



Building  
Tomorrow's  
Boards

Institute Of Directors

A Handbook for

# INDEPENDENT DIRECTORS

Condensed Guide for  
**Corporate Directors** and  
**Executive Management**



# **A Handbook for Independent Directors**

**Institute Of Directors**

A Society (National Level), registered under the Societies Registration Act XXI of 1860, Regd. No S21169 / 1990, in India

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Email: [info@iodglobal.com](mailto:info@iodglobal.com), Phone: 91 11 41636717 ■

Website: [www.iodglobal.com](http://www.iodglobal.com)

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## About this Handbook

The handbook for Independent Directors covers the role, duties, responsibilities and authority of corporate directors, with special reference to Independent Directors. It is a brief condensed account of Corporate Governance, Boardroom practices, connected Corporate and SEBI Laws dealing with Independent Directors, and their contribution to Boardroom Excellence, and corporate strategy. It covers the multidisciplinary and multifaceted nature of the roles and responsibilities of Independent Directors, in the light of Company's Act 2013, Companies (Amendment) Act, 2017, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and amendments thereof.

Corporate leaders and Directors can use the Handbook, as a ready reckoner for quick reference, on Corporate laws and practices effecting the boardroom.

This Handbook distils information about Independent Directors, from a variety of sources, and is intended to be indicative, not prescriptive. It has three parts, as under:

- Part I - Corporate Governance
- Part II - Independent Directors
- Part III - Enclosures



## Foreword

This is the third edition of the handbook for "Independent Directors," which made its second appearance in May 2016. 1000 copies of the first and second edition each have already been sold off and exhausted. This handbook has become the basic text for the Independent Directors

The handbook had to be revised and enlarged in many places, in order to incorporate recently notified provisions under Companies (Amendment) Act, 2017, Revised Secretarial Standards, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and latest MCA and SEBI circulars as applicable.

An organization is a complex network of people, scattered across departments and locations. However, it is only as good as those who lead it. It is those on the boards, who define the vision, strategy, goals, manage risks and set the tone and create the desired culture and ethics of every organization.

A company is a separate legal entity from those who manage it, and those who have put up the capital. The key parties are the shareholders, the management and the directors. The directors must act in the best interests of the company at all times, and not represent any special group of shareholders.

The stakeholder's interest needs to be reflected in all decision making, if they are to act in the best interests of the company. Consequently, responsible operating will include concern for customers, employees, society and environment. The directors have to add long-term value through the execution of a well-thought-through strategy in a competitive and changing world.

Independent Directors have the same obligations and the same potential liabilities as the others on the board. Directors, in other word, are equal under the Law. The responsibilities of Independent directors have intensified in recent years, and need to spare sufficient time to perform their duties effectively. Independent directors add value and bring balance on the board in terms of skills and experience; they have a wider set of experience to bear on issues and decisions of the company.

Independent Directors are best seen as 'empathetic' to management rather than 'sympathetic'. They need to be quite challenging in their analysis and evaluation of proposals put to the board. The success of the board is largely a function of the quality and diversity of experience and skills of the Independent Directors.

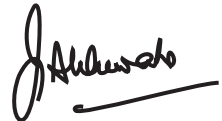
This Handbook is for all practicing directors with special focus on the role of 'Independent Directors'. It is based on 'Companies Act 2013', as amended and connected rules. It shows how Independent Directors can add real value to their boards and, in the process contribute to the long-term success of their organization, as well as the economy and society as a whole.

Institute of Directors (IOD) has increasingly recognized that 'Corporate Governance' of a

company depends entirely on the Leadership role played by its board. This comprehensive Handbook for 'Independent Directors' has a special role in enhancing the effectiveness of the board and sustainability of the organization. It incorporates references and details of the concerned Act and Rules, in the text. I am sure all directors, in addition to Independent Directors, shall find this handbook as a handy professional document for quick reference, at all times.

I would like to place on record my special appreciation of the dedicated efforts of Lt Gen (retd.) Surinder Nath, former Independent Director on L&T Board and Former chairman, UPSC, who painstakingly designed the 3<sup>rd</sup> edition of this handy reference document, CS Bhagyashree Bardia and Ms. Amanjit Kaur for coordinating the compilation of this comprehensive handbook that, provides the framework to help board practitioners to identify governance challenges, and transform them into opportunities. I am sure this handbook will be of immense benefit and a must-read, for every director serving on Indian boards today, and even the ones who aspire to do so in the future.

■



**April 24, 2018**  
New Delhi

**Lt. Gen J. S. Ahluwalia, PVSM (Retd.)**  
President, Institute Of Directors

## Preface

The shareholders, who are the real members of the company, leave the management of the company in the hands of a body of persons called Directors. There are executive Directors who are whole time employees of the company, and Non-executive Directors or Independent Directors (IDs) who attend board meetings and contribute in directing the company with their professional skills, expertise, collective wisdom and vast experience. IDs, who are from a cross section of the industry, assist in managing the affairs of a company by vetting the decisions of the management with intentions of securing the future of the company, give advice and counselling both of which will make the company strong and more successful, provide support for those investments and decisions that serve the best interests of the company and its stakeholders and warning in those cases in which investments and decisions are not beneficial to the company and its stakeholders. They bring valuable objective, neutral and outside perspective to the boardroom deliberations. They also have a crucial role to play as Chairman/member of various board committees and governance related matters of the company. They are the guardians of the interest of all shareholders and stakeholders, specially, when there is a conflict of interest.

Today, the ID's role has become more challenging due to intense scrutiny from stakeholders, greater demands imposed by regulatory authorities and an increase in overall complexity of the business environment in which Corporate India functions. Policy makers, investors and shareholders demand that IDs should play a more pro-active role in maximizing of shareholder's wealth, transparency and corporate ethics. They should be truly independent in their thoughts and deeds, and not just in name. India is essentially dominated by promoter-owned entities and promoter families continue to play a key role in management, the promoters continue to be involved at the Board level and in taking key decisions relating to strategy. However, the perception about IDs amongst the promoters is now changing rapidly and many of promoter driven companies are today highly professionally managed with IDs playing a significant role in strategic planning, decision-making, corporate ethics and taking care of interest of all stakeholders. A large number of our multinational companies are listed on New York Stock Exchange (NYSE) and the IDs on their Boards have additional responsibility to ensure that their corporate governance standards match with the global standards.

Companies Act, 2013, has further strengthened the institution of IDs and assigned them greater responsibilities and made them more accountable for not only listed companies, but also for certain types of public and private limited companies. The Act for the first time has introduced the concept of a woman director and has specified the type of companies, which must have at least one-woman director on their board. The Companies Act 2013 provides for business-friendly corporate regulations, pro-business initiatives, better corporate governance, e-governance initiatives, corporate social responsibility, enhanced disclosures forms, greater





accountability of Board of Directors (BoD) and management, stricter enforcement, protection of minority shareholders and investor protection.

This Handbook will be a very useful guide for all directors, particularly Independent Directors, as it comprehensively covers, not only the role and functions, duties, responsibilities and liabilities of Independent Directors, but also of the broad functioning of the boardrooms and what is expected out of Corporate Directors. Changes and new aspects introduced in the Companies Act 2013, Companies (Amendment) Act, 2017 along with the amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, have all been incorporated and references to various sections of the Act given, wherever required. ■

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke at the bottom.

**April 24, 2018**  
New Delhi

**Lt. Gen Surinder Nath (retd.)**  
Vice Chairman, Institute Of Directors  
Ex-Independent Director, L & T Ex-Chairman,  
UPSC; Ex-Vice Chief of Army Staff (VCOAS)

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# GLOSSARY



**Holding Company**, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

*Explanation:*

For the purposes of this clause, the expression "company includes any body corporate;

**Subsidiary Company or Subsidiary**, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

*Explanation:*

For the purposes of this clause—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression "company" includes any body corporate;
- (d) "layer" in relation to a holding company means its subsidiary or subsidiaries.

**Material Subsidiary** shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed

entity and its subsidiaries in the immediately preceding accounting year.

**Associate Company** in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

*Explanation*

- (a) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;
- (b) the expression "joint venture" means a joint arrangement where by the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

**Private Company and Public Company**

Section of CA 2013	Brief description	Private Company	Public Company
2	<b>Meaning</b>	Right to transfer the shares: Restricted, prohibits any invitation to the public to subscribe for any securities of the company	Company which is not a private company; Subsidiary of a Public Co. is deemed to be a public Co.
2	<b>Small Company</b>	If Paid-up Share Capital does not exceed Rs. 50 Lakhs and Turnover as per Last Audited accounts does not exceed Rs. 2 Crore	Not Applicable
3	<b>Minimum Members Required</b>	2 (Two), Maximum 200 (Two Hundred)	7 (Seven)
4	<b>Name of the Company</b>	"Private Limited" as Last Word	"Limited" as Last Word
	<b>Acceptance of Deposits</b>	Not allowed to accept deposit	Allowed if Paid up share capital is Rs. 100 Crore or more or Turnover of Rs. 500 Crore or more
	<b>Quorum of Meetings</b>	Two members personally present	Five in case of Members upto 1000; Fifteen in case of Members more than 1000, upto 5000; Thirty in case of Members exceed 5000.

	<b>Restriction on Managerial Remuneration</b>	No restriction on amount of managerial remuneration	Managerial Remuneration is: Restricted to 11% of Net profit (subject to conditions); OR at least Rs. 30 lakh p.a. depending upon paid up capital
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**Government company** means any company in which not less than 51 per cent of the paid-up share capital is held by the Central Government (CG), or by any state government or governments, or partly by the CG and partly by one or more state governments, and includes a company which is a subsidiary company of such a government company.

**Micro, Small & Medium Enterprises** In accordance with the provision of Micro, Small & Medium Enterprises Development (MSMED) Act, 2006 the Micro, Small and Medium Enterprises (MSME) are classified in two Classes:

- 1. Manufacturing Enterprises-** The enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the first schedule to the industries (Development and regulation) Act, 1951) or employing plant and machinery in the process of value addition to the final product having a distinct name or character or use. The Manufacturing Enterprise are defined in terms of investment in Plant & Machinery.
- 2. Service Enterprises-** The enterprises engaged in providing or rendering of services and are defined in terms of investment in equipment.

The limit for investment in plant and machinery / equipment for manufacturing / service enterprises, as notified, vide S.O. 1642(E) dtd.29-09-2006 are as under:

<b>MANUFACTURING SECTOR</b>	
<b>Enterprises</b>	<b>Investment in plant &amp; machinery</b>
Micro Enterprises	Does not exceed twenty five lakh rupees
Small Enterprises	More than twenty five lakh rupees but does not exceed five crore rupees
Medium Enterprises	More than five crore rupees but does not exceed ten crore rupees

**Listed Company** means a company which has any of its securities listed on any recognised

SERVICE SECTOR	
Enterprises	Investment in equipments
Micro Enterprises	Does not exceed ten lakh rupees:
Small Enterprises	More than ten lakh rupees but does not exceed two crore rupees
Medium Enterprises	More than two crore rupees but does not exceed five core rupees

stock exchange.

**Financial statement** in relation to a company, includes –

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

**Financial year**, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up. Companies which are holding or subsidiary of a foreign company and which are required to follow a different financial year for the purposes of consolidation of their accounts outside India, may apply to the tribunal for allowing the company to adopt a different financial year.

**Key managerial personnel (KMP)**, in relation to a company, means—

- (i) the Chief Executive Officer (CEO) or the managing director (MD) or the manager;
- (ii) the company secretary (CS);
- (iii) the whole-time director (WTD);
- (iv) the Chief Financial Officer (CFO);
- (v) such other officer, not more than one level below the directors who is in whole-time



employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed.

Every listed company and other Public company having paid-up share capital of Rs. 10 crore or more shall have whole-time KMPs. Also, every other company having paid up share capital of Rs. 5 crore or more shall have whole-time CS.

**Managing Director** means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

*Explanation:*

For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

**Effective capital** means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

**Net worth** means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

**Turnover** means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.

**Free reserves** means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

(I) any amount representing unrealised gains, notional gains or revaluation of assets,

whether shown as a reserve or otherwise, or

- (ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

Shall not be treated as free reserves.

**Applicability of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

Unless otherwise provided, these regulations shall apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):

- (a) Specified securities listed on main board or SME Exchange or institutional trading platform;
- (b) Non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;
- (c) Indian depository receipts;
- (d) Securitised debt instruments;
- (e) Units issued by mutual funds;
- (f) Any other securities as may be specified by the Board.

