

SSE Issues Guidelines of Election, Conducts of Directors of Listed Companies (2009-08-26)

Practical rules for due diligence and faithful fulfillment of duties by directors are defined.

The Shanghai Stock Exchange (SSE) released, on August 25, the "SSE Guidelines of Election and Conducts of Directors of Listed Companies". With an aim to regulate the election and duty fulfillment conducts of the directors of listed companies, as well as to detail the requirements for their election qualifications and the procedures of their exercise of powers, the guidelines have finalized the basic standards for directors by working out practical rules in terms of due diligence and faithful fulfillment of duties.

The guidelines make regulations on election of directors in such aspects as member constitution of the directorate, procedures for nomination of directors, qualifications for holding the position, appraisal and resignation. Especially, it emphasizes on review of the directors' qualifications and the appraisal of their professional qualities and duty fulfillment. According to the guidelines, the nominators and candidates for directors should reply to the inquiries from the shareholders' meeting after making a special remark to the meeting on the conditions of the candidates. The candidates should not be imposed on any administrative sanction by the China Securities Regulatory Commission or any public censure or more than two criticism circulars by stock exchanges in the recent 3 years. Besides, they should not be in the time period, as publicized by stock exchanges, during when they are not suitable for holding the position of director. In light of the company law, the guidelines also require listed companies' supervisors to conduct annual appraisal of directors for due diligence.

Based on relevant regulations such as the company law, the guidelines, to meet the interests of listed companies, define the obligations to be faithfully fulfilled by directors, including taking the initiatives to correct the behaviors that damage the interests of listed companies, disclose information on interests relationship as well as other obligations including non-compete, secrecy and shareholding management. In addition, it also requires that the directors should not damage the interests of listed companies for any interests of other parties. Instead, they should, by paying close attention, take necessary measures to prevent listed companies' interests from being damaged.

In line with the previous regulatory practices and experience in a long time, the guidelines focus on regulations of the duty fulfillment standards for due diligence of directors. Directors are required to make prudent decisions, for achieving the best interests of the listed companies, on the business interests and risks in the issues to be resolved by the companies, by considering possible judgments by other counterparts in similar situations. They should be not exempted from obligations by taking excuses that they are not familiar with the companies' business or don't know relevant issues. In principle, directors should attend the directorate meeting in person. They can only vote after making clear opinions at the discussion and put them on record. When discussing and submitting the issues decided by the directorate, the directors should first require relevant staff to provide detailed materials and make particular explanations before thinking over the elements for decisions of relevant issues.

To avoid the situation that only the chairmen of directorate of listed companies have the conn, the guidelines regulate that the chairmen of directorate should ensure the normal convention of the directorate meeting, and can't, in any way, restrict or hinder other directors from exercising their powers. Besides, they have the obligations to inform the directors of the companies' significant issues. They should not reject without reason but prudently deal with the proposal of holding directorate meeting proposed by a single director and fulfill relevant procedures. Moreover, the guidelines have specified the issues and functions that independent directors should pay special attention to when they exercise their powers. The annual office hours of a director at the listed company, as defined in the guidelines, should not be less than 10 days in principle.

According to an insider, the guidelines have the fundamental regulations for election and duty fulfillment of listed companies' directors. It has specified the standards for their due diligence and faithful fulfillment of duties. All this will help the listed companies further improve their qualities and levels of corporate governance.

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