



31 March 2021

Securities and Exchange Board of India

SEBI Bhavan Plot no. C4-A, "G' Block Bandra Kurla Complex
Bandra (East), Mumbai – 400 051
India.

Submitted via email to: consultationcmd2@sebi.gov.in and ishans@sebi.gov.in

RE: Consultation Paper on the review of regulatory provisions related to independent directors

Dear Sir/Madam,

BlackRock¹ is pleased to have the opportunity to respond to the "Consultation Paper on review of regulatory provisions related to independent directors" ("Consultation Paper") issued by the Securities and Exchange Board of India (SEBI).

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We are highly appreciative of the efforts by the SEBI to provide ever more transparency and related disclosure, including those related to the appointment, resignation and compensation of independent directors (IDs). Thus, we welcome the consultation which aims to improve transparency in this area. We would like to take this opportunity to comment on the Consultation Paper which we are very much in agreement with.

Executive Summary

We are broadly in agreement with the proposals of the Consultation Paper, as indicated in the details of our response. There are only a few points related to the proposals where we take a different view, which we summarise below:

- We believe the cooling off period for an executive or KMP to be appointed as an ID should be five years rather than three; for such a person to have an independent view on the board, he/she should not be associated with the management action on relevant policies being discussed; the relationships with former colleagues who remain executives should also be attenuated by being away from the company for more than just three years.
- We agree that the Nomination and Remuneration Committee as well as the Audit Committee should at least have a majority of IDs; however, if the Board does not have a majority of IDs, we believe that requiring these committees to be made up of two-thirds IDs may stretch the capacity of the IDs who may then have to be on a number of different committees which could result in them being less effective on the respective committees.
- We do not see any major conflicts of interest if an ID is to be appointed to an executive position if he/she is the most suitable person available, hence we do not believe there needs to be a cooling off period for an ID to be appointed in an executive role of the company or group.

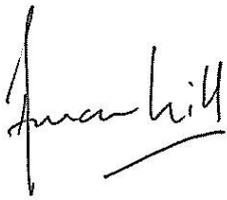
¹ BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

- In our view, IDs' compensation should not include options. We believe options as part of the ID's compensation will likely encourage greater risk taking by the board given the skew of returns from options. However, we believe that ordinary shares with an appropriate lock-in period may be considered as part of compensation for IDs as that would align their incentives with the returns of shareholders.

Our views on the criteria of independence and our voting guidelines generally are set out in our Asia voting guidelines which is available on the BlackRock Investment Stewardship website. The link to this document is <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-asiaxjapan.pdf>.

Below we present our comments on the Consultation paper in the template requested. We reiterate our appreciation for SEBI giving investors the opportunity to provide feedback and welcome further discussion on the points raised, or on any other relevant matter. Thank you.

Yours faithfully,



Amar Gill
APAC Head of Investment Stewardship



Winnie Pun
APAC Head of Public Policy

Comments on the Consultation Paper in the required format:

Sr No.	Proposal	Suggestions	Rationale
4.1.4	<p><i>It is proposed that KMPs or employees of promoter group companies, cannot be appointed as IDs in the company, unless there has been a cooling-off period of 3 years. The said restriction shall also extend to relatives of such KMPs for the same period.</i></p>	<p>Require a 5 year cooling off period for executives to be eligible to be appointed as an independent director.</p>	<p>A person who may have spent many years of his/ her career with a company or group, or even a few years but in a responsible position, is likely to continue to have a sense of having been with management and likely to continue to have quite close ties. Such a person may have skills and expertise that are required on the board and could be appointed as a non-independent non-executive directors. But to have a perspective that is credibly independent of management, such a person should have been no longer part of the decision making body of the company/ group for more than just 2-3 years; 5 years is often the medium-term planning cycle for companies and thus would represent a more credible cooling off period.</p>
4.1.5	<p><i>The prescribed cooling-off period for eligibility condition at 3(b) above shall be harmonized to 3 years.</i></p>	<p>In agreement that cooling-off period for a person from a service provider and/or his/ her relative should be raised to 3 years from 2 years presently.</p>	<p>There is no clear reason why the cooling off period for a person who has been an executive of the company/ group (or a relative) should be the same as the cooling off period from a similar person from a service provider to the company/ group. The risk of being wedded to earlier decisions of the group and having close relationships with current EDs is lower for someone coming from a service provider rather than directly from the company/ group, hence the cooling off period can be shorter.</p>
4.2.4	<p><i>Appointment and re-appointment of IDs shall be subject to “dual approval”, taken through a single voting process and meeting following two thresholds: –</i></p> <p><i>i.Approval of shareholders</i></p> <p><i>ii.Approval by ‘majority of the minority’ (simple majority) shareholders. ‘Minority’ shareholders would mean shareholders, other than the promoter and promoter group.</i></p> <p><i>The approval at point (i) above, shall be through ordinary resolution in case of appointment and special resolution in case of re-appointment.</i></p>	<p>In agreement.</p>	

