

CORPORATE GOVERNANCE LATEST AMENDMENTS (FOR AUG-2021)

BY PROF. JIMIT MARADIA

CHAPTER 4

SECRETARIAL STANDARDS

- The Central Government notified the Companies (Meetings of Board and its Powers) 4th Amendment Rules, 2020 to further amend the Companies (Meetings of Board and its Powers) Rules, 2014. In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 4, in sub-rule (2), for the word “31st December, 2020”, the word “30th June, 2021” shall be substituted.
- MCA vide this notification provides further relaxation till 30th June, 2021 in the requirement of holding Board meetings with physical presence of directors for approval of the restricted matters under Section 173(2) on account of current scenario due to COVID 19 pandemic.
- Accordingly, up to 30th June, 2021, following restricted matters can be dealt in board meetings held through video conferencing or other audio-visual means by duly ensuring compliance of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014. – (i) The approval of the annual financial statements; (ii) The approval of the Board’s report; (iii) The approval of the prospectus; (iv) The Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under Section 134(1) of the Companies Act, 2013; and (v) The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

CHAPTER 5

BOARD COMMITTEES

OLD PROVISION 178(8)	NEW PROVISION 178(8)
<p>In case of any contravention of the provisions of section 177 and section 178 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹25,000 but which may extend to ₹ 1Lakh , or with both.</p>	<p>In case of any contravention of the provisions of section 177 and section 178 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 5 Lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 1 Lakh.</p>

CHAPTER 6

CORPORATE POLICIES

AND DISCLOSURES

- In Rule 12(1) of the Companies (Management and Administration) Rules, 2014, a proviso has been inserted, specifying that the companies are not required to attach the extract of Annual Return with the Board's report in Form No. MGT.9, in case the web link of such Annual Return has been disclosed in the Board's report in accordance with Section 92(3) of the Companies Act, 2013.
- Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.
- Forensic Audit Disclosure - Para A of Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, requires the listed companies to disclose certain events or information upon occurrence without any application of the guidelines for materiality. As per the amendment, companies will now be required to disclose to Stock Exchange about the forensic audit initiated along with the details as prescribed.

CHAPTER 8

CORPORATE GOVERNANCE & SHAREHOLDER RIGHTS

OLD PROVISION 26(9)	NEW PROVISION 26(9)
<p>If a prospectus is issued in contravention of the provisions of Section 26 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs or both.</p>	<p>If a prospectus is issued in contravention of the provisions of Section 26 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹3 Lakhs and every person who is knowingly a party to the issue of such prospectus shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs.</p>

CHAPTER 9

CORPORATE GOVERNANCE AND OTHER STAKEHOLDERS

NEW CG CODE FOR FINNISH LISTED COMPANIES



Finnish Corporate
Governance Code 2015
an act of 14/12/2015

- The new Corporate Governance Code for Finnish listed companies ("2020 CG Code") entered into force this January, and it will replace the previous Corporate Governance (CG) Code applied since 2016 ("2015 CG Code"). While the number of recommendations in the 2020 CG Code has decreased, the 2020 CG Code introduces additional requirements on listed companies, in particular in relation to remuneration and related party transactions as required by the Shareholders' Rights Directive and the national rules implementing the Directive.
- In 2018, the Finnish Securities Market Association's board appointed a working group to update the CG Code to reflect the new regulations and the update needs to the 2015 CG Code development targets that had been identified over the years. Furthermore, the Shareholders' Rights Directive was implemented into Finnish company law in 2019 it created a need to amend and update the recommendations provided in the 2015 CG Code. The Finnish Securities Market Association's board adopted the amended and updated CG Code in September 2019. As a result of which the new 2020 CG Code came into force in January 2020 replacing the previous Finnish CG Code.
- The Finnish CG Code is applicable to all companies that are listed on Nasdaq Helsinki Ltd (Helsinki Stock Exchange). According to the Rules of the Helsinki Stock Exchange, all issuers of shares that are traded on the official list must comply with the CG Code.

NEW CG CODE FOR FINNISH LISTED COMPANIES



- Listed companies must present the new remuneration policy to the annual general meeting held after 1 January 2020, i.e. companies listed on the Helsinki Stock Exchange will need to prepare and present their first remuneration policy to the annual general meeting of 2020 and publish the proposal for a remuneration policy earlier in 2020.
- Under the amended Limited Liability Companies Act, the rules implementing the Shareholders' Rights Directive, the decision by the general meeting concerning the remuneration policy and remuneration report is only advisory in nature. Consequently, shareholders are not allowed to propose changes to the policy or report presented by the board to the general meeting or introduce any alternative policy or report proposals, only to adopt or reject the board's proposals.
- The board of directors should evaluate the independence of the directors and report which of the directors are independent of the company and which are independent of the significant shareholders. The board of directors will re-evaluate the situation every year, and the evaluation will be included in the company's CG statement.
- The audit committee must have sufficient expertise and experience to be able to challenge and evaluate the company's internal accounting function and the company's internal and external audit function. Due to the mandatory auditing duties, legislation also requires that at least one member of the audit committee must have expertise in accounting or auditing.

