

Companies wary of new secretarial standards

The new rules are facing stiff opposition from firms concerned over micromanagement, compliance costs

New standards to ensure better participation and fair conduct at annual general meetings (AGMs) and board meetings will take effect from 1 July.

All Indian companies will have to adhere to two sets of standards—one each for board meetings of directors and AGMs for shareholders—that are part of the secretarial standards issued by the Institute of Company Secretaries of India under Section 118(10) of the Companies Act, 2013.

The rules, somewhat quirky, include mandating company secretaries to sit near the chairman at AGMs and record the minutes of the meeting in third person and past tense. One of the rules also specifies that the notice for AGMs should include a route map with a prominent landmark, to make it easier for shareholders to reach the venue.

The rules are aimed at bringing in uniformity in practices followed across companies and strengthening corporate governance. They also stress on proper documentation of the meetings to avoid tampering by a select few later.

“Corporate governance is a DNA issue, ethics cannot be mandated. It must come from within. Someone might bring in 50% independent directors, and a woman director, but if they have cronies as board members, then they can push for their agenda as a promoter,” said Prithvi Haldea, chairman and managing director of Prime Database, a primary market tracker.

The standards, however, are facing stiff opposition from companies concerned over the level of micromanagement. The rules, they say, will increase compliance costs even for small companies as these standards will be applicable to all companies incorporated under the Companies Act except ‘one-person company’.

“The aim is to standardize compliance for all companies, whether public or private, listed or unlisted,” said Lalit Kumar, partner at J. Sagar Associates, a law firm. “It will foster corporate governance and reduce litigation as the steps on how to conduct a board meeting and an AGM have been very clearly specified,” said Kumar, who is a member of the Secretarial Standards Board.

He admitted that some companies have raised concerns over some provisions of the standards and its adverse impact on ease of doing business.

The standards prescribe many rules to prevent fraud and avoid litigation on account of unilateral action by a few directors controlling a board. For instance, to avoid manipulation of the minutes of the meeting and reduce disputes, the standards say that the signed minutes of a board meeting certified by a company secretary be circulated to all directors within 15 days of being signed.

Provisions have been introduced to discourage the practice of bringing in last-minute agenda items in board meetings. The standards also make it compulsory to number meetings, items of business, resolutions and page numbers to cut down the practice of paper meetings.

To ensure that all directors get a notice about a board meeting and its agenda, companies are required to maintain proof of delivery of such notices. Also, to avoid the practice of deliberately keeping out minority shareholders from important company decisions at AGMs, a provision insists on a quorum not only at the time of the commencement of a meeting but also while transacting business. The new standards also bar a company from postponing or cancelling a duly-convened general meeting.

It also spells out restrictions on changing a resolution and restricts it to correction of grammatical and spelling errors to avoid tweaking of decisions taken at the meeting through manipulation of resolutions.

To prevent insider trading, unpublished price-sensitive information can be placed in front of a board at a shorter notice rather than the mandatory seven days but with the consent of the majority of directors, including one independent director.

Further, the notice of meetings, results of votes and similar information will have to be disclosed on websites of the company and newspapers to ensure transparency.

“In the present scenario, where e-voting concludes before the AGM, the importance of the AGM has come to naught. It’s like you’ve decided the fate and are discussing later. I’ve suggested to the ministry that e-voting should begin after the conclusion of the AGM so that the shareholder can benefit from the discussion.

While all standards are welcome with an objective to improve governance, the outcome is rarely seen as compliance happens in the letter and not in spirit,” said J.N. Gupta, founder of SES Governance, a corporate governance advisory and former executive director of the Securities and Exchange Board of India.

(HT Mint)