(Section 2 of Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Para 2 of Companies (Amendment) Act, 2017 refers)

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# **CORPORATE GOVERNANCE PART I**

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# CORPORATE GOVERNANCE

## 1.1 Principles governing disclosures and obligations

A set of laws, regulations and good practices that enable an organization to perform efficiently and ethically generating long term wealth and create value for all its stakeholders. It ensures commitment to values and ethical conduct of business, transparency in business transactions, statutory and legal compliance, adequate disclosures and effective decision making to achieve corporate objectives. It helps in building trust with shareholders, employees, customers, suppliers and other stakeholders based on the principle of good corporate governance viz. integrity, equity, transparency, fairness, disclosures, accountability and commitment to values. Regulation 4(2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 specifies the guiding principles of Corporate Governance expected to be followed by each listed company. The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

- a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.
- b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
- c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
- d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.
- e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit,

timely and presented in a simple language.

- f) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.
- g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.
- h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.
- i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.
- j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

## **1.2 The Rights of Shareholders**

(1) The company should seek to protect and facilitate the exercise of shareholder's rights:

- a) Right to participate in, and to be sufficiently informed of, decisions concerning fundamental corporate changes.
- b) Opportunity to participate effectively and vote in general shareholder meetings.
- c) Being informed of the rules, including voting procedures that govern general shareholder meetings.
- d) Opportunity to ask questions to the board, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.
- e) Effective shareholder participation in Key Corporate Governance decisions, such as the nomination and election of board members, should be facilitated.
- f) Exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.

- g) Adequate mechanism to address the grievances of the shareholders.
- h) Protection of minority shareholders from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and effective means of redress.

## (2) Timely Information

The company should provide adequate and timely information to shareholders, including, but not limited to the following:

- a) Sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.
- b) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.
- c) Rights attached to all series and classes of shares, to be disclosed to investors before they acquire shares.

## (3) Equitable Treatment

The company should ensure equitable treatment of all shareholders, including minority and foreign shareholders in the following manner:

- a) All shareholders of the same series of a class shall be treated equally.
- b) Effective shareholder participation in key Corporate Governance decisions, such as the nomination and election of board members, shall be facilitated.
- c) Exercise of voting rights by foreign shareholders shall be facilitated.
- d) The company shall devise a framework to avoid Insider Trading and abusive self dealing.
- e) Processes and procedures for general shareholder meetings shall allow for equitable treatment of all shareholders.
- f) Procedures of listed entity shall not make it unduly difficult or expensive to cast votes.

### 1.3 Role of Stakeholders in Corporate Governance

The company shall recognize the rights of stakeholders and encourage cooperation with the stakeholders, in the following manner:

- The rights of stakeholders that are established by law or through mutual agreements shall be respected.
- Stakeholders shall have the opportunity to obtain effective redress for violation of their rights.
- Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in Corporate Governance process.
- The Company shall devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

### 1.4 Disclosure and Transparency

The company shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the company, in the following manner:

- a) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.
- b) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.
- c) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.

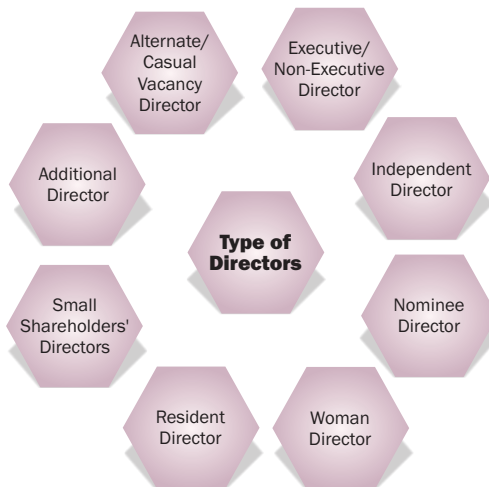
The company shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and should also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(Chapter II, Regulation 4(2) of the SEBI (LODR) Regulations, 2015 refers) ■

# CORPORATE BOARDS

## 2.1 Overview

Board of Directors, a combination of executive and non-executive directors, is deemed to be a body of visionaries and leaders appointed to manage the affairs of a company by vetting the decisions of the management with intentions of securing the future of the company. It comprises veterans from a cross section of the industry whose main purpose is to achieve the aims of the company as laid out in the Memorandum of Association and Regulations defined in the Articles of Association by collectively directing the affairs of the Company without sacrificing the interests of shareholders and stakeholders. The challenges facing today's Boards are managing sustainable growth, competing in global economy, rising employee expectations, nurturing and retention of talent, risk management and cyber security, greater emphasis on customer relationship and matching organisational structures with the changing environment. Boards have to be transparent, environmentally sensitive, and socially proactive for a long term sustainable growth through an ethical approach.

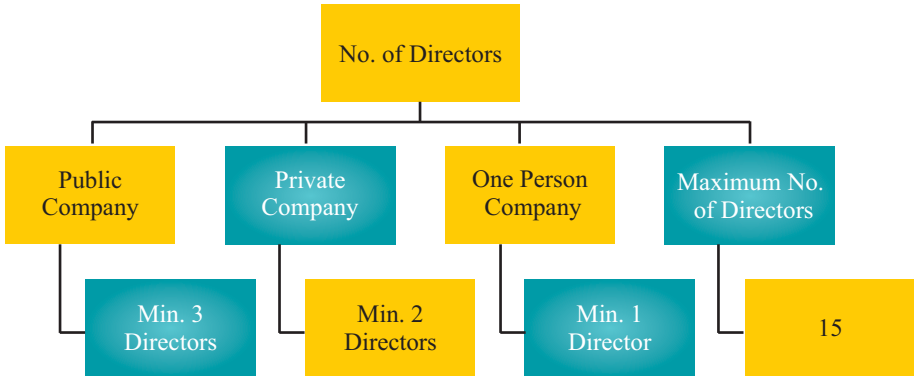




Section 149, Chapter XI of Companies Act 2013, and the Companies (Appointment and Qualification of Directors) Rules, 2014, Rule 3 and 4 specify:

## 2.2 Number of Directors

Every company shall have a board of directors as under:



Company may have more than 15 directors after passing a special resolution in a general meeting. Minimum 6 directors in the top 1000 listed entities by market capitalization shall be applicable by April 1, 2019 and in the top 2000 listed entities, by April 1, 2020.

*(Heading 2.2 is not applicable to Government companies and Section 8 companies)*

## 2.3 Woman Director

At least one-woman director in:

- a) Every Listed Company
- b) Every other public company having
  - i) paid up share capital of one hundred crore rupees or more; or
  - ii) turnover of three hundred crore rupees or more.
  - iii) to be complied with by March 31, 2015.
- c) Any intermittent vacancy of a woman director shall be filled up by the Board within 3months from the date of such vacancy.

Explanation: Paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

At least one woman independent director in the top 500 listed entities by market capitalization shall be applicable by April 1, 2019 and in the top 1000 listed entities, by April 1, 2020

## 2.4 Resident Director

Every company to have at least one director who stays in India for a total period of not less than 182 days during the financial year. In case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.[Para 46 of Companies (Amendment) Act, 2017 refers]

## 2.5 Independent Director (ID)

An ID means a non- executive director other than a nominee director.

## 2.6 Number of Independent Directors

- a) The Board of Directors of a listed company shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than 50% of the Board of Directors comprising non-executive directors.
- b) Where the Chairman of the Board is a non-executive director, atleast one-third of the Board shall comprise of Independent Directors and in case the company does not have a regular non-executive Chairman, at least half of the board shall comprise of Independent Directors.

Provided that where the regular non-executive chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or one level below the board, at least one half of the Board of the company shall consist of Independent Directors

Explanation: For the purpose of this clause, expression “related to any promoter” referred to in the sub clause 1.5 (b) above:

- i) If the promoter is a Listed entity, its directors other than the Independent Directors, its employees or its nominees shall be deemed to be related to it.
  - ii) If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.
- c) Any fraction in such one-third number to be rounded off as one.
- d) The following class of companies shall have at least two directors as Independent Directors:
- i) Public companies having paid up share capital of ten crore rupees or more; or
  - ii) Public companies having turnover of one hundred crore rupees or more; or
  - iii) Public companies, which have in aggregate, outstanding loans, debentures and deposits exceeding fifty crore rupees;

Unlisted public companies namely a joint venture, wholly owned subsidiary and a dormant company as defined under section 455 of Companies Act, 2013; shall not be covered under this. Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law, shall comply with requirements as specified in such law.

Explanation: Paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of the latest audited financial statements shall be taken into account.

- e) Any intermittent vacancy of an Independent director shall be filled-up by the Board within three months from the date of such vacancy.

[Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 refers]

## **2.7 Additional, Alternate, Nominee and Casual Vacancy Director**

### **ADDITIONAL DIRECTOR**

The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

### **ALTERNATE DIRECTOR**

The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India. Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.

### **NOMINEE DIRECTOR**

Nominee Director means a director nominated by any financial institution or appointed by any Government or any other person to take care of its interests. Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

### **CASUAL VACANCY DIRECTOR**

If the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board, which shall be subsequently approved by members in the immediate next general meeting. Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated. In case of a public company, the appointment of Director(s) in casual vacancy subject to the provisions in the Articles of the company.

(Section 161 of Companies Act, 2013 and Para 51 of Companies (Amendment) Act, 2017 refers)

## **2.8 Maximum Number of Directorship for Independent Directors**

- a) Maximum Directorship – 20 Companies out of which public companies not more than 10. Maximum number of Boards an Independent Director can serve on Listed companies, has been restricted to 7 by SEBI and 3 in case, the person is serving as a whole-time director in a Listed company. For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included Reduction in the maximum number of listed entity directorships from 10 to 8 shall be applicable by April 01, 2019 and to 7 by April 1, 2020.
- b) Maximum board committee membership – Ten, across all public limited companies, whether listed or unlisted, in which he is a director.
- c) Maximum Chairman of committees – Five, across all public limited companies in which he is a director.
- d) Every director shall inform the listed entity about the committee positions he or she occupies in other listed entities and notify changes as and when they take place.
- e) All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.
- f) Non-executive directors shall disclose their shareholding, held either by them or on a beneficial basis for any other persons in the listed entity in which they are proposed to be appointed as directors, in the notice to the general meeting called for appointment of such director
- g) Senior management shall make disclosures to the board of directors relating to all material, financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the listed entity at large.

Explanation:

- i) For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies under Section 8 of the Companies Act, 2013 shall be excluded.
- ii) For the purpose of reckoning the limit under this sub-clause, Chairmanship/membership of the Audit Committee and the Stakeholder Relationship Committee alone shall be considered.

[Para 53 of Companies (Amendment) Act, 2017 and Regulation 26(1) of SEBI (LODR) Regulations, 2015 refers]

## **2.9 Small Shareholders Directors**

- a) A listed company may *suo motu* or upon notice of not less than 1000 or 1/10<sup>th</sup> of the total number of small shareholders whichever is lower, elect a small shareholders director from

amongst the small shareholders. A small shareholder means a shareholder holding shares of not more than Rs.20,000 in value or such as may be prescribed by the Central Govt.

- b) Such small shareholders will give a 14 days notice of their intention for suggesting a candidate with information as under:
- i) Name, address, shares held and folio no. of the proposed person and small shareholders proposing such name.
  - ii) Such notice to be accompanied by a statement to be signed by the proposed person stating:
    - DIN.
    - He is not disqualified to become a director as per the criteria laid down in the Act. Such Director shall be considered as ID.
    - His consent to act as a director.
  - iii) His appointment conditions will be same as for other IDs except:
    - Shall not retire by rotation.
    - Tenure shall not exceed a period of three consecutive years.
    - On expiry of tenure, shall not be eligible for re-appointment.
  - iv) He shall vacate his office if:
    - incurs any of the disqualifications as laid down in sec 164 & 167 of the Act.
    - No longer meets the criteria of Independent Director.
  - v) He cannot be small shareholders director in more than two companies at the same time. Provided that the second company in which he has been appointed shall not be in a business, which is competing or is in conflict with the business of the first company.
  - vi) He shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

(Rule 7, Companies (Appointment and Qualification of Directors) Rules,2014, Chapter XI Companies Act 2013, refers)

## 2.10 Duties of Directors

**As per Section 166, Chapter XI of Companies Act, 2013, following are the duties of directors:**

- a) To act in accordance with the articles of the company.
- b) To act in good faith in order to promote the objects of the company for the benefit of its members as a whole and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

- c) He/She shall exercise his/her duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- d) He/she shall not involve himself/herself in a situation in which he/she may have a direct or indirect interest that conflicts, or possibly may conflict with the interest of the company.
- e) He/she shall not achieve or attempt to achieve any undue gain or advantage either to himself/herself or to his/her relatives, partners or associates and if found guilty, liable to pay an amount equal to gain to the company.
- f) He/she shall not assign his/her office and any assignment so made shall be void.
- g) If any of the above provisions contravened such director shall be punishable with fine between rupees one lakh and five lakhs.

