

I. DIFFERENT COMMITTEES OF BOARD UNDER THE COMPANIES ACT, 2013:

Delegation of Power is a buzz word in the Companies Act 2013. This delegation is not only from Legislature to Executive but also from Board of Directors to its committees. Committees are not new to Indian Corporate Jurisprudence. Audit Committee was introduced in the Companies Act, 1956 twelve years ago in year 2000. Schedule XII also gave provisions with respect to Remuneration committee. In the Companies Act 2013, there are specific provisions related to Committees. Now, certain committees have become a statutory mandate.

The Companies Act, 2013 envisages four types of committees to be constituted by the board:

- (i) Corporate Social responsibility Committee.
- (ii) Audit Committee.
- (iii) Nomination and Remuneration Committee.
- (iv) Stakeholders Relationship Committee.

II. MEANING OF AUDIT COMMITTEE:

Section 177 of the Companies Act, 2013 read Rule 6 and 7 of Companies (Meetings of Board and its Powers) Rules, 2014 deals with the Audit Committee.

Applicability

The Board of directors of every listed company and the following classes of companies shall constitute an Audit Committee:

- all public companies with a paid up capital of Rs.10 Crores or more;
- all public companies having turnover of Rs.100 Crores or more;
- all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores or more.¹

The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purpose of this Rule.

Composition

The Audit Committee shall consist of a minimum of 3 directors with independent directors forming a majority.

The majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the Financial Statement.

¹Rule 6 of Companies (Meetings of Board and its Powers) Rules,2014

The Board's Report under Section 134(3) of the 2013 Act shall disclose the composition of an Audit Committee and where the Board has not accepted any recommendation of the Audit Committee, the same shall be disclosed in such Report along with the reasons there for.

Reconstitution

Every Audit Committee of a company existing immediately before the commencement of the 2013 Act shall be reconstituted within one year of such commencement i.e. on or before 31st March 2015.

Establishment of Vigil Mechanism

- i. Every listed company, companies which accept deposits from the public and companies which have borrowed money from banks and public financial institutions in excess of Rs.50 crores shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.
- ii. The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee to deal with the matter on hand.
- iii. Where the companies are not required to constitute an audit committee, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.
- iv. The existence of the mechanism may be appropriately communicated within the organization. The details of establishment of Vigil mechanism shall be disclosed by the company in the website, if any, and in the Board's Report.

Safeguard to employees & Directors

The vigil mechanism shall provide adequate safeguards against victimization of employees and directors who avail of the Vigil mechanism and also provide for direct access to the chairperson of the Audit committee or the director nominated to play the role of audit committee, as the case may be, in exceptional cases.

Action against Frivolous complaints

In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

Penalty

- Company – Fine of Rs.1 Lakh to Rs.5 Lakhs

- Officer in Default – Imprisonment up to 1 year or Fine of Rs.25,000/- to Rs.1, 00,000 or both

III. ROLE AND RESPONSIBILITY OF AUDIT COMMITTEE:

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include,—

- the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- review and monitor the auditor's independence and performance, and effectiveness of audit process;
- examination of the financial statement and the auditors' report thereon;
- approval or any subsequent modification of transactions of the company with related parties;
- scrutiny of inter-corporate loans and investments;
- valuation of undertakings or assets of the company, wherever it is necessary;
- evaluation of internal financial controls and risk management systems;
- monitoring the end use of funds raised through public offers and related matters.
- The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
- The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.²

IV. MEANING OF NOMINATION AND REMUNERATION COMMITTEE:

While the Companies Act, 1956 did not require companies to set up Nomination and Remuneration Committee, the Listing Agreement provided companies with the option to constitute a Remuneration Committee. However, the Companies Act 2013 and corresponding Rule, Companies (Meetings of Board and its Powers) Rules, 2014 mandatorily requires the Board of every listed company to constitute the Nomination and Remuneration Committee and a similar modification has been made in Revised Clause 49 of the Listing Agreement.

Applicability

The Nomination and Remuneration Committee is applicable to the following classes of Companies

- Every listed Company

² Section 177(4), (5) &(6)

- Every other Public company
 - a) Having Paid up capital of Rs.100 crores or more; or
 - b) Which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores.

Composition

Nomination and Remuneration Committee shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent.³ The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.⁴ The revised Listing Agreement also prescribes an additional condition that the Chairman of the committee shall be an independent director.⁵

V. ROLE AND RESPONSIBILITY OF NOMINATION AND REMUNERATION COMMITTEE:

Responsibilities of NRC

The Nomination and Remuneration Committee shall⁶

- Identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down,
- Recommend to the Board their appointment and removal,
- Carry out evaluation of every director's performance,
- Formulate the criteria for determining qualifications, positive attributes and independence of a director, and
- Recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

Formulation of NRC policy

The Nomination and Remuneration Committee shall ensure that—

³ Section 178(1)

⁴ Proviso to Section 178(1)

⁵ Clause 49(IV), Listing Agreement

⁶Section 178(2) & (3)

- the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
- relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- remuneration to directors, KMPs and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.⁷

The above policy shall be disclosed in the Board's report.

VI. MEANING OF STAKEHOLDERS RELATIONSHIP COMMITTEE:

The Companies Act 1956 did not require a company to set up a Stakeholder's Relationship Committee. The Listing Agreement required listed companies to set up a shareholders / investors grievance committee to examine complaints and issues of shareholders. The Companies Act 2013 requires every company meeting the prescribed criteria to constitute a Stakeholders Relationship Committee to resolve the grievances of security holders of the company.

The board of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and other members as decided by the board.⁸

VII. ROLE AND RESPONSIBILITIES OF STAKEHOLDERS RELATIONSHIP COMMITTEE:

The Stakeholder's Relationship Committee shall consider and resolve the grievances of security holders of the company including complaints related to transfer of shares, non- receipt of balance sheet, non- receipt of declared dividend. Dubious accounting practices, abuses of corporate power, unequal voting rights, conflict of interest and so on, have been subjects of active debate in the media in the last few years thereby highlighting the vulnerability of the stakeholders of the Company. To overcome such practices and to safeguard the interest of the investors, a number of measures are being undertaken by the regulators. A recent step taken in this direction by SEBI is the "SCORES (Sebi Complaints Redress System)" system introduced by it. Formation of this committee will be another measure undertaken by the Ministry for Investors' protection.

⁷ Section 178(4)

⁸ Section 178(5)