

## SUMMARY OF PROXY ADVISORY GUIDELINE UPDATES | FY 2024-25

SES has released the updates to its Proxy Advisory Guidelines for FY 2024-25. For a comprehensive view of all the changes, please refer to the detailed document available here: [Click Here](#) Additionally, we've prepared this condensed educational document summarizing the key updates (reiterating few existing ones) for companies' information. Companies may take a note of the below information and apply to their future disclosures accordingly.

### REGULATORY UPDATES FOR INSURANCE COMPANIES

1. Insurance Companies should take a note of the updated regulations and guidelines issued by IRDAI. These updates comprise of information that will have an impact on the proposals for appointment of statutory auditors of the Company and remuneration payments to them; board composition, appointments of Directors/KMPs and their remuneration payments and other matters detailed therein. SES will analyse whether the proposals are compliant with the updated regulations/guidelines or not.

### DIRECTOR APPOINTMENTS

#### 2. Permanent Board Positions

SES believes that directors should not have permanent seats on the Board unless the appointment is proposed through a court or regulatory order. While Section 152(6) of the Companies Act, 2013 ensures board refreshment through retirement by rotation provisions, SEBI LODR Regulation 17(1D) requires the Non-Retiring Directors to come for shareholders' approval once in every five years.

SES will monitor whether the resolution clearly discloses the nature of the office of the Director regarding the same being retiring or not. Further, if the position is non-retiring, then the explanatory statement should ideally mention that the said appointment is subject to regulation 17(1D) or should be proposed for a fixed term of up to 5 years. Additionally, Companies should ensure that compliances with regard to retirement by rotation provisions as stipulated under Section 152(6) of the Companies Act, 2013 are complied with while appointing Directors under regulation 17(1D).

#### 3. Audit Committee attendance

SES is of the view that since the Audit Committee plays a very critical role in the governance process, only those Directors who are able to devote sufficient time, must be members of such a committee. Thus, as per SES criteria, any Director who is unable to attend at least **75% Audit Committee meetings**, must step down from such committee and make way for another Director or provide compelling reasons for absence. Only in case of cogent reasons, SES may grant relaxation.

#### 4. Group Association for Banks

SES recommends that the entire association of the director should be considered while judging the director's independence as the spirit behind the provision of law recognizes that long tenure does impact independence. However, since linking independence and group association is a subjective concept created as per our internal policy, the parameter cannot change from sector to sector merely because a shorter tenure is prescribed for Banks in the regulation. Henceforth, SES will set the group association limit at 10 years viz., common for both Banks and General Companies.

#### **5. Past Employees as Independent Directors**

In case, the Director has been held employment position in the Company or at the Group Level, then SES will generally not support such proposals unless 10 years has passed since cessation of association with the Company/Group and the Director has established his credentials and capabilities by taking up prominent roles post cessation of association with the Company/Group Company. However, the other roles should have been held in the recent period.

#### **6. Past Nominee Directors as Independent Directors**

SES has elaborated the parameters for analysing appointment of an ex-nominee director as independent director on the Board. SES, in general course, requires a cooling-off period to be served by the ex-NEDs prior to getting appointed on the Board again as Independent Directors. While exemption from cooling-off requirement will be granted to ex-nominees of Public Financial Institutions (“PFIs”), their association will be considered from the time they have been appointed on the Board unless cooling-off period of 3 years have been served since the cessation of association with the Company.

#### **7. Pre-fixed remuneration to Independent Directors**

SES believes that independent directors should not be paid fixed remuneration as guaranteed payments may vitiate the independence of the director. Hence, in general cases, SES will recommend against the appointment of independent directors who are proposed with or paid guaranteed remuneration unless the amount is nominal. SES has set internal parameters to analyse the quantum of pay.

#### **8. Independent Director holding Non-Independent Directorships at Group Level**

Law disallows IDs to be related to the Directors on the Board of the Company or at the Group Level. However, there is no explicit disallowance for IDs themselves from holding non-independent directorships at Group Level. Moving forward, SES will recommend against the ID appointments if they hold any non-independent directorships at the group level.

### **BOARD REMUNERATION**

#### **9. Absolute Cap on remuneration payments to Promoter Directors**

SES, in general course, will not support pay proposals to promoter directors wherein overall payments are not capped with an absolute end. However, if the proposed payments are within

legally specified limits and where past payments have been fair, transparent and reasonable, then, SES may take a lenient view and will make a recommendation on a case-to-case basis.

### **10. Non-Disclosure of remuneration received at Group Level**

In case any Director receives remuneration from the Group Companies, then disclosures regarding the same should be made in the remuneration disclosures of the Company in the Corporate Governance Report and also, in the Related Party Transactions disclosures of the Annual Report. Further, the remuneration terms should also be disclosed in the explanatory statement to the Notice while seeking remuneration approvals for the said director.

## **SHARE BASED BENEFIT SCHEMES**

### **11. Scheme is in favour of any select employee(s)**

If the Scheme has been created not for the benefit of the employees in general but rather keeping any select employee in focus, then SES will not support such schemes unless the Company explicitly communicates its intention in the explanatory statement and provides adequate justification for the same.

