not mandatory	Mandatory Directors and Officers (D&O) insurance for independent directors	Top 500 listed companies - 1 October 2018	
<b>Reason for resignation of ID</b>	Companies Act provides that a director who resigns before the expiry of his term. No provision in SEBI LODR	Disclose detailed reasons for resignation of an independent director before the expiry of his/ her tenure, within 7 days of resignation to the stock exchange	Annual Report - FY ended 31 March 2019	Stock exchange - 01-04-2019

Source: SEBI, Edelweiss research

**Table 17: Board committees, meetings and quorum**

Particulars	Current regulation	Recommendation of Uday Kotak Committee	Effective date
<b>Minimum Number of Committee Meetings</b>	SEBI LODR Regulations require at least four meetings of the Audit Committee every year. No requirements for other committees	Nomination and remuneration committee (NRC), stakeholders relationship committee and risk management committee would be required to meet atleast once in a year	01-Apr-19
<b>Role of Audit Committee</b>	Companies Act and the SEBI LODR Regulations provide the specific role and terms of reference of the audit committee	<b>Audit committee should be required to scrutinise the end utilization of funds</b> where the total amount of loans/ advances/ investment from the holding company to the subsidiary exceeds INR1.0bn or 10% of the asset size of the subsidiary, whichever is lower. Also applicable to existing loans/ advances as on 1 April 2019	01-Apr-19
<b>Enhanced Role of NRC</b>	Companies Act and SEBI LODR Regulations provide for detailed provisions on roles and functions of NRC	NRC to recommend remuneration payable to senior management. Definition of senior management amended to include all members of management one level below the CEO/ MD/ WTD / Manager and should specifically include CFO and CS. <b>Quorum</b> – Two members or one-third whichever is higher with atleast one independent director	01-Apr-19
<b>Applicability and role of Risk Management Committee</b>	LODR Regulations require the constitution of a risk management committee by the top 100 listed entities	Extend the requirement of RMC to top 500 listed entities (currently 100) and role would specifically cover cyber security	Top 500 listed companies - 1 April 2019
<b>Composition and role of Stakeholder Relationship Committee</b>	The Companies Act and SEBI LODR Regulations provide for detailed provisions on composition and role of the Stakeholders Relationship Committee	- Members to include minimum 3 independent directors with atleast 1 independent director - Enhanced role to include review of measures taken for effective exercise of voting rights by shareholders , adherence to service standards and reducing the quantum of unclaimed dividends	01-Apr-19
<b>Quorum of committee meetings</b>	Under Companies Act, there is no quorum requirement for meetings of the committees of the board. SEBI LODR Regulations specifies quorum requirement for meetings of the Audit committee but not for other committees	- The quorum for NRC shall be either 2 members or one third, whichever is greater, with at least one independent director - The quorum for SRC shall be either 2 members or one third, whichever is greater, with at least one independent director	01-Apr-19

Source: SEBI, Edelweiss research

**Table 18: Group governance, secretarial and remuneration of promoter directors**

Particulars	Current regulation	Recommendation of Uday Kotak Committee	Effective date	
			Upto FY 2019	01-Apr-19
<b>Group Governance Unit</b>	No provisions	Dedicated Group Governance Unit or governance Committee comprising the Members of its BoD. Strong and effective Group governance policy to be formulated	10-May-18	-
<b>Secretarial Audit</b>	Companies Act requires a secretarial audit for listed companies and unlisted companies above a certain threshold	Mandatory for listed entities and their material unlisted subsidiaries incorporated in India	FY ending 31 March 2019	-
<b>Obligation on the Board of the Listed Entity with Respect to Subsidiaries</b>	At least one ID must be a director in unlisted material Indian subsidiaries	At least one ID must be a director in unlisted material Indian and foreign subsidiaries. "Material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent (previously ten percent) of the consolidated income or net worth respectively	-	01-Apr-19
<b>Remuneration of executive promoter directors</b>	While the Companies Act prescribes a ceiling on the compensation that can be paid to directors, there are no specific provisions in the SEBI LODR Regulations on maximum remuneration payable to executive promoter directors	Shareholder approval required if remuneration paid to: - A single executive promoter director exceeds higher of 5 cr or 2.5% of net profit - All executive promoter directors exceeds 5% of net profit	-	01-Apr-19
<b>Remuneration to non-executive directors</b>	Companies Act requires the approval of shareholders for any remuneration payable to such directors exceeding 1% of the net profits in case there is a managing director or whole time director or manager and 3% in other cases	If remuneration of single non-executive director exceeds 50% of the pool being distributed to non-exec directors as whole, it would require shareholder approval by special resolution and details should be disclosed	-	01-Apr-19

