InGovern Research Services

Governance Watch

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Oman Board Analysis 2018: 2nd Edition

As a part of our study of the corporate governance practices in the MENA (Middle East & North Africa) region, we have studied and published a report titled, "Oman Board Analysis 2018". This report analyses the board and board committees' compliance with corporate governance code of listed companies in Oman. This report is the second edition of our previous report released in January 2018. In this report we have analyzed 110 companies listed on Muscat Securities Market, the stock exchange of Oman.

Key insights from this report are:

Law: Board should be entirely composed of non-executive directors

Practice: 6 Omani listed companies have one or more executive directors on their board

Law:1/3rd of all directors on board should be independent with a minimum of 2 independent directors

Practice: 7 companies have less than 1/3 representation of independent directors ; 5 companies defaulted on 2 minimum directors requirement

Law: Majority members of audit committee (AC) should be independent directors

Practice: 17 companies did not have a majority of independent audit committee members

Law: AC chairman must be independent & not be board chairman or member in other committees

Practice: 7 companies did not have independent audit committee chairman; 2 companies had same chairman for audit committee & the board; One company had audit committee chairman as a member on 2 other board committees

Law: Nomination & Remuneration (NR) committee formation with minimum 3 directors

Practice: 8 companies did not form NR committee; 4 companies had less than 3 directors on NR committee

Law: NR committee should meet at least twice per annum

Practice: 4 companies convened 0 NRC meetings and 10 companies convened 1 meeting

The full report is available in our website at: [Oman Board Analysis 2018]

Effect of Kotak Committee Recommendations

The prescriptive nature of the way corporate governance was introduced and is effected in India suggest that although the companies fare well in "tick-box approach" evaluations, they fall behind when spirit of the law is considered. When the requirement of independent directors came, promoters of many companies started examining the legal definition rather than the motive and exploited loopholes by appointing friends and other relatives to their boards. When stock options to promoters were forbidden, they rewarded themselves with warrants. When the woman director requirement was introduced, many promoters added their female family members onto the Boards. When tenure restrictions for independent directors were introduced, they kept their long serving directors for one more term of 5 years. These instances suggest whatever rules or guidelines have been introduced to enhance corporate governance, companies and their promoters have always tried to exploit possible loopholes to their advantage. The "tick-box compliance" approach set by the regulators has not been fully able to make companies adopt good corporate governance practice in its truest sense.

InGovern believes that the desire to improve corporate governance should elicit from the companies and not from the regulators. Investors' trust on Indian companies would increase if the latter shows efforts to enhance without any nudge from external parties. If we take an analogy from the Indian mythology, the government and regulators need to be more like Krishna who shows the good path and bad path and leaves it up to us to select which path to take and not be either like Kansa (uncle of Krishna) who believed in tyranny or like Ravana, who although wanted his citizen to do well in their lives, was forceful in his administration of the kingdom. In the same way, Indian regulators should show '*the good path*' by introducing and educating Indian corporates to best corporate governance practices around the world. The responsibility to walk on the good path should be left to the companies themselves.

InGovern, in its feedback to SEBI on these Kotak Committee recommendations, suggested that the recommendations be categorised into two codes: the Code of Acceptable Governance and the Code of Desirable Governance. The first should be mandatory while the latter should be the company's choice to adopt. However, companies should disclose their choice of codes in their annual reports. This would have put the responsibility on the companies themselves as to what Code they desire to adopt. As '*Karma*' catches up with what path one takes – good or bad – the companies' choice of Code will also send a clear message to their investors based on which they could have made informed investment decisions.

The recommendations by Kotak Committee on Corporate Governance to SEBI is going to alter Indian Boards' shape and dynamics, if not overhaul it altogether. Boards of many large companies are in non-compliance of the recommendations and have to make the required changes. In this note, we find out which of the top-100 companies have to make changes to comply with the recommendations in future. The top-100 companies were constituents of Nifty 50 and Nifty Next 50 indices as on June 30th, 2017 and the data presented here is based on our study of Indian boards as on March 31st, 2017.

Women Independent Directors

Section 149 of the Companies Act requires listed companies to have at least one woman director. The Kotak Committee recommends at least one woman independent director in top-500 companies by April 2019 and top-1000 companies by April 2020.

As per our study, there were 135 board seats occupied by women in the top-100 companies as on March 31, 2017. As of today, all the companies from Top-100 have appointed a woman director on their boards. However, the following 21 companies do not have any woman independent director:

Effect of Kotak Committee Recommendations… *(cont)*

Ambuja Cements	Airtel
GAIL	HDFC
Hindalco	Reliance Industries
Lupin	Interglobe Aviation
Tata Consultancy Services	Cummins India
MRF	DLF
Piramal Enterprises	Hindustan Zinc
Glenmark Pharma	Indian Oil
LIC Housing	Oracle Financial Services
Proctor & Gamble Hygiene	Sun TV Network
Siemens	

These companies have to appoint a woman independent director before April 1st, 2019 to comply with the Kotak Committee recommendations.