Comments on the Consultation Paper in the required format: (Cont'd)

Sr No.	Proposal	Suggestions	Rationale
4.2.5	<p><i>If either of the approval thresholds are not met, the person would have failed to get appointed / re-appointed as ID. Further, in such case, the listed entity may either:</i></p> <p><i>i. Propose a new candidate for appointment / re-appointment or</i></p> <p><i>ii. Propose the same person as an ID for a second vote of all shareholders (without a separate requirement of approval by 'majority of the minority'), after a cooling-off period of 90 days but within a period of 120 days.</i></p> <p><i>Such approval for appointment/re-appointment shall be through special resolution and the notice to shareholders will include reasons for proposing the same person despite not getting approval of the shareholders in the first vote.</i></p>	In agreement.	4.2.4 and 4.2.5 combined present a novel way of addressing the issue of controlling shareholders often effectively determining the appointment of IDs. While it will not eliminate the problem, we consider this a reasonable way of addressing the issue. If the candidate does not get support of majority of the minority shareholders, the controlling shareholders are sent a signal that the independence of the individual or his/her suitability is questionable. It would then be a mark of poor governance for the controlling shareholders to nevertheless push through his/her nomination.
4.3.3	<p><i>Removal of IDs shall be subject to "dual approval", taken through a single voting process and meeting following two thresholds: –</i></p> <p><i>i. Approval of shareholders.</i></p> <p><i>ii. Approval of 'majority of the minority' (simple majority) shareholders. 'Minority' shareholders would mean shareholders, other than the promoter and promoter group.</i></p> <p><i>The approval at point (i) above, shall be through ordinary resolution in case of removal in the first term and special resolution in case of removal in the second term.</i></p>	In agreement.	

Comments on the Consultation Paper in the required format: (Cont'd)

Sr No.	Proposal	Suggestions	Rationale
4.3.4	<p><i>If either of the approval thresholds are not met, the person would have failed to get removed as an ID. In such case, the removal of such ID may again be proposed through a second vote of all shareholders (without a separate requirement of approval by 'majority of the minority'), after a cooling-off period of 90 days but within a period of 120 days. Such approval for removal shall be through special resolution and the notice to shareholders will include reasons for proposing the removal again despite not getting approval of the shareholders in the first vote.</i></p>	<p>In agreement.</p>	<p>As above, 4.3.3 and 4.3.4 would be a novel proposal and is a reasonable approach to address the risk of an independent director being removed from the board simply because the controlling shareholder finds the person troublesome. If the majority of the minority votes in favor of keeping the director in question, then it would be a signal of poor governance for the company if the controlling shareholder goes ahead and uses their vote to remove the person in the subsequent vote.</p>
4.4.3	<p><i>The following procedure shall be followed by NRC for selection of candidates for the role of ID -</i></p>	<p>In agreement</p>	<p>We are in favor of added transparency regarding the selection of independent director candidates.</p>
4.4.3.a	<p><i>Process for shortlisting of the candidate</i></p> <p><i>i. For each appointment, the NRC shall evaluate the balance of skills, knowledge and experience on the board. In the light of this evaluation, a description shall be prepared of the role and capabilities required for a particular appointment.</i></p> <p><i>ii. The person who is recommended to the Board for appointment as ID should have the capabilities identified in this description</i></p> <p><i>iii. For the purpose of identifying suitable candidates, the committee may:</i></p> <ul style="list-style-type: none"> <i>· Use services of an external agencies</i> <i>· Consider candidates from a wide range of backgrounds, having due regard to diversity, and</i> <i>· Consider the time commitments of the appointees</i> 		

Comments on the Consultation Paper in the required format: (Cont'd)

