

Frequently Asked Questions

Section 9 - Corporate Governance

Q1: What is the required minimum Board composition as per the new Rules?

A1: As per Rule 9.8.1, the company should have a minimum of five (5) Directors.

Q2: What is the minimum number of Independent Directors required on the Board?

A2: As per Rule 9.8.2, "The Board of Directors of Listed Entities shall include at least two (2) Independent Directors or such number equivalent to one third (1/3) of the total number of Directors of the Listed Entity at any given time, whichever is higher."

Example 1: The company has 5 Directors on its Board. In that event, the required minimum number of Independent Directors are;

$$5 \times 1/3 = 1.66 \Rightarrow 2 \text{ Independent Directors}$$

Example 2: The company has 10 Directors on its Board. In that event, the required minimum number of Independent Directors are;

$$10 \times 1/3 = 3.33 \Rightarrow 3 \text{ Independent Directors.}$$

Example 3: The company has 8 Directors on its Board. In that event, the required minimum number of Independent Directors are;

$$8 \times 1/3 = 2.66 \Rightarrow 3 \text{ Independent Directors}$$

In calculating the minimum number of Independent Directors in terms of the Listing Rules as stipulated above, if the answer is a decimal value greater/less than 0.5, such value should be rounded up/down to the closest value.

Q3: If a company becomes non-compliant with the minimum number of Independent Directors due to the above, how can the company rectify?

A3: As per Rule 9.1.4.(3) of the Listing Rules, the company has time till 1st October 2024 to rectify the non-compliance.

Q4: What are the key requirements relating to the Chairperson and CEO of a Listed Entity?

A4: As per Rule 9.6.1;

- Chairperson should be a Non-Executive Director,
- Chairperson and CEO positions shall not be held by the same individual,

unless otherwise a Senior Independent Director is appointed by the company in terms of Rule 9.6.3.

Q5: What if a Listed Entity deviates from the requirements set out in Rule 9.6.1 of the CSE Listing Rules?

A5: The company should make a Market Announcement within one (1) month from the date of implementation of these Rules.

If a company deviates from the aforesaid requirements after the date of implementation of these Rules, the company should make an immediate Market Announcement from the date of the non-compliance as per Rule 9.6.2 of the CSE Listing Rules.

The said Market Announcement must state the reasons for non-compliance and the rationale for appointment of an Executive Director as Chairperson and/or combining the positions of the Chairperson and CEO of the Listed Entity.

Q6: Under what circumstances should a listed company appoint a Senior Independent Director?

A6: As per Rule 9.6.3 (a) of the Listing Rules:

- (i) if the Chairperson and CEO;
 - are the same person
 - are Close Family Members or Related Parties
- (ii) If the Chairperson is an Executive Director

Q7: What are the requirements for a person to be appointed as a SID?

A7: The requirements include the following;

He/she should possess reasonable experience

He/she should demonstrate good understanding on Board governance process/s.

He/she should be competent and possess leadership qualities in a manner that he/she is able to provide leadership when there is a conflict of interest, i.e., act as a 'Lead Independent Director'

Q8: What is meant by "the core line of business of such company is in direct conflict with the line of business of the Listed Entity" in Rule 9.8.3(viii) (c) of the CSE Listing Rules?

A8: Rule 9.8.3 (viii) states that a Director shall not be considered 'independent' if he/she;

- has a Material Business Relationship or a Significant Shareholding in another company or business;
- a. in which a majority of the other Directors of the Listed Entity are employed or are directors; and/or
- b. which has a Business Connection with the Listed Entity or Significant Shareholding in the same; and/or
- c. **where the core line of business of such company is in direct conflict with the line of business of the Listed Entity.**

The core line of business is the main business or the principal business activity of the company, which is the main source of revenue of such company. Therefore, in this scenario, if a Director has a Material Business Relationship or a Significant Shareholding in another company or business, where the principal business activity of such company is the same as the principal business activity of the Listed Entity, then the independence of such Director is impaired.