Separation of Chairman & Managing Director

The Kotak Committee recommends appointment of separate persons for the posts of Chairman and MD/ CEO. The Committee notes the rationale of UK's Cadbury Committee which states, "*given the importance and the particular nature of the chairmen's role, it should in principle be separate from that of the chief executive. If the two roles are combined in one person, it represents a considerable concentration of power*".

The following 26 Companies have a single person as their Chairman & Managing Director and have to appoint separate individuals before April 1st, 2020:

Adani Ports	BHEL
Bharat Petroleum Corp	Coal India
GAIL	HCL Technologies
NTPC	ONGC
Powergrid Corporation	Reliance Industries
Wipro	Havells
Bharat Electronics	Cadila Healthcare
MRF	Container Corporation
Glenmark Pharma	Hindustan Petroleum Corp
JSW Steel	NHPC
NMDC	Oil India
Power Finance Corp	Rural Electrification Corp
Steel Authority of India	UPL

Effect of Kotak Committee Recommendations… *(cont)*

Board Size

Section 149 of the Companies Act requires a public company to have a minimum of 3 directors. The Kotak Committee recommended a minimum Board size of 6 directors for top-1000 listed companies by April 1st, 2019 and top-2000 by April 1st, 2020.

In our study of top-100 companies for FY2017, none of the companies had a Board size smaller than 6. Five companies had a Board of 6 members. They were Larsen & Toubro, Emami, Bajaj Auto, ABB, Avenue Supermarts, Eicher Motors, InterGlobe Aviation and Power Finance Corporation.

Annual General Meetings

Section 96 of the Companies Act requires companies to hold AGM within a period of 6 months of their year-ending date. The Kotak Committee, in order to address the issue of bunching up of AGMs in the last month, i.e., September, recommends the top-100 companies to hold AGMs within 5 months of their year-ending date effective from the next proxy season, i.e., 2019.

The following 28 top-100 companies held AGM in the month of September in 2017. They have to hold AGMs earlier from the next year:

BHEL	Containers Corporation
Bosch	DLF
Bharat Petroleum Corp	Glenmark Pharma
Coal India	Hindustan Petroleum Corporation
GAIL	Indiabulls Housing
HCL Technologies	NHPC
Hindalco	NMDC
Maruti Suzuki India	Oracle Financial Services
NTPC	Oil India
Oil and Natural Gas Corporation	Power Finance Corporation
Power Grid Corporation	Rural Electrification Corporation
Sun Pharmaceutical Industries	Petronet LNG
Avenue Supermarts	Steel Authority of India
Bharat Electronics	Sun TV Network

Enhanced Disclosures by Board Committees

Indian listed companies are mandated under SEBI LODR Regulations to constitute at least three committees of Board viz., the Audit Committee, the Remuneration & Nomination (R&N) Committee and the Stakeholders Relationship Committee. An additional CSR Committee is mandated for companies with financial figures above a certain limit and soon a Risk Committee may also be mandated for certain companies. Basic disclosures that the companies are required to make regarding these committees are: terms of reference of the committee, composition, number of meetings and attendance of members.

Any well governed company's objective is to provide fair, transparent and detailed disclosures to its stakeholders. A detailed disclosure on the board committees would not only include this basic information about their terms and composition but also the actual work carried out by them during the year. Shareholders would appreciate these greater disclosures from the company as it reflects on the amount of the work a board does and the effort and eagerness of the board on achieving its objectives for the year.

One can counter this idea by saying that the committees cannot disclose their discussions and work as they may be sensitive in nature. However, this is in fact untrue as we can seek examples of UK-listed companies. The corporate governance statutes of UK mandate their companies to disclose this information mandatorily to their shareholders every year. Hence, one can ask the question that if companies in the UK can, why cannot Indian companies do the same if not more.

Given below are a few datapoints that the Audit Committee and R&N Committee of companies can provide to shareholders:

Audit Committee

The annual report can have an audit committee report signed by its chairman. This report can have the following information available to the public:

- What were the significant issues considered by the committee during the year?
- What did the committee do during the year with respect to:
  - Financial reporting
  - Auditors – external and internal
  - Internal controls and compliance
  - Risk management

There should also be a statement by the audit committee chairman on review of related party transactions and whether any transaction(s) was discussed in greater detail and scrutiny.

Remuneration & Nomination (R&N) Committee

A report by the R&N Committee should have the following details:

- Committee's assessment of board composition and diversity during the year
- Committee's review of succession planning process
- Process followed in appointment of new directors/ KMPs
- If promoter members were appointed as directors/ KMPs, why did the Board find it appropriate to do so rather than appoint external professionals

Enhanced Disclosures by Board Committees… *(cont)*

- Any discussions regarding the board evaluation process and its results
- Did the committee hire an external agency/ adviser for any purpose?
- Any significant issues that are forthcoming in the next year or so
- Commentary on justification of remuneration of directors and KMPs
- What are its objectives for the coming year?

Higher level of disclosures results into higher investor trust which translates into higher capital inflows into the company. If companies start making these disclosures in their annual reports without waiting for regulators to make them mandatory, it would raise their profile several notches in the investors community - domestic as well as global – and the companies can take appropriate benefits from the same.