Sr No.	Proposal	Suggestions	Rationale
4.4.3.b	<p><i>Disclosures to be made to shareholders The notice for appointment of director shall include the following disclosures:</i></p> <ul style="list-style-type: none"> <i>i. Skills and capabilities required for the appointment of the ID and how the proposed individual meets the requirement of the role.</i> <i>ii. Channels used for searching appropriate candidates. In case, one of the channels is 'recommendation from a person', the category of such person (viz. promoters, institutional shareholders, directors (non-executive, executive, ID) etc) shall be disclosed.</i> 		
4.4.4	<p><i>Composition of Nomination and Remuneration Committee (NRC) may be modified to include 2/3rd IDs instead of majority of IDs.</i></p>	<p>We recommend that the NRC can be majority independent but that the Chair of the NRC should be independent.</p>	<p>Our Asia voting guidelines recommend that Board committees should be chaired by an ID and have a majority of IDs (rather than 2/3 independent). If the board itself has only 1/3 IDs, then requiring that each committee to have 2/3 IDs will entail that the IDs would be on practically all the committees, stretching the commitments and demands on the directors with the risk that they pay less attention to their committee functions. However, if the Board has a majority of IDs, then the requirement that the NRC should be 2/3 independent could be indicated as a best practice standard.</p>
4.5.5	<p><i>Independent Directors shall be appointed on the board only with prior approval of the shareholders at a general meeting.</i></p>	<p>In agreement</p>	<p>Requiring that IDs be voted on first before their appointment to the board would be an improvement on current practice.</p>
4.5.6	<p><i>In case, a casual vacancy arises due to resignation / removal / death / failure to get re-appointed etc., the approval of shareholders should be taken within a time period of 3 months.</i></p>	<p>In agreement</p>	<p>Requiring that replacement IDs be voted on within 3 months of their appointment to the board would be an improvement on current practice.</p>

Comments on the Consultation Paper in the required format: (Cont'd)

Sr No.	Proposal	Suggestions	Rationale
4.6.4	<i>The entire resignation letter of an ID shall be disclosed along with a list of his/her present directorships and membership in board committees.</i>	In agreement	Publishing the full resignation letter might give investors a sense of any strategic or ethical reasons for the director stepping down that may be relevant for shareholders generally to be aware of.
4.6.5	<i>If an ID resigns from the board of a company stating reasons such as pre-occupation, other commitments or personal reasons, there will be a mandatory cooling-off period of 1 year before the ID can join another board.</i>	In agreement	This would be a good way to discourage directors from hopping to different boards after they have been voted on certain boards but then might find opportunistic personal reasons to move to different board(s).
4.6.6	<i>It is proposed that there should be a cooling-off period of 1 year before a director can transition from an ID to a whole-time director.</i>	Not in agreement with this change.	There may be situations where an ID is the most suitable person to take on an executive position. For instance, an independent chairman may need to be appointed as interim CEO if the previous CEO has just departed without a succession plan that can be put into effect in a timely manner. In our view, the potential for conflict of interest is not particularly high and thus a cooling off period for an independent director to take an executive role in the company or group may not be necessary.
4.7.2	<i>Considering the importance of the Audit Committee with regard to related party transactions and financial matters, it is proposed that audit committee shall comprise of 2/3rd IDs and 1/3rd Non-Executive Directors (NEDs) who are not related to the promoter, including nominee directors, if any.</i>	In agreement that the Audit Committee should be entirely non-executive directors, but we would allow for independent directors to be a majority (rather than 2/3rd) while also requiring that the Chair should be independent and at least one member of the committee should have appropriate accounting or some related financial background.	If the Audit Committee needs to be constituted of 2/3 independent directors, there might not be sufficient IDs to be appointed to other board committees that should also have significant independent representation without the IDs being spread too thin on the committees and thus impacting their effectiveness.

Comments on the Consultation Paper in the required format: (Cont'd)

Sr No.	Proposal	Suggestions	Rationale
4.8.6	<p><i>Whether there is a need for reviewing the remuneration structure for IDs. If so,</i></p> <p><i>a. Whether ESOPs with a long vesting period of 5 years, be permitted for IDs, in place of profit linked commission, and</i></p> <p><i>b. What should be the maximum limit of remuneration through ESOPs</i></p>	<p>We are not in agreement with performance linked remuneration for IDs either in cash or options.</p>	<p>By our Asia voting guidelines, IDs should not be compensated in terms of ESOPs as the incentive structure would then encourage risk-taking. We believe IDs' compensation should be at an appropriate level for the responsibilities and time commitments that the role entails and should be aligned with the interests of shareholders generally, rather than being awarded options that would reward the IDs for upside risks that payoff but do not entail any cost if the risks eventually have a negative impact on the company's market value.</p> <p>However, IDs could be compensated in shares with a suitable lock-in period, e.g. while they remain on the board and for up to 2 years after they retire; these shares should not have any characteristics different from the shares they may acquire in the market, if they choose, outside of non-trading periods for insiders.</p>