Examples:

1. Mr. A is an Independent Director of a listed hotel. He becomes a major shareholder of another company (listed or unlisted), which also owns hotels. As both the companies have same core line of business, the independence of Mr. A is impaired.
2. Mr. B is an Independent Director of a listed hotel. Mr. B also has a business contract with another company owning hotels (listed or unlisted) where 30% of his annual income is received from that company. In this instance, since both the Listed Entity and the other company have the same core line of business, the independence of Mr. B is impaired.
3. Mr. C is an Independent Director of a listed hotel and he has been appointed as an Independent Director in another listed hotel in the same group. His independence is not impaired in relation to both Listed Entities in this situation.

Q9: If an Independent Director does not meet the independence criteria, can the Board still determine him/her as nevertheless 'independent'?

A9: No; going forward, the Board cannot determine a Director who does not meet the independence criteria as nevertheless 'independent'. Listed Entities will be granted time till 1st October 2024 to rectify any anomalies arising pursuant to deletion of this provision.

Q10: In a group of companies, if a Director is appointed to the parent company on a particular date as an Independent Director and subsequently, after a certain period of time, he is also appointed to the listed subsidiary as an Independent Director, which date should be considered to count the nine (9) year period as set out in Rule 9.8.3 (v) of the CSE Listing Rules?

A10: The initial appointment to the parent company should be considered as the date of appointment to count the nine (9) year period in respect of both companies.

Example: In a group company, if a Director is appointed to the parent listed company on 1st January 2020 as an Independent Director and thereafter, to the subsidiary listed company on 1st January 2023, his total number of nine (9) years will be counted from 1st January 2020. Hence, his independence will be impaired on 1st January 2029 in respect of both listed companies, if he continues to serve on the Boards of any of the companies.

Q 11: Which date will be considered as impairing independence when a Director reaches seventy (70) years?

A 11: Rule 9.8.3 (ix) states that a Director shall not be considered independent if he/she is above the age of seventy (70) years. The day following the birthday on which the director turns seventy (70) years old is considered as the date on which his/her independence is impaired. He/she may remain in the Board as a Non-Executive Director until his/her term ends as per the Articles of Association of the Listed Entity or at the discretion of the Board of Directors of such Listed Entity.

Q 12: Independence criteria for Directors – Rule 9.8.3 (viii) – will the interest income received by a Director from any deposits held with the Listed Entity or debentures issued by the Listed Entity be considered when calculating the 20% of the annual income of the particular Director in ascertaining whether such Director has a Material Business Relationship?

A 12: If a Director of a Listed Entity receives income by way of interest income from fixed deposits or Debentures equivalent to 20% or more, which is on par with the interest paid to the other deposit holders/debenture holders by the Listed Entity, then it would not be considered as a Material Business Relationship.

Q 13: How frequently should the Fitness and Propriety of Directors and CEO be assessed?

A 13: At a minimum, an annual assessment of fitness and propriety is required for Directors and CEOs. Further, whenever a Director is appointed to the Board, the assessment of fitness and propriety needs to be carried out.

Q14: How should the Director's remuneration be disclosed in the Annual Report?

A14: The total amount paid as remuneration (including salaries, allowances, cash and non-cash benefits) to all Executive and Non-Executive Directors should be disclosed in the Annual Report as one figure.

Q15: If a company currently has Alternate Directors on the Board, what would be the impact to such Alternate Directors pursuant to the amended Listing Rules?

A15: Any Alternate Director who has completed one (1) year or more will cease to be an Alternate Director with effect from 1st January 2024. If the tenure of the Alternate Director is less than one (1) year as at 1st January 2024, then such Director may continue the tenure until the expiry of the balance part of the one (1) year period.

Example: Mr. A was appointed as an Alternate Director on 15th August 2023. In this event, he can continue as an Alternate Director until 15th August 2024.

Q16: Can an Alternate Director be re-appointed for the same position after the expiry of the one (1) year period for a further period of one (1) year?

A16: No. An Alternate Director cannot be re-appointed after the expiry of one (1) year from his initial appointment.