## **2.11 Responsibilities of the Board**

### *1. Disclosure of Information*

- a) Members of the Board and Key Managerial Personnel (KMP) shall disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.
- b) The Board and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision making.

### *2. Key Functions of the Board of Directors*

The Board shall fulfil certain key functions, including:

- a) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestment.
- b) Monitoring the effectiveness of the company's governance practices and making changes as needed.
- c) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.
- d) Aligning key managerial personnel and board of directors' remuneration with the longer term interests of the company and its shareholders.
- e) Ensuring a transparent board nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board.

- f) Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.
- g) Ensuring the integrity of the company's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
- h) Overseeing the process of disclosure and communications. The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliance.
- i) Monitoring and reviewing Board Evaluation framework. Evaluating performance of Directors, CEO and senior management.

### 3. *Other Responsibilities*

- a) The Board shall provide strategic guidance to the company, ensure effective monitoring of the management and shall be accountable to the company and the shareholders.
- b) The Board shall set a corporate culture and the values by which executives throughout a group will behave.
- c) Board members shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.
- d) The Board shall encourage continuing directors training to ensure that the Board members are kept up to date.
- e) Where Board decisions may affect different shareholder groups differently, the Board shall treat all shareholders fairly.
- f) The Board shall apply high ethical standards and shall take into account the interests of stakeholders.
- g) The Board shall be able to exercise objective independent judgement on corporate affairs.
- h) Boards shall consider assigning a sufficient number of non-executive Board members capable of exercising independent judgement to tasks where there is a potential for conflict of interests.
- i) The Board shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognized or exposes the company to excessive risk.
- j) The Board shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as

acquisitions), risk appetite, exposures and the key areas of the company's focus.

- k) When committees of the board are established, their mandate, composition and working procedures shall be well defined and disclosed by the Board.
- l) The Board shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.
- m) Board members shall be able to commit themselves effectively to their responsibilities.
- n) In order to fulfil their responsibilities, board members shall have access to accurate, relevant and timely information.
- o) The Board and senior management shall facilitate the Independent Directors to perform their role effectively as a Board member and also a member of a committee of the board of directors.
- p) The Board shall lay down a code of conduct for all Board members and senior management which will be displayed on the Company's website.

(Regulation 4(2) (f) of SEBI (LODR) Regulations, 2015 refers)

- q) The following compliance certificate shall be furnished by chief executive officer and chief financial officer to the Board of Directors:
  - A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
    - (1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
    - (2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
  - B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.
  - C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
  - D. They have indicated to the auditors and the Audit committee
    - (1) significant changes in internal control over financial reporting during the year;
    - (2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and



- (3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

[Regulation 17(8) and Schedule II Part B of SEBI (LODR) Regulations, 2015 refers]

## 2.12 Information to be placed before Board of Directors:

a) Annual operating plans, budgets and any updates.
b) Capital budgets and any updates.
c) Quarterly results of the company and its operating divisions or business segments.
d) Minutes of all committees of the board.
e) The information on recruitment and remuneration of senior officers just below the board level including appointment or removal of Chief Financial Officer and the Company Secretary.
f) Show cause, demand, prosecution and penalty notices which are materially important.
g) Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
h) Details of any joint venture or collaboration agreement.
l) Any material default in financial obligations to and by the company, or substantial non payment for goods sold by the company.
j) Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
k) Significant labour problems and their proposed solutions. Any significant development in Human Resources / Industrial Relations front like signing of wage agreement, implementation of VRS, etc.
l) Sale of investments, subsidiaries, assets, which are material in nature and not in normal course of business.
m) Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
n) Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer, etc.
o) Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.

(Part A of the Schedule II to the Regulation 17(7) of SEBI (LODR) Regulations, 2015 refers)

## 2.13 Powers of Board

**The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:**

- a) to make calls on shareholders in respect of money unpaid on their shares;
- b) to authorize buy-back of securities under section 68;
- c) to issue securities, including debentures, whether in or outside India,
- d) to borrow monies;
- e) to invest the funds of the company;
- f) to grant loans or give guarantee or provide security in respect of loans;
- g) to approve financial statement and Board's report;
- h) to diversify the business of the company;
- i) to approve amalgamation, merger or reconstruction;
- j) to take over a company or acquire a controlling or substantial stake in another company;
- k) to make political contributions;
- l) to appoint or remove key managerial personnel (KMP), i.e., CEO, CFO and Company Secretary;
- m) to take note of appointment(s) or removal(s) of one level below Key Management personnel;
- n) to appoint internal auditors and secretarial auditor;
- o) to take note of the disclosure of director's interest and shareholding;
- p) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the invest company;
- q) to invite or accept or renew public deposits and related matters;
- r) to review or change the terms and conditions of public deposit;
- s) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

(Section 179, Chapter XII, Companies Act 2013 and Rule 8 of the Companies (Meetings of Board and its Powers) Rules 2014 refers)

## 2.14 Restrictions on Powers of Board

The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely: -

- a) To sell, lease and otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

- b) To invest otherwise in trust securities, the amount of compensation received by it as a result of any merger or amalgamation.
- c) To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business.
- d) To remit, or give time for the repayment of, any debt due from a director.

(For further amplification, refer to Section 180 of the Companies Act, 2013)

## **2.15 Establishment of Vigil Mechanism (Whistle Blower Policy)**

- a) Every listed company and the following class or classes of companies shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances about unethical behaviour, actual or suspected fraud or violation of Company's Code of Conduct or Ethics Policy.
  - i) Companies, which accept deposits from the public;
  - ii) Companies, which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.
- b) The Companies, which are required to constitute an Audit Committee, shall oversee the functioning of the vigil mechanism through the Committee. If any members of the committee have a conflict of interest, they should recuse themselves and other members of the Committee would deal with the matter on hand.
- c) In case of other companies, Board of Directors shall nominate a director to play the role of Audit Committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.
- d) The vigil mechanism to cater for adequate safeguards against victimization of employees and directors or any other person, who avail of the mechanism. The vigil mechanism is to provide direct access to the Chairperson of the Audit Committee or the Director nominated to play the role of Audit committee, as the case may be, in exceptional cases.
- e) In case of repeated frivolous complaints being filed by a director or an employee, the Audit Committee or the director nominated to play the role of audit committee, may take suitable action against the concerned director or employee including reprimand.
- f) The details of establishment of such mechanisms shall be disclosed by the company on its website and in the Board's report.

(Rule 7 of Companies (Meetings of the Board and its Powers) Rules, 2014 and Regulation 22 of SEBI (LODR) Regulations, 2015 refers)

## **2.16 Responsibilities of Chairman of the Board**

- a) Ensure that board has a balanced composition and functions effectively.
- b) Maintain cordial relationship with CEO and other board members.
- c) Chair board meetings and AGMs.
- d) Maintain and monitor frequency of board meetings, agenda points and notes to agenda points.
- e) Monitoring and evaluating performance of CEO, directors and entire board/board committees.
- f) Oversee functioning of board committees.
- g) At request of CEO, represent at official functions, stakeholders, public relations and media meetings.
- h) During conduct of Board Meetings:
  - i) Generate discussion and active participation. Dialogue and not monologue.
  - ii) Control discussion, work towards consensus.
  - iii) Set the tone and culture for effective corporate governance.
  - iv) Manage dissent, do not assert authority.
  - v) Make sure minutes of Board meetings are recorded accurately and ensure follow up actions.



# BOARD COMMITTEES

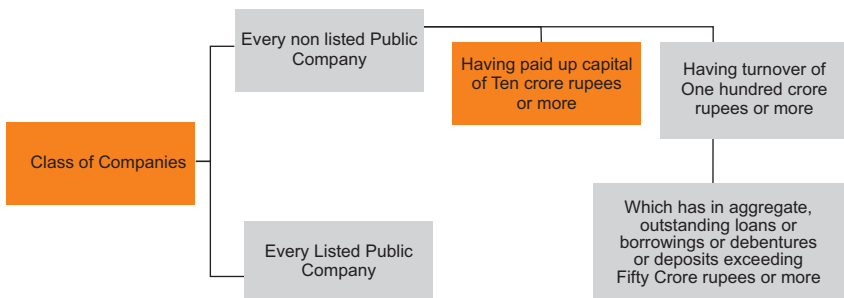
## 3.1 Overview

### 3.1.1 Types of Board Committees



### 3.1.2 Rules for Audit, Nomination and Remuneration Committee

Following class of companies shall constitute an Audit committee and a nomination and remuneration committee:



Following classes of unlisted public companies are not required to constitute such committees, namely:-

- a) a joint venture;
- b) a wholly owned subsidiary; and
- c) a dormant company as defined under section 455 of the Act.

Explanation:

The paid up share capital or turnover or outstanding loans or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited financial statements shall be taken in to account for this rule.

[Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, Section 177 and Sec 178 of Chapter XII of the Companies Act, 2013 and Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 refers]

### **3.2 Audit Committee**

#### **a) Composition**

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

- (i) The audit committee shall have minimum three directors as members. Two thirds of the members of audit committee shall be independent directors.
- (ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

Explanation (I)

The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation (ii)

A member will be considered to have accounting or related financial management expertise if he or she possesses expertise or experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a CEO, CFO or other senior officer with financial oversight responsibilities.

- (iii) The Chairman of the Audit Committee shall be an independent director.
- (iv) The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries.
- (v) The Audit Committee at its discretion shall invite the finance director or the head of the finance function to be present at the meetings of the committee, but on occasions it may also meet without presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee.
- (vi) The Company Secretary shall act as the secretary to the committee.

**b) Meeting of Audit Committee**

The Audit Committee shall meet at least four times in a year and not more than 120 days shall elapse between two meetings. The quorum shall be either two members or one-third of the members of the audit committee, whichever is greater, but there should be a minimum of two independent directors present.

**c) Power of Audit Committee**

The Audit Committee shall have powers, which should include the following:

- i) To investigate any activity within its terms of reference.
- ii) To seek information from any employee.
- iii) To obtain outside legal or other professional advice.
- iv) To secure attendance of outsiders with relevant expertise, if it considers necessary.

**d) Role of Audit Committee**

The role of the Audit Committee shall include the following:

- i) Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
- ii) Recommendation for appointment, remuneration and the terms of appointment of auditors of the company.
- iii) Approval of payment to statutory auditors for any other services rendered by the statutory auditors.
- iv) Reviewing, with the management, the annual financial statements and auditor report thereon before submission to the board for approval, with particular reference to:
  - Matters required to be included in the Director's Responsibility Statement

to be included in the Board's report in terms of clause (c) of sub-section 3 of section 134 of the Companies Act 2013.

- Changes, if any, in accounting policies and practices and reasons for the same.
  - Major accounting entries involving estimates based on the exercise of judgement by management.
  - Significant adjustments made in the financial statements arising out of audit findings.
  - Compliance with listing and other legal requirements relating to financial statements.
  - Disclosure of any related party transactions.
  - Modified opinions in the draft audit report.
- v) Reviewing, with the management, the quarterly financial statements before submission to the board for approval.
- vi) Reviewing, with the management, the statement of uses/application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilization of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take steps in this matter.
- vii) Review and monitor the auditor's independence and performance, and effectiveness of audit process.
- viii) Approval of any subsequent modification of transactions of the company with related parties. However, in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board. In case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it. These provisions shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.
- ix) Scrutiny of inter-corporate loans and investments.



- x) Valuation of undertakings or assets of the company, wherever it is necessary.
- xi) Evaluation of internal financial controls and risk management systems.
- xii) Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.
- xiii) Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
- xiv) Discussion with internal auditors of any significant findings and follow up there on.
- xv) Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
- xvi) Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.
- xvii) To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non- payment of declared dividends) and creditors.
- xviii) To review the functioning of the Whistle Blower mechanism.
- xix) Approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience and background, etc., of the candidate.
- xx) Carrying out any other function as is mentioned in the terms of reference of the audit committee.
- xxi) Reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower.

**e) Review of Information by Audit Committee**

The Audit Committee shall mandatorily review the following information:

- i) Management discussion and analysis of financial condition and results of operations.
- ii) Statement of significant related party transactions (as defined by the Audit committee), submitted by management.