## **RELATED PARTY TRANSACTIONS**

### **12. Basis of Arm's Length Pricing**

SES is of the view that the disclosure regarding the basis of arriving at the pricing of the related party transactions is a material disclosure for shareholders to arrive at an informed decision making. Hence, the same should form part of the disclosures unless the transactions are of a nature where basis of pricing cannot be determined. Henceforth, SES will require basis of pricing to be disclosed in the explanatory statement. SES has been advocating the importance of this disclosure in its proxy advisory reports for a year now and moving forward, SES will not support related party transactions wherein basis of arriving at the arm's length pricing is not disclosed.

### **13. Prior Approval of Shareholders**

SEBI LODR Regulations require prior approval of shareholders for material related party transactions. Hence, the Companies should clearly mention in the explanatory statement that the materiality thresholds stipulated in the SEBI LODR Regulations have not been breached till the time of taking shareholders' approval. SES has been advocating the importance of this disclosure in its proxy advisory reports for a year now and moving forward, SES will not support related party transactions wherein clarity regarding prior approval of shareholders being obtained is not provided.

### **14. Significant shift between the proposed transaction limit and the previous approved limit**

If there has been a significant shift in the proposed RPT limit as compared to the limit sought in the previous approval, then companies should adequately justify the basis of arriving at the proposed limit of transaction. SES may take a lenient view if there are apparent reasons which explains the increased limit, however, as a good transparency measure, the rationale should form part of the explanatory statement.

## **INTERCORPORATE LOANS/ GUARANTEES/ INVESTMENTS**

### **15. Pro-rata contributions made by other shareholders of the Recipient Company**

If the Company is providing loans/guarantees to any entity, then the explanatory statement should explain whether the other shareholders of the recipient entity are making pro-rata contributions or not. SES may take a lenient view in this regard when the other shareholders comprise of widely held public investors or government or when the Company has operational control over the recipient entity or when the Company is adequately compensated for the obligations undertaken.

## **SALE OF ASSETS**

### **16. Sale of controlling stake from a subsidiary**

Regulation 24(5) of SEBI LODR Regulations requires shareholders' approval to be obtained via special resolution when a company disposes of shares in its material subsidiary resulting in reduction of its shareholding to less than or equal to 50% or ceases to exercise control over the subsidiary.

Regulation 37A of SEBI LODR Regulations deals with sale, lease or disposal proposals of an undertaking outside Scheme of Arrangement wherein shareholders' approval for such sale has to be sought via special resolution. The definition of undertaking is the same as assigned under section 180 of the Companies Act, 2013. However, special resolution sought under regulation 37A can be acted upon only when the votes cast by the public shareholders in favour of the resolution exceed the votes cast by public shareholders against the resolution.

SES believes that if the Company intends to sell its controlling stake from a subsidiary and if the value of the said subsidiary triggers the limits defined for an undertaking under Section 180 of the Companies Act, 2013, then the said sale amounts to sale of undertaking as per SES and companies should seek shareholders' approval for such disposal via special resolution under regulation 24(5) and also, via special resolution with special majority under regulation 37A.

The technical concern arises from a perspective as to how the approval mechanism can be different for two actions that have similar implications on the functioning of a company, i.e., parting away with a unit at the Company level and parting away with a material subsidiary at a consolidated level.

## **NEW ISSUE OF SHARES**

### **17. Enabling Issue of Shares**

#### **Stakeholders Empowerment Services**

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In case there lies a potential for dilution of over 5% to existing shareholders as and when the new issuance of shares will be undertaken, then Companies should adequately mention the rationale behind not opting for rights issue in the explanatory statement. Further, proposal for any fund raising should be supported with adequate justification. If relevant information regarding the fund raising are available in the other public disclosures of the Company, then references to the same should be provided in the explanatory statement.

### **18. Rationale for not opting Rights Issue**

In case, when the dilution as a result of the preferential issue exceeds 5%, then Companies should specifically mention the rationale behind not opting for rights issue in the explanatory statement. Further, the explanatory statement should clearly explain the rationale for raising funds.

### **19. Valuation Report for Pricing of Preferential Issues**

In cases where the articles of association of the Company requires the pricing of new issuance of shares to be determined post considering the valuation report or when the dilution as a result of the preferential issue exceeds 5%, then along with ensuring compliance with pricing provisions as per SEBI ICDR Regulations, Companies should also consider the value arrived at as per the Valuation Report of an independent registered valuer for determining the pricing of a preferential issue of shares.

## **OFFICE OF PROFIT POSITIONS**

### **20. Remuneration related disclosures in the explanatory statement**

With regard to remuneration payments, SES will require the explanatory statements to provide information on the basis of arriving at the proposed remuneration. Further, the remuneration package should be an optimum combination of both, fixed and variable component wherein the variable component should be higher and linked to objective performance parameters. The overall remuneration should be capped with an absolute upper end.

## **ESG**

21. Companies should ensure compliance with BRSR related reporting requirements. Further, the top 150 listed entities should obtain and disclose the BRSR Assurance Certificate in the Annual Report as mandated by SEBI. SES will closely monitor whether the Companies are compliant with the aforesaid requirements.