Source: SEBI, Edelweiss research

**Table 19: AGM and resolutions**

Particulars	Current regulation	Recommendation of Uday Kotak committee	Effective date	
			Upto FY 2019	01-Apr-19
<b>Timeline for Annual General Meetings (AGM) of Listed Entities</b>	AGM to be held within six months from the end of the financial year	- Annual general meetings to be held <b>within five months</b> from the date of closing of the financial year  - <b>Live one-way webcasts of AGMs</b> would be required for the top 100 listed entities	Year ending FY19:- Top 100 listed entities	-
<b>Resolutions sent to Shareholders without Board's Recommendation</b>	No general rule that every resolution placed before the shareholders should have been recommended by the board of directors	An explanatory statement for such a resolution must disclose the board's deliberated views to the shareholders	-	01-Apr-19

Source: SEBI, Edelweiss research

## Recommendations accepted and referred to other regulators

Table 20: Recommendations referred to MCA, RBI, IRDA and other regulators

Particulars	Current regulation	Recommendation of Uday Kotak Committee	Remarks
<b>Review of Internal Financial Controls (IFC) to be extended to foreign subsidiaries</b>	While the SEBI LODR Regulations have general provisions on IFC, there is no specific provision on the coverage of the same	IFC reporting requirements to be extended to foreign subsidiaries as well. Initially applicable to listed entities with network of > INR10.0bn	Referred to the regulator
<b>Audit quality indicators to be made public</b>	No specific provision	The Committee believes that making such indicators public will enable transparency and comparison of the audit quality of different auditors	Referred to the regulator
<b>Implementation of Ind AS by Banks, NBFC and Insurance companies</b> <sup>2</sup>	Different timelines prescribed for banks, NBFCs and insurance companies. Most companies have adopted IND AS except for Banks & Insurance companies	Committee recommends full implementation of IND-AS as currently scheduled without extension, for all listed entities including banks, NBFCs and insurance companies	Referred to the regulator
<b>Strengthening the Role of ICAI</b>	While the Companies Act also has provisions for enhanced monetary penalties on auditors, the enforcement of the same is through the MCA and not the ICAI	Committee recommends that ICAI may be given powers to increase the scope of punishment as well as the penalty amount as follows: - On the member - penalty of up to Rs. 1 crore; - On the audit firm- punishment or impose penalties of up to Rs. 5 crore in case of repeated violations (i.e. where the number of violations exceed three)	Referred to the regulator

## Recommendations accepted and further guidelines to be issued

**Table 21: Recommendations with detailed guidelines to follow**

Particulars	Current regulation	Recommendation of Uday Kotak Committee	Remarks
<b>Disclosures in Valuation Reports in Schemes of Arrangement</b>	No specific provision	No amendments may be required to SEBI LODR Regulations. However, SEBI may consider amending its circular dated March 10, 2017 on Schemes of Arrangement by listed entities in this regard	Accepted with modification. Would be issuing separate disclosure guidelines
<b>Commodity Risk Disclosures</b>	Disclosure of commodity price risk and commodity hedging activities by the listed companies in the Annual report	No amendment to the SEBI LODR Regulations required. SEBI should consider issuing a circular in this regard	Accepted and would be issuing detailed reporting format along with periodicity of disclosures
<b>Stewardship Code</b>	No specific provision	Common stewardship code be introduced in India for the entire financial sector on the lines of best practices globally based on the seven principles of stewardship	Accepted and would be issuing a common stewardship code for financial sector
<b>Harmonization of Disclosures</b>	No specific provision	The stock exchanges shall collectively harmonise the formats of the disclosures made by the listed entities on their respective websites in XBRL format. A common filing platform may be devised on which a listed entity may submit all filings, which could then be disseminated to all exchanges simultaneously and harmonise with filing on MCA.	SEBI to undertake separate examination of the recommendations on a common filing platform

Source: SEBI, Edelweiss research



## Annexure 1 – Related Party definition and case studies

Table 22: Definition of related party

Accounting Standards (IndAS 24)	Companies Act, 2013	SEBI (LODR)
(a) A person or a close member of that person's family is related to a reporting entity if that person:	(i) a director or his relative;	"related party" means a related party as defined under Companies Act, 2013 or under the applicable accounting standards:
(i) has control or joint control over the reporting entity;	(ii) a key managerial personnel or his relative;	
(ii) has significant influence over the reporting entity; or	(iii) a firm, in which a director, manager or his relative is a partner;	Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.
(iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.	(iv) a private company in which a director or manager is a member or director;	
(b) An entity is related to a reporting entity if any of the following conditions applies:	(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;	
(i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).	(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;	
(ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).	(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act (NA if given in professional capacity)	
(iii) Both entities are joint ventures of the same third party.	(viii) any company which is—	
(iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.	(A) a holding, subsidiary or an associate company of such company; or	
(v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.	(B) a subsidiary of a holding company to which it is also a subsidiary;	
(vi) The entity is controlled or jointly controlled by a person identified in (a).	(ix) such other person as may be prescribed	
(vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).		