- iii) Management letters/letters of internal control weaknesses issued by the statutory auditors.
- iv) Internal audit reports relating to internal control weaknesses, and
- v) The appointment, removal and terms of remuneration of the Chief Internal auditor shall be subject to review by the Audit Committee.
- vi) Statement of deviations:
  - (a) quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1) of SEBI (LODR) Regulations, 2015.
  - (b) annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7) of SEBI (LODR) Regulations, 2015.

[Para 57 of Companies (Amendment) Act, 2017 and Section 177 of Companies Act, 2013 refers]

### **3.3 Nomination & Remuneration Committee**

- a) Composition** – Three or more non-executive directors out of which not less than one-half shall be independent directors. The Chairperson of the company (whether executive or non executive) may be appointed as a member of this committee but shall not chair such committee. The Chairman of this Committee shall be an Independent Director.
- b) Duties** –
  - i) To identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.
  - ii) To formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.
  - iii) While formulating the policy, ensure that—
    - the level and composition of remuneration is reasonable and sufficient to

attract, retain and motivate directors of the quality required to run the company successfully;

- relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

Such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.

- iv) Devising a policy on Board Diversity.
- v) Whether to extend or continue the term of appointment of Independent directors on the basis of Report of performance evaluation of Independent directors.
- vi) The Chairman of Nomination & Remuneration Committee should be present at the AGM to answer the Shareholder's queries. However, it would be upto the Chairman to decide who should answer the queries.
- vii) Recommend to the board all remuneration, in whatever form, payable to senior management;

(Section 178 of Companies Act, 2013, Regulation 19 of SEBI (LODR) Regulations, 2015 refers and Para 58 of Companies (Amendment) Act, 2017 refers)

### **3.4 Stakeholders Relationship Committee**

**a) Composition** – The Board of Directors of a company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year, shall constitute a stakeholders relationship committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

**b) Duties**–

- i) Look into the mechanism of redressal of grievances of security holders of the company.
- ii) Consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report

and non-receipt of declared dividends.

(Section 178 of Companies Act, 2013 and Regulation 20 of SEBI (LODR) Regulations, 2015 refers)

### **3.5 Strategy Planning Committee**

**a) Composition** – Some companies may have dedicated Strategy Planning Committee whose composition will be as decided by the board.

**b) Duties** –

- i) To recommend to the board the strategic roadmap of the company keeping in view the long term sustainability and growth of the company.
- ii) To do perspective planning for the next 5 to 10 years highlighting goals to be achieved with emphasis on key enablers to support growth, organization structure, manpower planning, financial resources required, technology, mergers, acquisitions and divestitures
- iii) To recommend to the Board yearly implementation plans with specific targets and growth plans.

### **3.6 Risk Management Committee**

- (a) The board of directors shall constitute a Risk Management Committee.
- (b) The majority of members of Risk Management Committee shall consist of members of the board of directors.
- (c) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- (d) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. Such function shall specifically cover cyber security.
- (e) The provisions of this regulation shall be applicable to top 500 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

(Regulation 21 of SEBI (LODR) Regulations, 2015 refers)

### **Ensuring Financial Integrity and Managing Risk**

1. Increasing vulnerability to outside threats by hackers, criminal organizations

armed with superior technology are posing great threat to cyber security. Some suggested measures for cyber security are:-

- a) Identify vulnerable areas of cyber-attacks and take all preventive measures including speedy response to such attacks.
  - b) Sensitize employees to report any suspicious e-mails or activities to IT team.
  - c) Be careful while posting financial or personal information to social media or company's website.
  - d) Ensure two step-verification processes for wire transfer payments.
  - e) Ensure critically that your third party service providers thoroughly comply with your security policies and procedures.
  - f) For wire transfer payments, be sceptical of requests for secrecy or pressure for urgent action.
2. Collusion between insiders and outsiders, weak internal control systems, volatile capital markets, paperless transactions create opportunities for frauds.
  3. All potential threats to be systematically identified, carefully evaluated, regularly monitored efficiently controlled.
  4. Board and senior management to continuously anticipate where things can go wrong and take preventive measures.
  5. Work out an expansive strategic vision for risk management in consultation with all stakeholders.
  6. Financial expertise of Audit committee – able to timely detect and manage financial risks.
  7. All financial statements to be critically reviewed by all Board members
  8. Strengthen internal audit and control systems.
  9. Effective whistle blower policy and establishing a hot line.
  10. Rotation of auditors.
  11. Board to be sensitive to non-financial risks i.e. social, economic, climate, unforeseeable, reputational, ethical, operational, cyber security, regulatory, technology and innovation risks.
  12. Complete transparency & accuracy in disclosures.

### 3.7 CSR Committee

**a) Composition**– Every company having net worth of Rs.500 Crore or more OR turnover of Rs. 1000 Crore or more OR a net profit of Rs. 5 Crore or more during the immediately preceding financial year shall have a CSR committee consisting of 3 or more directors out of which atleast one will be an independent director. Where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

**b) Duties –**

- i) Formulate and recommend to the Board a CSR policy indicating activities to be undertaken by the company in areas or subject, specified in Schedule VII.
- ii) Recommend amount of expenditure and budgeting
- iii) Monitor CSR policy of the company from time to time.
- iv) CSR policy to be included in the annual report and displayed on company's website. Board to ensure that the activities, as are included in CSR policy of the company, are undertaken by the company.
- v) The Board shall ensure that company spends, in every financial year, at least 2% of average net profits of the company made during the three immediately preceding financial years. If not spent, reasons to be reflected in the annual report. Provided that the company shall give preference to the local areas around it, where it operates for spending the amount earmarked for CSR activities. For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

**c) Activities -**

As per Schedule VII, Activities to be included by companies in their CSR policies:

- Eradicating hunger, poverty and malnutrition, promoting preventive healthcare and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;

- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and differently abled and livelihood enhancement projects;
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga;
- Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- Measures for the benefit of armed forces veterans, war widows and their dependents;
- Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports;
- Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Schedule Castes, the Schedule Tribes, other backward classes, minorities and women;
- Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- Rural development projects;
- Slum area development.

[Section 135 read with Schedule VII of the Companies Act, 2013, Ministry of Corporate Affairs Notifications dated Aug6, 2014, and Oct 24, 2014 giving amendments to Schedule VII of the Act and Para 37 of Companies (Amendment) Act, 2017 refers]

### 3.8 Corporate Governance Requirements for Subsidiary Companies:

- a) At least one Independent Director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material unlisted Indian subsidiary company, incorporated in India.
- b) The Audit Committee of the listed company shall review the financial statements, in particular, the investments made by the unlisted subsidiary.
- c) Every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any. Every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.
- d) The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company.
- e) The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

**Explanation :** The term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.

- f) The company shall formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed to Stock Exchanges and in the Annual Report.

**Explanation:** For the purpose of this clause, a subsidiary shall be considered as material if the investment of the company in the subsidiary exceeds twenty percent of its consolidated net worth as per the audited balance sheet of the previous financial year or if the subsidiary has generated twenty percent of the consolidated income of the company during the previous financial year.

- g) No company shall dispose off shares in its material subsidiary, which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.
- h) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.
- i) Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

[Regulation 24 of SEBI (LODR) Regulations, 2015 and Para 38 of Companies (Amendment) Act, 2017 refers]



# MEETINGS

## 4.1 Board Meetings

- a) Every company shall hold first meeting of its Board of Directors (BoD) within 30 days of its incorporation.
- b) Every company will hold minimum of 4 meetings of its BoD in each calendar year. Gap between two consecutive meetings not to exceed 120 days. A Meeting may be convened at any time and place, on any day.
- c) A one person company, small company and dormant company to conduct at least one meeting of BoDs in each half of a calendar year and the gap between the two meetings to be not less than 90 days.
- d) **Calling notice** – Minimum 7 days' notice with agenda and notes on agenda, in writing to every director. For urgent business transactions, meeting may be called at shorter notice but at least one independent director, if any, must be present in such a meeting. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company. Notice of the Meeting shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and all the recordings of the proceedings of the Meeting, if conducted through Electronic Mode, shall be deemed to be made at such place.
- e) The intention of law is that if a director opts to attend through video conferencing, the Company shall provide the facility. The Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information.
- f) **Quorum** - For the meeting of BoDs, quorum shall be one-third of its total strength or two directors, whichever is higher. Directors participating through Electronic

Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law. Quorum for Board meetings (1/3rd of the size of the Board or 3 members, whichever is higher) in the top 1000 listed entities by market capitalization shall be applicable by April 1, 2019 and in the top 2000 listed entities, by April 1, 2020

- g) **Finalisation of Minutes** - A company may maintain its Minutes in physical or in electronic form. Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated to all the members of the Board or the Committee, as on the date of the meeting, for their comments. Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.

(Revised Secretarial Standard-1 (SS-1) on “Meetings of the board of directors” refers)

## 4.2 Participation of Directors

Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year. However, such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person. Participation of Directors in the Board Meeting may be:

**In person**

**Through Video Conferencing**

**Through the Audio-Visual means to be prescribed by the Ministry of Corporate Affairs (MCA)**

Video or audio-visual means should be capable of recording and recognizing the participation of the directors. Recording and storing of the proceedings of such meetings should be done along with date and time. A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.

[Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 and Revised SS-1, 2017 refers]

### **4.3 Meetings of Board through Video Conferencing or other Audio-Visual Means**

- a) Every company shall make necessary arrangements to avoid failure of video or audio-visual connection.
- b) Chairperson and company secretary shall take due and reasonable care
  - To safeguard the integrity of the meeting by ensuring sufficient security and identification procedures to record proceedings and safe keeping of the recordings.
  - Ensure availability of proper video conferencing or other audio visual Equipment/ facilities for effective participation.
  - To record the proceedings and prepare the minutes of the meeting.
  - To store and marking the tape recordings for maintaining records of the company, at least before the time of completion of Audit of that particular year.
  - To ensure that no other person except the authorized participants are attending or have access to the proceedings of the Meeting where Director (s) participate through Electronic Mode, except a Director who is differently abled, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the Meeting.
  - To ensure that the participants are able to hear and or see other participants clearly during the course of the meeting.
  - To ensure that the required Quorum is present throughout the Meeting and at the end of discussion on each agenda item the Chairman shall announce the summary of the decision taken thereon.
  - Company Secretary shall keep records of the request and details furnished by the Directors, which shall be noted and recorded in the minutes.
  - The detailed procedure for actual conduct of the meeting through videoconferencing or other audio-visual means and for maintenance of records of the same is given in Chapter XII of the Companies Act, 2013 and in Rule 3 of Companies (Meetings of Boards and its Powers) Rules, 2014.

Matters not to be dealt with, in a meeting through Video Conferencing or other Audio-Visual Means
• The approval of annual financial statements.
• The approval of Board's annual report.
• The approval of the prospectus.
• The Audit Committee meetings for consideration of accounts.
• The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified above.

[Para 56 of Companies (Amendment) Act, 2017, Revised SS-1 and Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 refers]

#### 4.4 General Meetings

a) **Quorum** - Quorum shall be present throughout the Meeting. Unless the Articles provide for a larger number, the Quorum for a General Meeting shall be:

(i) in case of a public company,—

- five Members personally present if the number of Members as on the date of Meeting is not more than one thousand;
- fifteen Members personally present if the number of Members as on the date of Meeting is more than one thousand but up to five thousand;
- thirty Members personally present if the number of Members as on the date of the Meeting exceeds five thousand;

(ii) in the case of a private company, two Members personally present.

Where the Quorum provided in the Articles is higher than that provided under the Act, the Quorum shall conform to such higher requirement. Members need to be personally present at a Meeting to constitute the Quorum. Proxies shall be excluded for determining the Quorum.

b) **Frequency of Meetings** - Every company shall, in each Calendar Year, hold a General Meeting called the Annual General Meeting. Not more than 15 months shall elapse between the date of one AGM of a company and that of the next. Top 100 entities to hold AGMs within 5 months after the end of FY 2018-19 i.e. shall be applicable by August 31, 2019

c) **Calling notice** - Notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of

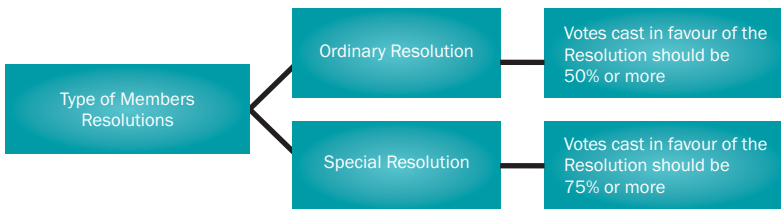
the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons. Notice and accompanying documents shall be given at least twenty-one clear days in advance of the Meeting. In case of companies having a website, the Notice shall simultaneously be hosted on the website till the conclusion of the meeting.

