

Separation of roles of Chairperson and MD/CEO in listed entities

1 Objective

1.1. This memorandum seeks approval of the Board to modify the regulatory provisions in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR”) with respect to the requirement of separation of roles of Chairperson and Managing Director / Chief Executive Officer (MD / CEO) in listed entities.

2 Genesis of the regulatory requirement

A. Requirement prior to “Kotak Committee”

2.1 The concept of a separate Chairperson and MD/CEO was first mooted as a proposal in the Companies Bill, 2012 (subsequently became an Act), as follows:

“An individual shall not be appointed or reappointed as the Chairperson of the company, in pursuance of the articles of the company, as well as the MD/CEO of the company at the same time unless, —

- (a) the articles of such a company provide otherwise; or
- (b) the company does not carry multiple businesses.

2.2 Prior to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR” or “LODR Regulations”), Clause 49 of the listing agreement contained provisions related to corporate governance for listed entities, including composition and independence of directors, etc.

2.3 Since the Companies Bill contained provisions on corporate governance too, SEBI thought it fit to align provisions of Clause 49 with the Companies Bill after due consultation. Accordingly, consultation paper on ‘Review of Corporate Governance norms in India’ was issued in January 2013.

2.4 Based on the comments received from public and the Primary Market Advisory Committee (PMAC) of SEBI, Clause 49 was revised vide Circular dated April 27, 2014 stating that the company may appoint separate persons to the post of Chairperson and MD/CEO as a good governance

practice. This requirement was introduced by SEBI as a voluntary requirement for listed entities.

2.5 Subsequently, LODR Regulations were notified which consolidated and streamlined provisions of listing agreements that existed for different segments of the capital market. Among other things, LODR contained a discretionary requirement for appointment of separate persons to the post of Chairperson and MD/CEO.

B. Requirement post “Kotak Committee”

2.6 The SEBI Committee on Corporate Governance was set up in June 2017 under the Chairmanship of Shri Uday Kotak to make recommendations for improving standards of corporate governance norms of listed entities in India. Towards this objective, the Committee made various recommendations, inter-alia, on issues relating to composition and role of the board of directors, institution of independent directors, board committees etc.

2.7 One of the recommendations of the Committee related to the separation of roles of non-executive Chairperson and MD/CEO. The main rationale for this recommendation was that separation of powers of the Chairperson and MD/CEO may provide a better and more balanced governance structure by enabling more effective supervision of the management.

2.8 The report of the committee was placed for public comments on SEBI website. Additionally, separate meetings were also held between SEBI, Ministry of Corporate Affairs (MCA) and Ministry of Finance (MoF) on the recommendations. After taking into consideration the public comments and the views of MCA and MoF, the matter was further examined and appropriate proposals on different recommendations were taken to the SEBI Board in its meeting held in March 2018. The SEBI Board considered the proposals and approved them including the one relating to the separation of the roles of Chairperson and MD/CEO of listed entities.

2.9 The above decision of the Board was implemented by way of amendments to the LODR dated May 09, 2018, which mandated that with effect from April 01, 2020; the top 500 listed entities by market capitalization shall ensure that the Chairperson of the board of listed entity shall

- a. be a non- executive director;
- b. not be related to the MD or the CEO as per the term “relative” defined under the Companies Act, 2013.

2.10 Thereafter, representations from industry bodies were received by SEBI for extension of the deadline for compliance. Considering that the listed entities needed more time to prepare themselves for effecting the transition and various other difficulties highlighted by the industry representatives, the implementation of this provision was deferred to April 01, 2022 from April 01, 2020.

3 Representations received

3.1 Now that the date of implementation i.e. April 1, 2022 is nearing, SEBI has been receiving various representations on the above regulatory requirement including from listed entities and industry bodies such as X and Y (The names have been changed for reasons of confidentiality) which, inter-alia, mention that:

- 3.1.1 The regulatory provision on separation of roles of non-executive Chairperson and MD / CEO may increase costs and administrative burden. It may not be conducive to decision making, and perhaps for, ease of doing business.
- 3.1.2 Most businesses in India are controlled by families and the requirement that non-executive Chairperson of a listed entities should not be related to MD/CEO has the potential to create disruption in the manner family businesses are managed.
- 3.1.3 Covid-19 pandemic has impacted the businesses across sectors and made it difficult for listed entities to ensure timely compliance with this regulatory requirement.

3.1.4 The requirement of separation of posts of the Chairperson and MD/CEO is recommendatory across several corporate governance codes, globally.

3.2 There are also articles in the media which, inter-alia, highlight the state of unpreparedness of listed entities to comply with the above regulatory provision. MoF has also suggested SEBI to consider views of the industry on this regulatory requirement.

4 Current compliance status

4.1 In view of the representations received and articles in the media, data was sought from stock exchanges in order to gauge the level of compliance with this regulatory provision. The following table shows the compliance status as on December 31, 2021 for the top 500 listed entities by market capitalization:

Details	Complied	Total entities in respective category	Percentage of compliance (of total in corresponding category)
PSU	6	62	9.7%
Non-PSU	263	436	60.3%
Grand Total	269	498	54.0%

Note: Two listed entities have not submitted the corporate governance report for the quarter ended December 31, 2021

4.2 As the revised deadline is less than two months away, a review of the compliance status so far was made which revealed that the compliance level, which stood at 50.4% amongst the top 500 Listed Companies as on September 2019, has progressed to only 54% as on December 31, 2021. Thus there has been barely a 4% incremental improvement in compliance by the top 500 listed companies over the last two years. The prima facie inference from this is that expecting the remaining about 46% of the top 500 listed companies to comply with these norms by the target date would

be a tall order. Meanwhile SEBI continues to receive representations from industry bodies and corporates expressing various compelling reasons, difficulties and challenges for not being able to comply with this regulatory mandate.

5 Proposal

5.1 While it is a significant Corporate Governance reform, considering rather unsatisfactory level of compliance achieved so far, various representations received, constraints posed by the prevailing pandemic situation and with a view to enabling the companies to plan for a smoother transition, as a way forward, it is proposed that this provision may not be retained as a mandatory requirement and instead be made applicable to the listed entities on a “voluntary basis”.

5.2 This will restore the regulatory requirement on this issue as was prevailing prior to the implementation of Kotak Committee recommendations. It may be recalled that this requirement relating to separation of Chairman and MD on a voluntary basis was already a part of the erstwhile Listing Agreement since 2014 which subsequently formed part of SEBI (LODR) Regulations 2015.

5.3 The Board is requested to consider and approve the aforesaid proposal and authorize the Chairman to take consequential and incidental steps, as may be required, to give effect to the decision of the Board.