Source: Companies Act, MCA, Edelweiss research

**Important Definitions**

**Control:**

Control is the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

**Joint Control:**

Joint control is the contractually agreed sharing of control over an economic activity

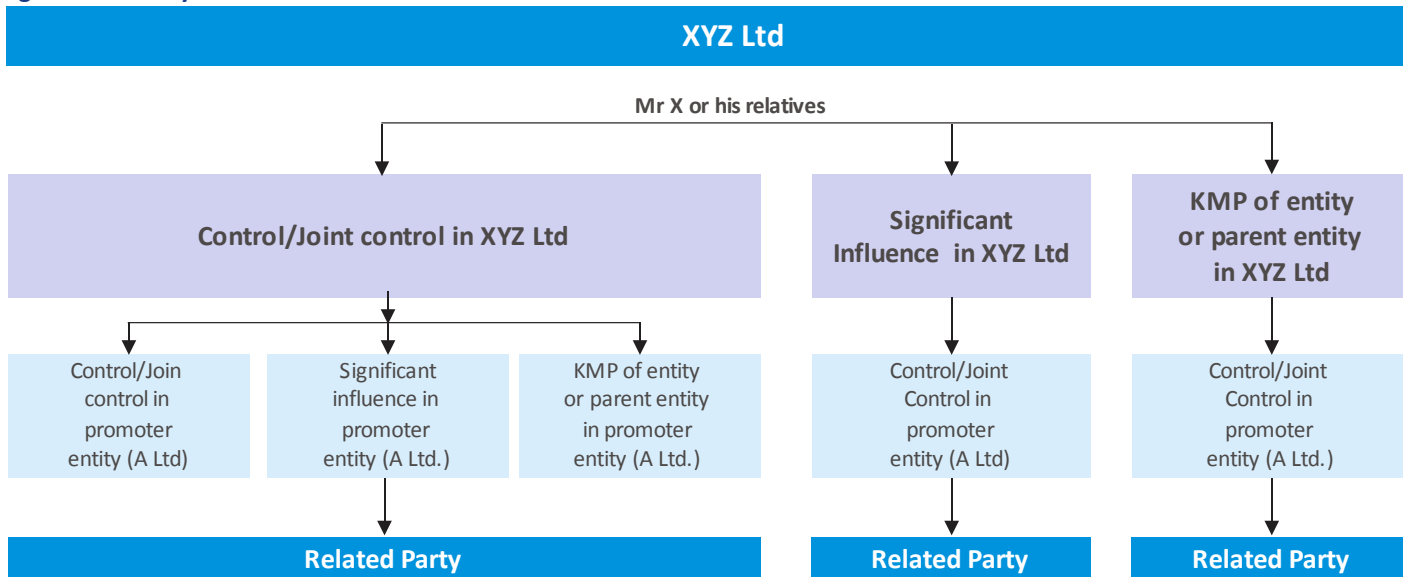
**Significant influence:**

Significant influence is the power to participate in the financial and operating policy decisions of an entity, but is not control over those policies. Significant influence may be gained by share ownership, statute or agreement.

**Key management personnel:**

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity

**Fig. 1: Case Study**



Source: Edelweiss research

**Table 23: Shareholding of A Ltd.**

Promoter entities of A Ltd.	% holding of promoter entities	% stake held by Mr. X in each of the entities	RPT Determination		
B Ltd	10%	100%	40%	Held by Mr.X	Considered in determination of RPT
C Ltd	10%	100%			
D Ltd	10%	100%			
E Ltd	10%	100%			
F Ltd	10%	0%	60%	Held by entities controlled by Mr.X	2nd layer of control not considered in determination of RPT
G Ltd	10%	0%			
H Ltd	10%	0%			
I Ltd	10%	0%			
J Ltd	10%	0%			
K Ltd	5%	0%			
L Ltd	5%	0%			
<b>Total promoter holding</b>	<b>100%</b>				

Source: Edelweiss research

100% shareholding of an entity, A Ltd, is held by promoters comprising of 10 entities, of which 4 entities are controlled by Mr X (100% shareholding) resulting in ~40% indirect shareholding in A Ltd and remaining ~60% stake is held by other entities in which Mr X has significant stake.

**Analysis:** Mr X is part of KMP of XYZ Ltd and has 40% direct stake in promoter entities however has indirect control over entities holding remaining 60% stake in A Ltd. Since 2<sup>nd</sup> layer of control by Mr X is not considered, Mr X has does not have direct control over XYZ Ltd.

