Corporate India dances to Clause 49 tune

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NEW DELHI: SEBI means business. It has sent India Inc scampering to meet the Clause 49 deadline. Close to 80 companies have made changes in their board, by adding directors or restructuring their boards in line with the revised clause in the last 7 working days. On the last trading day, December 30, as many as 18 companies, informed BSE about the changes they have made in their boards.

Some of the prominent companies to have informed BSE about the addition of independent directors were Pantaloon, Sail, Asahi Glass, Suzlon, and Kotak Mahindra Primus, among others. On December 28 and 29, 13 companies informed BSE about the addition, or resignation of some directors. The trend remained unabated as the stock market opened on the first working day of the new year with close to 30 companies bringing in new independent directors to comply with the provisions of the clause.

Experts say that many companies are still in the process of making changes though the last date for meeting the independent directors compliance — December 31 — is over. “There is a heightened activity to meet with the compliance norms as far as independent directors go. Some companies were hoping that the regulator would relax the date of compliance, but that hasn’t happened,” says Sunil Chandiramani, national director, risk and business solutions, E&Y.

The stipulation on the composition of the board as ordained by the revised Clause 49 makes it mandatory for the listed companies to have 50% of the members on the board to be independent if the chairman is executive, but if the chairman is a non-executive director, at least one-third of the board should comprise of independent directors.

The other compliance norms that need to be completed by the first report that will be filed on April 1, ‘06, are CEO and CFO certification, and legal and regulatory compliance. While the larger companies are by and large already compliant, it’s only the smaller and medium sized companies that are rushing to meet the Clause 49 norms for the listing agreement. “It’s not going to be easy, compliance in form is one thing and compliance in spirit is another thing,” says Mr Chandiramani.

The medium and smaller companies have started to formalise the governance structures, and have a long way to go. It can take from three to six months to put in compliance structures, and it can be a expensive proposition. And penalties for non compliance can be strict. Sebi can even delist a company, and according to the Securities Contracts Regulations Act 1956, Section 23, sub section 2. amended 2004, non-compliance is punishable with imprisonment up to 10 years, or Rs 25 crores in penalty or both.

Implementation is fine, but there should be increasing emphasis on whether a company has requirement of internal control in place? Asks Ashok Haldea, secretary, ICAI. “The CFO may certify the accounts, the question is do you have enabling systems to allow you to give a credible certification.”

As the compliance date came closer, there’s been hectic activity to hunt down talented people to be inducted in the board of directors.

Primedirectors.com, a platform for independent directors and corporate governance initiative supported by Prime Database, NSE, BSE and CII put up its website on November 8. The database boasts of close to 8,000 profiles for the companies to choose from. Similarly, ICAI is in the process of compiling its own database.