JAPAN STEWARDSHIP CODE, 2020 APPROACH



- Soft Law Approach – although the Code is not legally binding, the FSA encourages institutional investors to voluntarily adopt the principles of the Code by disclosing a list of institutional investors who have become signatories
- Principles-Based Approach – the Code adopts a principles-based approach (instead of a rules-based approach) so that the way in which the Code's principles are applied in practice, can differ depending on factors such as the investor's size and investment policies, as long as the purpose and spirit of these principles are followed.
- "Comply or Explain" Approach – the Code adopts a "comply or explain" approach under which an institutional investor can either disclose its intention to comply with a principle or provide sufficient explanation as to why it is not suitable to adopt such principle.

JAPAN STEWARDSHIP CODE, 2020



- Stress on Sustainability including ESG Factors: There was no mention of sustainability or ESG in the previous version of the Code. In light of the increasing focus on sustainability and ESG factors in corporate valuation, one of the main purposes of the Revision Code is to address 13 issues of sustainability including ESG factors. The Revision Code redefines “stewardship responsibilities” and clearly instructs institutional investors to consider sustainability (medium- to long-term sustainability including ESG factors) according to their investment management strategies in the course of their constructive engagement with investee companies.
- Disclosure of reasons for votes on agenda items- The previous version of the Code stated that institutional investors should, in principle, disclose voting records for each investee company on an individual agenda item basis. The Revision Code has taken this position further and specifically instructs institutional investors to disclose their voting rationale, whether they voted for or against agenda items, that are considered important from the standpoint of constructive dialogue with investee companies

JAPAN STEWARDSHIP CODE, 2020



- Application of the Code to Asset Classes other than Listed Shares- The previous version of the Code stated that the Code mainly targets institutional investors investing in Japanese listed shares. While that remains unchanged, the Revision Code explicitly adds that it may also apply to other asset classes, as far as it contributes to fulfilling stewardship responsibilities as defined in the Code.
- Stewardship activities of Asset Owners such as Corporate Pension Funds- To help corporate pension funds understand stewardship activities set forth in the Code, the Revision Code clarifies stewardship responsibilities of asset owners. The Revision Code instructs asset owners to encourage asset managers to engage in effective stewardship activities accordingly to their size and capabilities, in order to secure the interests of the beneficial owners. When asset owners manage funds and exercise their voting rights by themselves, they should engage in stewardship activities such as holding dialogues with investee companies accordingly to their size and capabilities.

ITALIAN CG CODE, 2020



- The Italian Corporate Governance Code, 2020 focuses on the following:
 - i) Article 1- Role of the board of directors
 - ii) Article 2- Composition of the corporate bodies
 - iii) Article 3- Functioning of the board of directors and the role of the chair.
 - iv) Article 4- Appointment of directors and board evaluation.
 - v) Article 5- Remuneration
 - vi) Article 6- Internal control and risk management system

CHAPTER 10

GOVERNANCE & COMPLIANCE RISK

OLD PROVISION 88(5)	NEW PROVISION 88(5)
<p>If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or subsection (2) of Section 88 of the Companies Act, 2013, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 3 lakhs and where the failure is a continuing one, with a further fine which may extend to ₹ 1000 for every day, after the first during which the failure continues.</p>	<p>If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or subsection (2) of Section 88 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 3 lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000.</p>

OLD PROVISION 92(5)	NEW PROVISION 92(5)
<p>If any company fails to file its annual return under Section 92(4) of the Companies Act, 2013, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 50000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 5 lakhs.</p>	<p>If any company fails to file its annual return under Section 92(4) of the Companies Act, 2013, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2 lakhs in case of a company and ₹ 50,000 in case of an officer who is in default.</p>

CHAPTER 11

CORPORATE

GOVERNANCE FORUMS

CSR AUDIT

To ensure that the companies comply with the provisions of Section 135 and rules made thereunder and genuinely spend the CSR amount on the eligible welfare projects, it is imperative to improve governance and transparency in CSR sphere. In this regard, an independent CSR Audit/ Review and issue of CSR Audit/Review Report by the Company Secretaries in Practice shall not only give the existing CSR mechanism much needed support and give necessary comfort to the stakeholders, regulators and the society at large that the companies are Complying with the legal requirements but will also give authentic information about the utilisation of CSR funds by the companies in specified CSR activities.

THANK YOU