- d) However, a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded there to—
  - (i) in the case of an annual general meeting, by not less than ninety-five percent of the members entitled to vote thereat; and
  - (ii) in the case of any other general meeting, by members of the company—
    - (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
    - (b) having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at that meeting.

Also, where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this clause in respect of the former resolution or resolutions and not in respect of the latter.

- e) An Annual General Meetings and a Meeting called by the requisitionists shall be called during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a National Holiday.
- f) Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark, if any, for easy location, except in case of a company in which only its directors and their relatives are members or a wholly owned subsidiary.
- g) In case of a Government company, the Annual General Meeting shall be held at its registered office or any other place with the approval of the Central Government, as maybe required in this behalf.
- h) Extraordinary General Meetings – The Board may, whenever it deems fit, call an Extraordinary General Meeting of the Company to transact the business which requires the approval of members under the Companies Act, 2013.

[Revised Secretarial Standard-2 (SS-2) on “General Meetings” and Para 28 of Companies (Amendment) Act, 2017 refers]



## 4.5 Resolution by Circulation

Circular resolutions refer to the resolution passed by the board by circulation, together with the necessary papers at their registered address by hand delivery or by post/ courier, or through such electronic means. Such resolution has to be approved by a majority of directors, who are entitled to vote on the resolution.

### Resolution by circulation to be passed on the fulfilment of the following conditions:

- The Companies Act, 2013 requires certain business to be approved only at meetings of the board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation - (Section 175). Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the board and have equal authority.
- No resolution shall be deemed to have been duly passed by the board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution. Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the board.
- At least seven days shall be given to the Directors to respond to the draft of the Resolution circulated.
- A resolution under sub-section (1) shall be noted at a subsequent meeting of the board or the committee thereof, as the case may be, and made part of the minutes of such meeting.
- Secretarial Standards-1 issued by Institute of Company Secretaries of India prescribes the matters which cannot be passed by circulation and shall be placed before the Board at its Meeting. ■

# **INDEPENDENT DIRECTORS**

## **PART II**

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# INDEPENDENT DIRECTORS

## 5.1 Definition of Independent Directors (ID)

- a) A person of integrity & possesses relevant expertise and experience.
- b)
  - i) Who is or was not a promoter of the company or its holding, subsidiary or associate company or member of the promoter group of the listed entity.
  - ii) Who is not related to promoter or director in the company, its holding subsidiary or associate company.
  - iii) Who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director
- c) Who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.
- d) None of whose relatives—
  - (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
  - (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;
  - (iii) has given a guarantee or provided any security in connection with the



indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent or more of its gross turnover or total income singly or in combination with the transactions referred to in (i), (ii) or (iii).

e) Who neither himself, nor any of his relatives:

- Holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed. Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.
- is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of:
  - A firm of auditors or company secretaries in practice or cost auditors of the company or its holding subsidiary or associate company, or
  - Any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm.
  - Holds together with his relatives 2% or more of the total voting power of the company, or
  - Is the CEO or director, by whatever name called, of any non-profit organization that receives 25% or more of its receipts or corpus from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company, or
  - Is a material supplier, service provider, customer or a lessor or lessee of the company,
  - Who is not less than 21 years of age.

f) Every ID at its first meeting and thereafter, at the first board meeting every financial year, will give a declaration that he meets the above criteria

[Sec 149, Chapter XI of Companies Act 2013 and Para 46 of Companies (Amendment) Act, 2017 refers]

## **5.2 Qualifications**

Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014 to Chapter XI of Companies Act 2013 specifies that an Independent Director shall possess appropriate skills, experience and knowledge in one or more fields of Finance, Law, Management, Sales, Marketing, Administration, Research, Corporate Governance, Technical Operations or other disciplines related to the company's business.

## **5.3 Selection Process**

### **5.3.1 Process:**

- a) *Selection Procedure* - IDs may be selected from a databank containing names, addresses and qualifications of persons who are eligible and willing to act as IDs maintained by anybody, institute or association as may be notified by the Central Govt. The responsibility for exercising due diligence before selecting a person from data bank, shall be with the company making such appointment.
- b) *Selection of Independent Directors:*
  - i) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
  - ii) Identify core competencies; create competency grid outlining competencies of current directors and the competencies required.
  - iii) Competencies which are lacking, search for a pool of candidate directors eminent persons of proven integrity with requisite professional skills, experience and knowledge.
  - iv) Companies need board members with backgrounds and skills that complement each other and are related to mission of the companies.
  - v) Companies need persons of high integrity, ethical standards, sound judgement and who can be forth-right in giving views, give rich inputs which help in taking decisions, and even disagree with MD or CEO sometimes, if required. The behaviour analysis of prospective candidates must be verified.

- c) Company's board will select and approve most suitable person for the appointment of ID out of the short listed candidates recommended by the Nomination committee. Thereafter, the person selected can be appointed as an Additional Director. The final approval of the appointment of ID shall be given by the shareholders in the Annual General Meeting of the company. (Sec 150, Chapter XI of Companies Act refers)

### **5.3.2 Creation and Maintenance of databank of persons offering to become Independent Directors**

Anybody, institute or association, (to be referred to as “the agency”) authorized by the Central Government shall create and maintain a data bank of persons willing and eligible to be appointed as IDs and such data bank shall be placed on the website of the Ministry of Corporate Affairs or any other website as may be approved or notified by the Central Government.

- 5.3.3** Any person wanting to get his name included in the data bank of IDs shall make an application to the Agency in Form DIR 1. Subsequent changes in the data already provided to be intimated within 15 days of such changes.

- 5.3.4** Consent to act as Director Every person who has been appointed to hold office of a director shall on or before the appointment furnish to the company, consent in writing to act as such in Form DIR 2. Such consent will be filed with the Registrar within 30 days of the appointment.

(Rule 8 of the Companies (Appointment and Qualification of Directors) Rule 2014, Sec 150, Chapter XI, Companies Act 2013 refers)(Heading 5.3 is not applicable to Government Company)

## **5.4 Appointment Letter**

After final selection and approval of the board, the appointment letter containing the following information will be issued:-

- a) The term of appointment;
- b) The expectation of the board and board level committees, in which the director is expected to serve and its tasks;
- c) Fiduciary duties along with accompanying liabilities;
- d) Provision for Directors and officers (D&O) insurance, if any;
- e) Code of business ethics expected to be followed;
- f) List of actions that a director should not do, while functioning as such in the

company;

- g) The remuneration, mentioning sitting fees and profit related commission, if any;
- h) These terms & conditions of appointment shall be disclosed on the website of the company.

NOTE: Since appointment of IDs is to be formalized through a letter of appointment, it has been clarified by Government of India that in view of the specific provisions of Schedule IV, such appointment of existing IDs on the boards of various companies would also need to be formalized with a fresh appointment letter.

(Item IV, Code for IDs, Sec 149 (8), Chapter XI, Companies Act 2013 and Regulation 46(2) of SEBI (LODR) Regulations, 2015 refers)

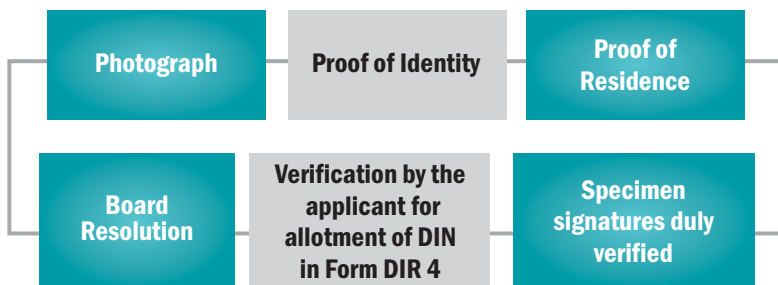
## 5.5 Director Identification Number (DIN)

**5.5.1** No person shall be appointed as a director of a company, unless, he/she has been allotted a Director Identification Number (DIN).

(Ref: Sec 152(3), Chapter XI of Companies Act, 2013)

**5.5.2** Every individual intending to be appointed as director of an existing company shall make an application electronically in Form DIR 3 to the Central Government for allotment of a DIN along with such fees as specified. The Application Form DIR 3 can be downloaded from the website of Ministry of Corporate Affairs (MCA). Provided that while incorporating a Company, in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICe).

**5.5.3** a) The applicant shall sign the form after filling in the required particulars as given in the Form DIR-3 and after attaching copies of the following documents, scan and file the entire set of documents electronically:



Note: Board resolution proposing his appointment as director in an existing company

b) The Form DIR – 3 shall be signed and submitted electronically by the applicant using his or her own digital signature certificate and shall be verified digitally by: -

A company secretary in full time employment of the company
OR
Managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company

Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of Companies Act and in case any individual holds or acquires such identification number, the requirement of section 153 shall not apply or apply in such manner as may be prescribed.

[Para 48 of Companies (Amendment) Act, 2017 and Companies (Appointment and Qualification of Directors) Amendment Rules, 2018 refers]

#### 5.5.4 ALLOTMENT OF DIN

- a) On submission of Form DIR-3 on the portal and payment of requisite amount of fees through online mode, the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.
- b) Where provisional DIN has been generated, the Central Government shall decide on the approval or rejection thereof, and if approved, shall communicate the same to the applicant along with the DIN, within one month from the receipt of such application.
- c) If the Central Government, on examination finds the application incomplete or defective in any respect, they shall give intimation to the applicant of such defect/incompleteness through their website and by email asking them to re-submit after due rectification within 15 days. Thereafter, if the application is still incomplete, the Central Government may reject or treat the application as invalid and the provisional DIN will lapse. The applicant will be informed accordingly.
- d) All DINs allotted to individuals by the Central Government before the commencement of the above rules shall be deemed to have been allotted to them under these rules.
- e) The DIN so allotted under these rules will be valid for the life-time and shall not be allotted to any other person.

### **5.5.5 Cancellation or Surrender or De-activation of DIN**

The Central Government or their nominated office may, upon being satisfied on verification of particulars or documentary proof, cancel or deactivate the DIN, in case:

- a) The DIN is found to be duplicated in respect of the same person; provided the data related to both the DIN shall be merged with the validly retained number.
- b) The DIN was obtained in a wrongful manner or by fraudulent means;
- c) On the death of the concerned individual;
- d) The concerned individual has been declared as a person of unsound mind by a competent court, or if the concerned individual has been adjudicated an insolvent.

Provided that before cancellation or de-activation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

- e) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may de-activate such DIN, provided that before de-activation of any DIN in such case, the Central Government shall verify e records.

### **5.5.6 Intimation of Changes in Particulars specified in DIN Application**

In the event of any change in particulars, as stated in Form DIR 3, every DIN allotted, will intimate such changes to the Central Government within 30days of such changes using Form DIR 6 in the following manner:

- a) Download Form DIR 6, fill in the relevant changes, attach copy of the proof of changed particulars and verification in Form DIR 7, all of which shall be scanned and submitted electronically.
- b) The form shall be digitally signed by a practicing chartered accountant, a company secretary in practice or a cost accountant in practice.
- c) The Central Government upon being satisfied, after verification of such changed particulars, shall incorporate the said changes in the electronic database maintained by the Ministry and inform the applicant accordingly.
- d) The concerned individual, shall also intimate the changes in his particulars to the companies in which he is a director within 15 days of such change.

(Rules 9 to 12 of the Companies (Appointment and Qualifications of Directors) Rules, 2014, Sec 153, Chapter XI, Companies Act 2013 refers)

## **5.6 Tenure of Independent Directors**

- a) An ID can hold office upto five consecutive years on the board of a company.
- b) She/he is eligible for re-appointment for another five years term on passing of a special resolution by the company and disclosure of such an appointment shall be in the Board's report.
- c) The maximum tenure is two consecutive terms of 5 years each. An ID will be eligible for re appointment after expiry of 3 years, since his last term, provided during these three years, he was not associated with the prospective company in any other capacity, either directly or indirectly.
- d) As per the act, any tenure of an ID, on the date of commencement of this Act, shall not be counted as a term, under the above said paragraphs.
- e) It has been clarified by the Government of India, that appointment of an Independent Director for less than 5 years would be permissible; appointment for any term whether for 5 years or less is to be treated as one term under Sec 149 (10) of the Act. Such a person shall have to demit office after 2 consecutive terms even if the total period is less than 10years. (MCA General Circular No. 14/2014 dated June 9, 2014, refers)

(Sec 149 (10), Chapter XI, Companies Act 2013 and Regulation 25(2) of SEBI (LODR) Regulations, 2015 refers)

## **5.7 Liability of Independent Directors**

An Independent Director/ A non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company, which had occurred with his knowledge, attributable through Board processes, and with his consent, connivance or where he had not acted diligently. {Ref: Companies Act, 2013, Chapter XI, Sec149(12)}.