"Independent" Directors?

The Companies Act, 2013 sets the maximum tenure of an independent director at 10 years comprising of two terms of 5 years each. It says anyone crossing this limit has to be allowed a cooling-off period of 3 years before being appointed as an independent director again in the same company.

It is clear from this provision that the Act believes independent directors serving on the board for more than 10 years to be not independent anymore. However, companies with long serving independent directors on their boards, rather than imbibing the spirit of the law, have taken into its legality and taken advantage of the provision that provides independent director with long tenures to be re-appointed for one more maximum term of 5 years on the board. While it is understandable to re-appoint independent directors for a further period of 5 years for directors with tenures of 10-15 years, following companies have re-appointed their long-serving independent directors for a full additional term of 5 years:

Name of ID	Company	Tenure (Years)
Mr. R. A. Shah	Procter & Gamble Hygiene	53
Mr. Mansingh L. Bhakta	Reliance Industries	40
Mr. B. S. Mehta	Procter & Gamble Hygiene	38
Mr. R. A. Shah	Colgate Palmolive	34
Mr. T. K. Balaji	Titan Industries	31
Dipak Poddar	Bajaj Finance	30
Ranjan Sanghi	Bajaj Finance	30
Rajendra Lakhotia	Bajaj Finance	30
Mr. P. K. Ghosh	Colgate Palmolive	29
Mr. B. S. Mehta	HDFC	29

Investors should ask these companies the rationale for classifying directors with such longer tenures as independent directors when a reading of Section 149 of the Companies Act suggests the opposite. While we believe that the individuals mentioned here are imminent personalities of great repute, the companies should have classified them as non-executive directors if they wanted these directors to continue on the board.

While it is understood that proper succession planning is necessary not only for executives but also for non-executive directors, a period of one year at most would have been sufficient for shortlisting and appointing new independent directors in place of the long serving directors. Investors should ask these companies why a full additional tenure of 5 years was granted to these directors to continue on the board as independent directors.

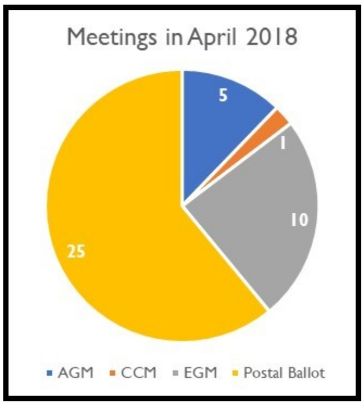
Shareholder Meetings in April

There were 41 shareholder meetings scheduled in April whose meeting details were collected by InGovern.

These included 5 AGMs, 10 EGMs, 25 Postal Ballots and 1 CCM.

Some of the large companies that held meetings during April are:

ACC
Ambuja Cement
CRISIL
JK Tyre
Karur Vysya Bank
KPIT Technologies
Mahindra CIE
NBCC India
Reliance Infra
Reliance Power
Schaeffler India
Thomas Cook
Vesuvius India



Please write to us at info@ingovern.com for vote recommendations on any company.

We are in the News!

Financial Times: Governance remains a risk for Asia-Pacific investors (Click here)

"The corporate governance challenges for investors in Indian companies are to figure out the background of the promoters or founders, figure out whether the financial statements reflect the true picture, and any abusive related party transactions, which can take away value from the company" says Shriram Subramanian.

Business Line: Infosys looks to sell its subsidiary Panaya (Click here)

"The announcement of a timeline is quite surprising. One usually sells off a company and then makes an announcement. I am unable to understand the reason for declaring a timeline" said Shriram Subramanian.

Times of India: Infosys whistleblower asks SEBI to question board (Click here)

Shriram Subramanian, founder and managing director of InGovern Research Services, a corporate governance consulting firm, said Parekh and Sikka could have different acquisition strategies, a reflection of how they see the tech shifts in the industry. "Having said that, shareholders want to know why the two companies were singled out as part of the sell-out plan. We don't know the backstory around it and there is no easy answer to it"

Economic Times: Is Fortis going the Satyam way? (Click here)

This article quotes the report on Fortis Healthcare published by InGovern.

Reuters: Clouds over hospital chain Fortis (Click here)

"All interested bidders are aware that Fortis is in dire need of funds and that there could be contingent liabilities in the books of the company," said Shriram Subramaniam .

About InGovern

InGovern is India's first independent corporate governance research and advisory firm which assists shareholders and lenders that have financial or reputation exposure to companies. InGovern also assists companies in enhancing their corporate governance practices.

InGovern is a SEBI registered Proxy Advisory firm.

Our Services

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- *'Corporate Governance Alert' on interesting company proposals*
- *Publication of Annual Proxy Season Report*

Shareholder Activism

- *Advising clients (investors and companies) on solutions for value enhancement*
- *Helping companies to connect with investors on voting decisions for shareholder meetings*
- *Communicating governance practices through market leading Investor Relations initiatives and white papers*
- *Advising companies on strategies, solutions and tools to enhance investor perception and enhance value for all stakeholders*