Q 17: Should the company be required to amend the Articles of Association before 01st of January 2024 to incorporate requirements set out in Rule 9.9 of the CSE Listing Rules applicable to appointment of Alternate Directors?

A 17: The Listed Entity is not required to hold an EGM prior to 01st of January 2024 to amend the Articles of Association to incorporate the requirements regarding the appointment of Alternate Directors. The company may hold an EGM to amend the Articles of Association on the same day as the date of its AGM.

Q18: What are the mandatory Board Committees a Listed Entity should maintain?

A18: Rule 9.3.1 of the CSE Listing Rules require the company to have 4 Board Committees namely,

- Nominations and Governance Committee
- Remuneration Committee
- Audit Committee
- Related Party Transactions Review Committee

Q19: What should be the composition of each Board Committee?

A19: The composition requirements of each Board Committee are as follows:

Nominations and Governance Committee

Minimum of three (3) Directors out of which minimum two (2) Directors should be independent

- Executive Directors should not be on the Committee.
- Chairperson should be an Independent Director.

Remuneration Committee (RC)

- Minimum of three (3) Directors out of which minimum of two (2) Directors should be independent
- Executive Directors should not be on the Committee.
- Chairperson should be an Independent Director.
- If the parent company is listed, parent company's RC can act as the RC of the listed subsidiary only till 30th September 2024. This provision shall be repealed w.e.f. 1st October 2024.

Audit Committee (AC)

- Minimum of three (3) Directors out of which a minimum of two (2) Directors or a majority of Directors, whichever is higher, should be independent. For an example, if the AC has four (4) members, three (3) should be independent.
- Executive Directors should not be on the Committee.
- Chairperson should be an Independent Director.

- Chairperson of the AC shall be a Member of a recognized professional accounting body. A professional accounting body means a member of International Federation of Accountants (IFAC)
- If the parent company is listed, parent company's AC can act as the AC of the listed subsidiary only till 30th September 2024. This provision shall be repealed w.e.f. 1st October 2024.

Related Party Transaction Review Committee (RPTRC)

- Minimum of three (3) Directors out of which minimum of two (2) Directors should be independent
- Chairperson should be an Independent Director.
- Can have Executive Directors on the Committee
- If the parent company is listed, parent company's RPTRC can act as the RPTRC of the listed subsidiary only till 30th September 2024. This provision shall be repealed w.e.f. 1st October 2024.

Q 20: Can the Chairperson of the Board chair the committees which are not mandatory under the CSE Listing Rules?

A 20: Yes, the Chairperson of the Board may chair any committees which are non-mandatory under the CSE Listing Rules.

Q21: If the company is subject to the other regulatory requirements of another regulatory body where the CEO needs to be a member of the Risk Committee, how will Rule 9.13.3 (6) apply?

A21: As per the amended Rules, the CEO shall attend the Risk Committee meetings by invitation. Therefore, the CSE Listing Rules do not prohibit a CEO from being a member of the Risk Committee.

Q22: Can a company have one committee as the Risk and Audit Committee and have the CEO as a member of the Risk and Audit Committee?

A22: No. If a Listed Entity has chosen to have one committee as the Risk and Audit Committee, the CEO cannot be a member of such Committee. However, the CEO may attend the committee meetings by invitation.

- Q23:** If a company has a Nomination committee which already performs the functions of the Governance Committee but not named as “Nominations and Governance Committee”, what should the company do?
- A23:** The company should rename the committee as “Nominations and Governance Committee” and should ensure that all the functions applicable to such committee as set out in the amended Listing Rules are performed by the said committee.
- Q24:** If a company has one committee as the Nomination and Remuneration Committee, should the company have two (2) separate committees?
- A24:** Yes. The company should have two (2) separate committees - one as the Nomination and Governance Committee and the other as the Remuneration Committee
- Q 25:** Can a company have two separate Committees as Nominations Committee, Corporate Governance Committee?
- A 25:** Yes, provided that such separate committees meet the composition requirement and perform the functions of the Nominations and Governance Committee set out in the Listing Rules.