## **5.8 Guidelines for Professional Conduct of Independent Directors**

An Independent Director shall:

- a) uphold ethical standards of integrity and probity;
- b) act objectively and constructively while exercising his duties;
- c) exercise his responsibilities in a *bona fide* manner in the interest of the company;
- d) devote sufficient time and attention to his professional obligations for informed

and balanced decision making;

- e) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
- f) not abuse his position to the detriment of the company or its share holders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- g) refrain from any action that would lead to loss of his independence;
- h) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- l) assist the company in implementing the best corporate governance practices.

## **5.9 Role and Functions of Independent Directors**

### **An Independent Director must:**

- a) help in bringing an independent judgment to bear on the Boards deliberations, especially, on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- b) bring an objective view in the evaluation of the performance of board and management; (Not applicable to Government Company)
- c) scrutinize the performance of management in meeting agreed goals and objectives; monitor the reporting of performance;
- d) satisfy himself/herself on the integrity of financial information and that financial controls, the systems for risk management are robust and defensible;
- e) safeguard the interests of all stakeholders, particularly, the minority shareholders;
- f) balance the conflicting interest of the stakeholders;
- g) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management; have a prime role in appointing and where necessary, recommend removal of executive directors, key managerial personnel and senior management; (Not applicable to Government Company)
- h) moderate and arbitrate in the interest of the company as a whole, in the situations of conflict between management and shareholder's interest.



## 5.10 Duties of Independent Directors

The Independent Directors shall:
a) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
b) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
c) strive to attend all meetings of the Board of Directors and of the Board Committees of which he/she is a member;
d) participate constructively and actively in the committees of the Board, in which they are chairpersons or member;
e) strive to attend the general meetings of the company;
f) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the board and, to the extent that they are not resolved insist that their concerns are recorded in the minutes of the Board meeting;
g) keep themselves well informed about the company and the external environment in which it operates;
h) not to unfairly obstruct the functioning of an otherwise proper board or committee of the board;
l) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
j) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
k) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
l) Act within their authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
m) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.
(Code for Independent Directors, Section 149 (8), Chapter XI of the Act)

## 5.11 Remuneration for Directors

- a) All directors, executives and Non-executives should be adequately compensated for their time and effort.
- b) Nomination and remuneration committee works out the remuneration for all executive and non-executive Directors and approved by Board and shareholders.
- c) Total managerial remuneration payable by a public company, to its directors including MD and whole-time director, and its manager in respect of any financial year, shall not exceed 11% of the net profits of the company. The company in general meeting may authorise the payment of remuneration exceeding eleven per cent of the net profits of the company.
- d) Except with the approval of the company by a special resolution:
  - i) Remuneration payable to any one managing director or whole time director or manager shall not exceed 5% of the net profits of the company.
  - ii) If there is more than one such director, remuneration will not exceed 10% of the net profits to all such directors and manager taken together.
  - iii) Remuneration payable to directors, who are neither managing directors nor whole time directors shall not exceed:
    - 1% of the net profits of the company, if there is a managing or whole time director or manager
    - 3% of the net profits in any other case.

Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

- e) If in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager, by way of remuneration any sum exclusive of any fees payable to directors except in accordance with the provisions of Schedule V.
- f) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval

required under section 197, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company. The company shall not waive the recovery of any sum refundable to it unless approved by the company by special resolution within two years from the date the sum becomes refundable. However, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.

- g) Sitting fee payable to a director for attending Board or committee meeting shall not exceed Rs. One lakh per meeting, provided that for IDs and women directors, the sitting fee shall not be less than the sitting fee payable to other directors.
- h) IDs will not be entitled to any stock options.
- l) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.
- j) Remuneration payable by companies having no profit or inadequate profit without Central Government approval

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the limits under (A) and (B) given below:—

Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(I) Negative or less than 5 crores	60 lakhs
(ii) 5 crores and above but less than 100 crores	84 lakhs
(iii) 100 crores and above but less than 250 crores	120 lakhs
(iv) 250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

Provided that the above limits shall be doubled if the resolution passed by the

shareholders is a special resolution.

Explanation— It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

- (B) In case of a managerial person who is functioning in a professional capacity, no approval of Central Government is required, if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates.

(Sec 197, Chapter XIII, Companies Act 2013, Schedule V, Part II (Sec I, II, III), Rule 4 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and Para 67 of Companies (Amendment) Act, 2017 refers)

### **5.12 Resignation by Director**

- a) A Director may resign from the office by giving a notice in writing to the company and the Board shall immediately take note of the same. The company must intimate the receipt of such resignation to the Registrar, within 30 days using Form DIR -12 and post the information on its website, if any.
- b) The Director who has resigned may also forward within 30 days from the date of resignation to the Registrar, a copy of his resignation along with the reasons for the resignation using Form DIR 11 and the prescribed fees.
- c) The resignation shall take effect from the date over which the company receives the notice or date, if any, specified by the director in the notice.
- d) The director who has resigned shall be liable, even after his resignation for the offences, which occurred during his/her term.

(Sec 168, Chapter XI, Companies Act 2013, Para 55 of Companies (Amendment) Act, 2017 and Rules 15, 16 of the Companies Appointment and Qualifications of Directors) Rules 2014 refers)

### **5.13 Removal of Directors**

- a) A company may, by ordinary resolution, remove a director before the expiry of his tenure after giving him a reasonable opportunity of being heard. Provided that an

independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard

- b) A special notice shall be required of any resolution, to remove a director under the section or to appoint someone else in his place at the meeting at which he is removed.
- c) On receipt of a resolution to remove a director under this section, the company and the director shall be entitled to be heard on the resolution at the meeting.
- d) If the director concerned makes a representation in writing and requests its notification to members of the company, the company shall, if time permits to do so:-
  - i) State the facts of the representation having been made.
  - ii) Send a copy of representation to every member of the company to whom notice of the meeting is sent.
  - iii) Due to insufficient time, if a copy of representation cannot be sent the director's representation may be read out at the meeting.
- e) A vacancy created by the removal of director may be filled by appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given.
- f) A director so appointed shall hold office till the date upto which his predecessor would have held office if he had not been removed.
- g) If there is any intermittent vacancy of an independent director then it shall be filled up by the board of directors within 3 months from the date of such vacancy.
- h) Where the company fulfils the requirement of IDs in its Board even without filling the vacancy created by such resignation or removal, the requirement of replacement by a new ID shall not apply.

(Sec 169, Chapter XI, Companies Act 2013, Companies (Removal of Difficulties) Order, 2018 and MCA notification dated 5<sup>th</sup> July, 2017 refers)

#### **5.14 Disqualifications for Appointment of Director**

- a) Disqualifications for appointment as Director, of any company have been specified in Section 164, chapter XI of the Companies Act, 2013. Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the

director shall become vacant in all the companies, other than the company which is in default under that sub section.

- b) Some of the important disqualifications are highlighted below:
- i) A person convicted by a court of any offence and sentenced to imprisonment for not less than 6 months, and a period of 5 years has not elapsed from the date of expiry of such sentence.
  - ii) An order disqualifying him/her for appointment has been passed by a court or tribunal.
  - iii) Has been absent from all Board Meetings held during the year, with or without seeking leave of absence from the board.
  - iv) He has not paid any calls, in respect of any shares of the company held by him, whether alone or jointly, and six months have elapsed from the last day for the payment of the call.
  - v) He has been convicted of the offence, dealing with 'Related party' transactions, under Sec 188 of the Act, at any time, during the last preceding 5 years.

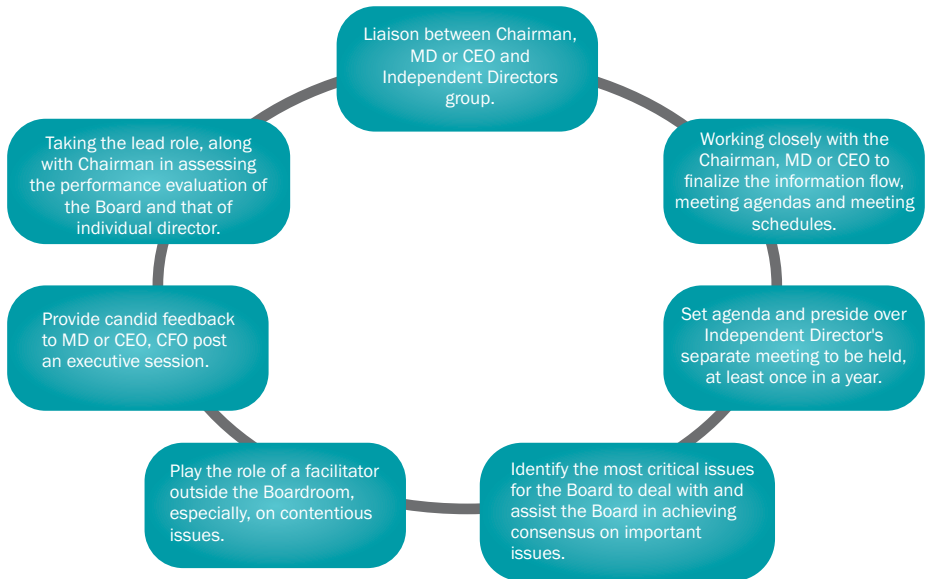
Provided that the disqualifications referred above (i, ii and iv) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

- vi) No person, who is or has been a director of a company which:
- has not filed financial statements or annual returns for any continuous period of three financial years, or
  - has failed to repay the deposits accepted by it or pay interest there on, or to redeem any debentures on the due date or pay interest due there on, or pay any dividend declared and such failure to pay or redeem, continuous for one year or more shall be eligible to be re-appointed as a director of that company or appointed in other company for 5 years from the date on which the said company fails to do so. Every director shall inform the company concerned about his disqualification, if any, in Form DIR-8 before he is appointed or re appointed. Provided that where a person is appointed as a director of a company which is in default of above clauses, he shall not incur the disqualification for a period of six months from the date of his appointment.

c) Whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, and dividend or fails to redeem its debentures as specified, the company shall immediately file Form DIR- 9 to the registrar giving names and addresses of all directors during the relevant financial years. If the company fails to file Form DIR-9 within 30 days of the failure, officers of the company shall be in default. Any application for removal or disqualification of directors shall be made in Form DIR-10.

[Section 164 and 167 of Companies Act, 2013, Rule 14 of Companies (Appointment and Qualifications for Directors)Rules, 2014 and Para 52 & 54 of Companies (Amendment) Act, 2017 refers]

### 5.15 Role of Lead Independent Director



### 5.16 Independent Directors’ Separate Meeting

- a) Independent Directors shall hold at least one meeting in a financial year without attendance of non-independent directors and members of management.
- b) All Independent Directors will strive to be present at such meeting.

- c) The meeting shall:
- i) Review performance of non-independent directors and the Board as a whole. (Not applicable to Government Company)
  - ii) Review performance of the Chairperson of the company, taking into account the views of executive and non-executive directors. (Not applicable to Government Company)
  - iii) Assess the quality, quantity and timeliness of flow of information between the management and the board, which is necessary for the board to effectively and reasonably perform their duties.

(Code of Conduct, Item VII, Sec 149 (8), Chapter XI of Companies Act 2013 and Regulation 25(4) of SEBI (LODR) Regulations, 2015 refers)

## **5.17 Performance Evaluation**

### **5.17.1 Applicability**

Every listed company and every other unlisted public company having a paid up share capital of twenty five crores rupees or more calculated at the end of the preceding financial year shall undergo a performance evaluation of its Board, Directors and Committees. (Rule 8 of Chapter IX Companies (Accounts) Rules, 2014 refers)

### **5.17.2 Subject of Evaluation**

As required under SEBI LODR and Companies Act, the evaluation involves multiple levels

- Board as a whole
- Committees of the Board
- Individual directors and chairperson (incl. CEO, NEDs)

### **5.17.3 Method of Evaluation**

- **Internal Assessment:** Given the sensitivity of the issues at hand, entities often opt for an internal evaluation of their board and processes thereof. The Chairperson, assisted by NRC, has a significant role in facilitating such evaluations. Detailed Questionnaires and/or candid interviews can be used to gather necessary information. All such information must be handled with utmost care due to their confidential nature and to ensure maximum fair participation from all parties involved.