**Therefore, A Ltd. is not classified as a related party.**

## Annexure 2 - Recommendations not accepted by SEBI

**Table 24: Recommendations not accepted**

Particulars	Current regulation	Recommendation of Uday Kotak committee	Remarks
<b>Minimum Number of Board Meetings</b>	At least four meetings of the board every year with a maximum gap of 120 days between any two meetings	Board of directors shall meet at least five times a year, with a maximum time gap of 120days between any two meetings and at least once a year	-
<b>Minimum no. of independent directors</b>	At least one-third of total directors as IDs. SEBI imposes stricter obligations requiring at least half of the total directors of the board of a listed entity to be IDs if the Chairperson is executive/ related to the promoter, and in other cases, at least one-third IDs	At least half of the board of directors shall comprise of independent directors	Concern on availability of directors with requisite expertise/ skills
<b>Lead Independent Director in Companies with Non-independent Chairperson</b>	Currently, there is no requirement of a Lead Independent Director in Companies Act/SEBI LODR Regulations	All listed entities where the Chairperson is not independent to designate an Independent Director as the Lead Independent Director	-
<b>Disclosures Pertaining to Analyst/Institutional Investor Meets</b>	SEBI LODR Regulations require the disclosure of schedules for analyst or institutional investor meetings and presentations made by the listed entity to analysts or institutional investors on its website and to the stock exchange	Disclosure of schedules of analyst/ institutional investor meetings may not be required. To clarify, the information to be shared at such meetings has to be strictly in compliance with the SEBI PIT Regulations	Against the transparency principle and may deprive the retail investors of key alerts
<b>Enhanced Disclosures on Deposit Receipt (DR) holders</b>	No specific provision	The statement of holding of securities and shareholding pattern as specified shall include details of names of holders of global depository receipts issued by the listed entity, if any, holding more than 1% of the total shareholding of the entity	It was pointed out that there are issues with availability of desired information with global depositories
<b>Permit obtaining of independent external opinion by auditors</b>	No specific provision	In case an auditor is not satisfied with the views or opinions of the management or of an management expert, the auditors shall have the right to independently obtain external opinions from experts	It would put additional burden on listed companies and auditors would have to qualify their opinion
<b>E-voting till the end of day of AGM</b>	Mandatory for a listed entity to provide e-voting facility to shareholders and such e-voting is permitted upto 5 p.m. one day prior to the general meeting	Shall provide one-way live webcast of the proceedings of all shareholder meetings held on or after April 1, 2018	Rejected due to operational issues
<b>Non-Exec Director engagement with the Management</b>	NA	The listed entity shall, at least once every year, undertake a formal interaction between the nonexecutive directors and the senior management	-

Source: SEBI, Edelweiss research

**Table 24: Recommendations not accepted (contd...)**

Particulars	Current regulation	Recommendation of Uday Kotak committee	Remarks
<b>Minimum Compensation to Independent Directors</b>	There is no requirement for minimum compensation to be paid, except that the sitting fee paid to IDs cannot be lower than that of other directors	Minimum total remuneration in aggregate of INR500,000 per annum, whether through sitting fees or profit linked commissions subject to receipt of approvals, if any, as may be necessary under Companies Act, 2013  Minimum sitting fees for every board meeting of INR50,000 for top 100 entities and INR25,000 for next 400 entities  Minimum sitting fees for each audit committee meeting of INR40,000 for top 100 entities and INR20,000 for next 400 entities by market capitalisation  Minimum sitting fees for each board committee meeting (other than audit committee) of INR20,000 for top 100 entities and INR10,000 for next 400	-
<b>Formal updation program for Board on changes in law every year :</b>			
<b>Formal induction program for independent directors</b>	The Companies Act provides general clauses pertaining to training, induction, etc. of directors. SEBI LODR Regulations require familiarization of the IDs relating to certain specified matters	Each independent director shall ensure that he/she undergoes formal training once every 5 years on their roles and responsibilities with particular emphasis on governance aspects, and shall certify compliance with the same to the listed entities every year	-
<b>More exclusive meetings of independent directors</b>	Companies Act and the SEBI LODR Regulations require at least one meeting of the IDs in a year without the presence of other directors	Committee recommends that such meetings may be held more than once at the discretion of the IDs	-
<b>Setting up of IT committee</b>	NA	The listed entity may constitute an information technology committee which will focus on digital and technological aspects	-
<b>Casual Vacancy of Office of Independent Director</b>	Filling the vacancy of IDs only in case of resignation and removal and provides that in case of such resignation/removal, such vacancy shall be filled but not later than the immediate next meeting of the board of directors or three months from date of vacancy	Any appointment to fill a casual vacancy in the office of independent director shall be subject to approval by the shareholders at the next general meeting	Already in Companies Act. Not required in LODR
<b>Membership and Chairpersonship Limit</b>	in determining the maximum number of committees of which a director can be a member/Chairperson, SEBI LODR Regulations considers only the Audit Committee and Stakeholders Relationship Committee.	Also include NRC in determining the limit	-

Source: SEBI, Edelweiss research

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