- **Assessment by External Experts:**

With a view to bring about more objectivity to the process, entities may also opt for an evaluation by an external agency. This practice is widely recognized today as a commitment to stronger corporate governance ideals and is being followed by many entities globally. It must be ensured that the assessor is not a related party or poses any potential conflict of interest with the entity.

Signing of a Non-Disclosure Agreement with the external agency is a vital first step in any such process to ensure protection of the confidential information involved. It may be emphasized that external evaluation is not a substitute, but a complementing exercise to internal evaluation and brings about a 360 degree perspective making evaluations more meaningful.

#### **5.17.4 Criteria of Evaluation**

- In case of Internal Evaluation, NRC shall formulate criteria for performance evaluation of directors, board of directors and board committees.
- If pursued externally, the external assessor after interacting with the board, shall formulate the relevant criteria for evaluation
- Performance evaluation of all Directors shall be done by the entire Board of Directors, excluding the director being evaluated.
- The board shall determine whether to extend or continue the term of appointment of ID based on performance evaluation.

#### **5.17.5 Disclosure**

It is required by law, under the SEBI LODR and Companies Act that annual disclosures be made regarding the manner of formal evaluation of the Board, its directors and the Committees and the criteria used for evaluating the independent directors. Such disclosures form part of the Corporate Governance report under the annual report of the entity.

**A comprehensive note on the Performance Evaluation Yardsticks is annexed at Annexure 1.**

The provisions of Code for Independent Directors relating to performance evaluation, remuneration, manner of appointment and re-appointment of IDs shall not apply to a Government Company, if the requirements in respect of matters specified in these paragraphs are specified by the concerned Ministries or Departments of the Central Government or as the case may be the State Governments and such requirements are complied with by the Government companies.

(Section 134(3) (p) of Companies Act 2013, Para 36 of Companies (Amendment) Act, 2017, Regulation 17(10) of SEBI (LODR) Regulations, 2015 and MCA notification dated 5 July, 2017 refers)

### 5.18 IOD's Guidelines for becoming an effective Independent Director

a)	Thoroughly understand the business of the company and gain in-depth knowledge of the industry.
b)	Equip yourself with the financial and legal skills required.
c)	Strive to attend Annual General Meeting, maximum number of board and committee meetings.
d)	Visit various project sites and interact with senior managers.
e)	Ensure to receive meeting notice, agenda and notes to agenda, seven days in advance.
f)	Give rich inputs which help in taking decisions, be frank and forthright in expressing your views.
g)	Play the role of a colleague as well as a "cop". No laxity in monitoring role.
h)	Ensure any dissent expressed in a board meeting, is accurately recorded in the minutes.
l)	Ensure adequate deliberations are held before approving Related Party Transactions, any loans/investments to be made by the company.
j)	Refrain from any action that leads to compromising your independence.
k)	Ensure draft minutes of the board/committee meetings are received within 15 days after the meeting.
l)	Adopt an ownership mind set, have passion for the company.
m)	Must have loyalty to the company, enhance its brand image and reputation.
n)	Look at long term plans while developing strategy and monitoring risks.
o)	Support those investments and decisions that serve the best interests of the company, its employees, the shareholders, all stakeholders, community and for the protection of environment.
p)	Must realize their fiduciary obligations to the shareholders and moral obligations to operate the company in a legal and ethically responsible manner.
q)	Devote sufficient time and attention to your professional obligations for informed and balanced decision-making.
r)	Strictly follow the Company's code of conduct for Directors.



# TRAINING AND ORIENTATION PROGRAMMES

## 6.1 Masterclass for Corporate Directorship

IOD provides certified training programmes for directors for professional recognition called the Masterclass for Directors. The certified programmes equip one with knowledge and skills for boardroom governance and practices. Most directors receive no formal training in their role, responsibilities or for the skills required to do their job. IOD, through its professional development training programmes helps one learn the craft of board leadership, from knowledgeable talented business professionals, with hands on insights.

IOD's 'Open-House' courses (3 days program) are designed from the director's view point, covering the wide spectrum of roles, responsibilities and leadership skills that are essential for success today. In-House training programmes for companies are designed and delivered by the IOD experts with the organisation's success in mind. IOD can actively engage to outline the key challenges and skill gaps facing your board and the organisation, to define training objectives and conveys success.

## 6.2 Organization for Non-Executive Independent Directors (ONEID)

IOD has already run this three days Masterclass programme for over 200 batches and maintains a panel of all certified personnel willing to become Independent Directors, on the boards of various companies, in an Organization for Non-Executive Independent Directors (ONEID). The mission of this organization is to take care of specific needs of all Independent Directors, i.e., Training, Empanelment and placement for varied corporates, i.e., Public, Private or NGOs etc. An up-to-date domain wise list of qualified personnel, willing to become Independent Directors along with their career profile is displayed on the ONEID website, [www.certifiedcorporatedirectors.com](http://www.certifiedcorporatedirectors.com)

For organization and Frequently Asked Questions (FAQs) on ONEID, see **Annexure-3**.

## 6.3 Corporate Induction Familiarization Programme for Independent Directors

- a) Most Independent Directors on joining the Boards, may not have adequate knowledge about the business and the industry, knowledge of Legal, Financial and Regulatory Environment.
- b) Director's education and suitable orientation are essential for active participation and

significant contribution.

- c) Induction training and orientation programme should include the following:
- i) Company's background and nature of the industry in which it operates,
  - ii) Company's financial, strategic, operational and risk management policies,
  - iii) The roles, duties, responsibilities and code of conduct for IDs,
  - iv) The role and responsibilities of senior executives,
  - v) The role of Board and Board committees.
  - vi) Organized visits to various plants, project sites and interaction with senior managers,
  - vii) The role and responsibilities of lead Independent Directors, if any,
  - viii) An induction kit to be given to newly inducted IDs containing the following:
    - Memorandum and Articles of Association.
    - Current business plans, market analysis and budgets.
    - All relevant policies and procedures such as policy for obtaining independent professional advice for directors, avoidance of insider trading.
    - Press releases of last three years.
    - Notes on agenda points and minutes of last 6 - 8 board meetings.
    - A copy of the SEBI (LODR) Regulations, 2015.
    - Protocol and procedures for Board meetings with particular reference to Board meetings through video conferencing or other audio-visual means.
- d) The details of such familiarization programme shall be disclosed in the Annual report and website of all Listed companies.

(Schedule IV of the Companies Act, 2013, Regulation 34(3) and 46(2) (i) of SEBI (LODR) Regulations, 2015 refers)

■

# CODE OF CONDUCT FOR DIRECTORS, INTEGRITY AND BUSINESS ETHICS

## 7.1 Code for Directors

- a) Regulation 17(5) of SEBI (LODR) Regulations, 2015 has specified that the BoD of all listed companies shall lay down a code of conduct for all board members and senior management of the company, which will be displayed on the website of the Company. All board members and senior management shall affirm compliance with the code on annual basis. The Annual report of the company shall contain a declaration to this effect signed by the CEO.
- b) The code is a guide for professional conduct by Directors and its compliance will promote confidence of the investors, particularly minority shareholders, regulators and all stakeholders.
- c) A sample code of conduct for directors and senior management is at **Annexure 4**.

## 7.2 Integrity and Business Ethics

- 7.2.1** a) Strong linkages between ethics and business. Companies displaying a clear commitment to ethical conduct have been found consistently outperforming those, which do not display ethical conduct.
- b) Ethical conduct promotes sustainable growth and builds brand image, while failure to do so may result not only in loss of image, market share, but also it's very right to exist.
  - c) An organization with a strong ethical environment places its customer's interest as foremost, which helps in promoting a strong public image.
  - d) Ethical work culture provides a solid foundation for efficiency, increased productivity and sustainable loyalty of all stakeholders including investors.
  - e) Ethical work environment helps in attracting and retaining the best talent available in the market and creating efficient and committed workforce, which in turn gives them a strong competitive advantage over poorly managed organizations.

## Role of the Board of Directors

The BoD of a company holds the ultimate responsibility for the ethics of their actions. The Directors are the Role Models in ethical practices and their work culture, attitudes and behaviour percolates across the company and goes straight to the bottom-line. It motivates the employees, increases their confidence level and output.

Due to globalization, increased role of media, speed of communications, watch by various regulatory agencies, the directors are now under greater demands of accountability and transparency. By virtue of their position, IDs are expected to play a greater pro-active role in a company's approach towards ethical issues and protecting interests of stakeholders.

### 7.2.2 Creation of Ethical climate - Role of Directors

#### a) *Professional Responsibilities -*

- i) Ownership Attitude - Every director treating the company as his/her own and accepting personal responsibility and accountability for all its business needs and actions.
- ii) Consumer Focus -Superior understanding of the consumer needs and development of products or services accordingly.
- iii) Integrity - Honest dealings with consumers, business partners and all the stakeholders.
- iv) Professional Competence -Constant updating of professional developments, setting standards and achieving them.
- v) Knowledge and respect of the laws -
  - Obeying the policies, procedures, rules and regulations.
  - Faithfully obeying the local, national & international laws & regulations.
- vi) Performance Evaluation - Sincere and true performance evaluation of the peers and the Board.
- vii) Upright behaviour and avoiding any inducements - Avoid any personal fee, gift, commission or any other form of remuneration arising out of business transactions, directly or through family or relatives/friends.
- viii) Observe corporate discipline -
  - Faithfully carry out the board decisions.
  - Maintain confidentiality of sensitive information.
- ix) Identifying, managing and mitigating business risks -Risks to be identified, boldly

faced and prudently managed. Losses/damages to be prevented/minimised.

- x) Protection of Company's properties -Company's assets to be safeguarded from loss, damage, theft or misappropriation.

**b) Moral Responsibilities**

- i) Protection of Environment - Company's products should do no harm to the local or global environment.
- ii) Quality of Products - No compromise on the quality of products. Ensure products are such, that they do not cause harm to the health of consumers.
- iii) Be honest and trustworthy -Abstain from making false or deceptive claims about the products, services and systems. Instead provide full disclosure of all pertinent limitations, safety precautions and problems involved.
- iv) Fair and just dealings - Be fair, impartial and no discrimination on the basis of race, gender, religion, caste, age or nationality. Treat everyone with respect and good faith, avoid loose talk.

**7.2.3 Law cannot codify all ethical requirements. An action, which is unethical, need not necessarily be illegal. Ethics is a set of principles or standards that govern and regulate the behaviour of individuals or organizations. These standards are self-imposed rather than enforced, but play a crucial role in today's business environment.**

### 7.3 Related Party

#### 7.3.1 “Related party” with reference to a company means:

• A Director or his relative.
• A key managerial personnel or his relative.
• A firm, in which a director, manager or his relative is a partner.
• A private company in which a director or manager is a member or director.
• A public company in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital.
• Any corporate whose Board of Directors, Managing Director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager.
• Any person on whose advice, directions or instructions a director or manager accustomed to act except if advice is given in the professional capacity.

- any body corporate which is—
  - a holding, subsidiary or an associate company of such company;
  - a subsidiary of a holding company to which it is also a subsidiary;
 or
  - an investing company or the venturer of the company;

Explanation.—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

• A director or key managerial personnel of the holding company or his relative.

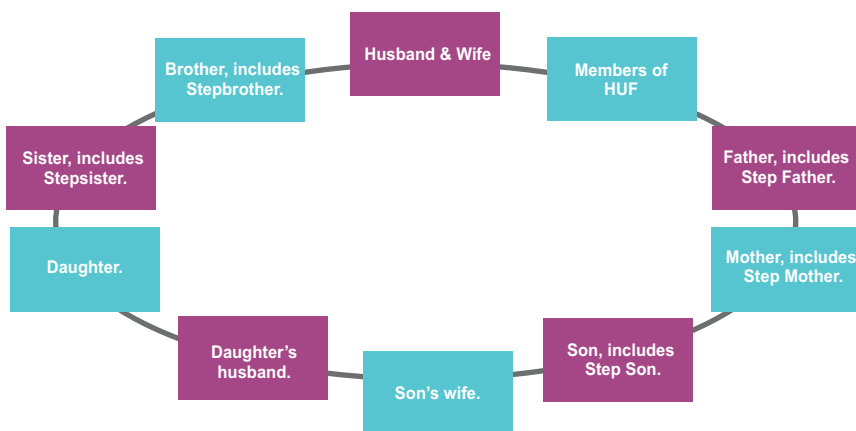
• Such other persons as may be prescribed by the Central Government.

• Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall also be a related party

[Section 2(76) of the Companies Act, 2013 and Para 2 of Companies (Amendment) Act, 2017 refers]

### 7.3.2 List of relatives in terms of Clause (77) of Section 2 of the Act:

A person shall be deemed to be relative of another, if he or she is related to another in the following manner, namely:-



(Rule 4 of the Companies (Specification of definition details) Rules, 2014, Chapter I of the Companies Act 2013, refers)



### **7.3.3 Related Party Transactions**

- (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:

Explanation: A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

- (2) All related party transactions shall require prior approval of the audit committee.
- (3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-
  - (a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;
  - (b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
  - (c) the omnibus approval shall specify:
    - (i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,
    - (ii) the indicative base price / current contracted price and the formula for variation in the price if any; and
    - (iii) such other conditions as the audit committee may deem fit:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

- (d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.
- (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:

- (4) All material related party transactions shall require approval of the share holders through resolution.
- (5) The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases:
  - (a) transactions entered into between two government companies;
  - (b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.
- (6) The provisions of this regulation shall be applicable to all prospective transactions.
- (7) For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.
- (8) All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

(Regulation 23 of SEBI (LODR) Regulations, 2015 refers)

#### **7.3.4 Disclosures – Related Party Transactions**

- a) Details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance.
- b) The company shall disclose the policy on dealing with Related Party transactions on its website and also in the Annual Report.

#### **7.3.5 Contract or Arrangement with a Related Party**

- 1. A Company shall enter into any contract or arrangement with a related party subject to the following conditions:-
  - a) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose:-
    - i. the name of the related party and nature of relationship;
    - ii. Nature, duration of the contract and particulars of the contract or arrangement;
    - iii. Material terms of the contract or arrangement including the value, if any;

- iv. Any advance paid or received for the contract or arrangement, if any;
  - v. The manner of determining the pricing and other commercial terms, both, included as part of contract and not considered as part of the contract;
  - vi. Whether all the factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
  - vii. Any other information relevant or important for the Board to take a decision on the proposed transaction.
- b) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussion on the subject matter.
2. A company must pass prescribed resolution to enter into any contract or arrangement with a related party with respect to the following:-
- a) Sale, purchase or supply of any goods or materials,
  - b) Selling or otherwise disposing of, or buying property of any kind,
  - c) Leasing of property of any kind,
  - d) Availing or rendering of any services,
  - e) Appointment of any agent for purchase or sale of goods, materials, services or property,
  - f) Such related party's appointment to any office or place of profit in the company, its subsidiary or associate company,
  - g) Underwriting the subscription of any securities or derivatives, thereof, of the company.
3. Every contract or arrangement entered into as mentioned above, shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.
4. Where any above mentioned contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board or, as the case may be, of

the shareholders, and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

5. No contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as maybe prescribed, shall be entered into except with the prior approval of the company by a special resolution. No member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party, except for a company in which ninety per cent or more members, in number, are relatives of promoters or are related parties.
6. These provisions shall not apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

[Section 188 of Companies Act, 2013, Para 63 of Companies (Amendment) Act, 2017 and Rule 15(3) of the Companies (Meetings of the board and its Powers) Rules, 2014 refers]

## **7.4 Prohibition on Insider Trading of Securities**

### **7.4.1 Insider means:**

Any person who is:

- i) a connected person; or
- ii) in possession of or having access to unpublished price sensitive information;

**7.4.2** Trading means and includes: subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly ;

### **7.4.3 Unpublished price sensitive information means:**

Any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

- (I) financial results;
- (ii) dividends;
- (iii) change in capital structure;

- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- (v) changes in key managerial personnel; and
- (vi) material events in accordance with the listing agreement.

**7.4.4** Every listed company, in their Code of Conduct for Directors, key managerial persons and all other employees lays down a policy on prohibiting trading in shares/securities of the company for a specified period prior to the declaration of quarterly/annual financial statements of the company.

**7.4.5 Disclosure by certain persons**

Initial Disclosure:	Continual Disclosures:
Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.	Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

**7.4.6** When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

**7.4.7 Trading Plans**

- (a) An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

*NOTE: This provision intends to give an option to persons who may be perpetually in possession of unpublished price sensitive information and enabling them to trade in securities in a compliant manner. This provision would enable the formulation of a trading plan by an insider to enable him to plan for trades to be executed in future. By*

*doing so, the possession of unpublished price sensitive information when a trade under a trading plan is actually executed would not prohibit the execution of such trades that he had pre-decided even before the unpublished price sensitive information came into being.*

(b) To curb the abuse of the Trading Plans, certain safeguards have been built in the provisions of SEBI (PIT) Regulations, 2015 which are:

1. trading plan to cover a period of at least 12 months;
2. approval of trading plan by the compliance officer;
3. public dissemination of trading plan;
4. cooling off period of six months from the public disclosure of the trading plan;
5. no trading during specified periods;
6. mandatory implementation of trading plan;
7. trading plan to be deferred in case UPSI at the time of formulation of the trading plan is not generally available at the time of execution of trades.
8. no overlapping of trading period in two trading plans;

© The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

**7.4.8** If any person contravenes the provisions, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

[Refer Section 195, Chapter XII of Companies Act 2013 and SEBI (Prohibition of Insider Trading) Regulations, 2015)].

## 7.5 Disclosure of Interest by Director

### Authorities under Companies Act, 2013

**1. National Financial Reporting Authority (NFRA):** The National Advisory Committee on Accounting Standards (NACAS) has been renamed as NFRA and changes have been made in its responsibilities and powers. The authority will have all-encompassing powers related to scrutiny and compliance of accounting and audit standards. (Section 132 of Companies Act, 2013 refers)

**2. Serious Fraud Investigation Office (SFIO):** The SFIO is an expert body to investigate into serious cases of fraud received by the Department of Corporate Affairs.

**3. National Company Law Tribunal (NCLT):** Matters dealt with by the High Court or the Company Law Board (CLB) or the Board for Industrial and Financial Reconstruction (BIFR) now vest with single body called NCLT.

**4. Special Courts:** The Central Government may for the purpose of providing speedy trial of offence punishable under 2013 Act with imprisonment of 2 years or more by notification establish or designate as many special courts as may be necessary. Few courts have been recently recognised as Special courts in this category. (Section 435 of Companies Act, 2013 refers)

## 7.6 Prohibition & Restrictions regarding Political Contribution

A company, other than a Government company and a Company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party provided: -

- a) Amount not to exceed 7.5% of its average net profits during the three immediately preceding financial years.
- b) A Board resolution authorizing making such contributions is essential.
- c) The amounts contributed to any political party during the financial year will be disclosed in its Profit and Loss statement.

(Refer Sec 182 of Chapter XII, Companies Act, 2013)

## 7.7 Loans and Investments

### 7.7.1 Multi-layering of Investment Companies

Section 186 of the Companies Act, 2013 prohibits a company from making investment through more than two layers of investment companies. As per the provisions of

Companies (Restriction on number of layers) Rules, 2017:

- A holding company is allowed to have up to two layers of subsidiaries. In computing the layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account. Provided that the provisions of this rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country.
- The restrictions are in addition to the layering restrictions under Section 186(1), which prohibit a company from making investment through more than two layers of investment companies. Investment companies will also be included in the count for the purposes of layer requirements under the new rule.
- The provisions of this rule shall not apply to a banking company, systematically important non banking financial company registered with Reserve Bank of India, insurance company, government company referred to in clause (45) of section 2 of the Act.
- If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

### **7.7.2 Loan to Directors**

- (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by—
  - (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
  - (b) any firm in which any such director or relative is a partner.
- (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—
  - (a) a special resolution is passed by the company in general meeting:

Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is



proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

- (b) the loans are utilised by the borrowing company for its principal business activities.

*Explanation.*—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—

- (a) any private company of which any such director is a director or member; (b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
- (c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(3) Nothing contained in sub-sections (1) and (2) shall apply to—

- (a) the giving of any loan to a managing or whole-time director—
  - (i) as a part of the conditions of service extended by the company to all its employees; or
  - (ii) pursuant to any scheme approved by the members by a special resolution; or
- (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
- (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
- (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

- (4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section—
  - (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;

- (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and
- (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

[Para 61 of Companies (Amendment) Act, 2017 and Section 185 of Companies Act, 2013 refers]

### **7.7.3 Loan and investment by Company**

- (1) A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:

Provided that the provisions of this sub-section shall not affect—

- (i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
  - (ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.
- (2) No company shall directly or indirectly—
- (a) give any loan to any person or other body corporate;
  - (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
  - (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, which ever is more.
- (3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.
- (4) The company shall disclose to the members in the financial statement the full

particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

- (5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution. Provided further that in case of a Specified IFSC company, the Board can exercise powers under this sub-section by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.

- (6) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.
- (7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan. Provided that nothing contained in this sub section shall apply to a company in which twenty-six per cent or more of the paid up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance of its objects as stated in its memorandum of association. The above exceptions / modifications / adaptations shall be applicable to section 8 Company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.
- (8) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give

any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

(9) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

(10) The register referred to in sub-section (9) shall be kept at the registered office of the company and —

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infra structural facilities;

(b) to any acquisition—

(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;

(ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.

(12) The Central Government may make rules for the purposes of this section.

(13) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but

which may extend to one lakh rupees.

*Explanation*—For the purposes of this section,—

- (a) the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities;
- (b) the expression “infrastructure facilities” means the facilities specified in schedule VI.

*Exemptions*—

- Section 186 shall not apply to –
  - (a) a Government Company engaged in defence production;
  - (b) a Government Company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section; vide Notification No. GSR 463(E) dated 5th June, 2015.
- In case of a Specified IFSC company (1) shall not apply vide Notification no. G.S.R. 8(E) and 9(E) dated 04th January, 2017.
- In case of a Specified IFSC company (2) and (3) shall not apply if a company passes a resolution either at meeting of the Board of Directors or by circulation, vide Notification no. G.S.R. 08(E).dated 04<sup>th</sup> January, 2017.

[Section 186 of Companies Act, 2013 and Para 62 of Companies (Amendment) Act, 2017 refers]

#### **7.7.4 Restriction on powers of the board**

The Board of Directors of a company shall only with the consent of the company by a special resolution, borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawals by cheque, draft, order or otherwise, shall not be deemed to be borrowing of monies by the banking company within the meaning of this clause.

*Explanation*—For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as

short-term, cash credit arrangements, the discounting of bills and the issue of other short loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

[Section 180(1) (c ) of the Companies Act, 2013 and Para 59 of Companies (Amendment) Act, 2017 refers]

## 7.8 Type of Auditors

### 7.8.1 Statutory Auditor

The role of a statutory auditor is to determine whether an organization is providing a fair and accurate representation of its financial position. As per Section 139 of Companies Act, 2013, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

### 7.8.2 Internal Auditor

The role of internal auditor is to provide independent assurance that an organisation's risk management, governance and internal control processes are operating effectively. As per Section 138 of Companies Act, 2013, internal audit is applicable to the following class of companies:

Listed Company	Unlisted Public Company	Private Company
Applicable to all	<ul style="list-style-type: none"> <li>• paid up share capital of fifty crore rupees or more; or</li> <li>• turnover (income) of two hundred crore rupees or more; or</li> <li>• outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or</li> <li>• outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year.</li> </ul>	<ul style="list-style-type: none"> <li>• turnover of two hundred crore rupees or more; or</li> <li>• outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.</li> </ul>

### 7.8.3 Secretarial Auditor

“Secretarial Auditor” means a Company Secretary in Practice or a firm of Company Secretary(ies) in Practice appointed in pursuance of the Act to conduct the secretarial

audit of the company. The role of secretarial auditor is to check compliance of various legislations including the Companies Act and other corporate and economic laws applicable to the company. As per Section 204 of Companies Act, 2013, secretarial audit is applicable to the following class of companies:

Listed Company	Unlisted Public Company	Private Company
Every listed entity and its material unlisted subsidiaries incorporated in India	<ul style="list-style-type: none"> <li>paid up share capital of fifty crore rupees or more; or</li> <li>turnover of two hundred fifty crore rupees or more.</li> </ul>	Not Applicable

### 7.9 Class Action Suits

Section 245 of the Companies Act, 2013 empowers a specified number of members (minimum 100 or such percentage of total members as may be prescribed) or specified number of depositors (minimum 100 or such percentage of total depositors as may be prescribed) to file an application to the Tribunal if the members/depositors are of the opinion that the management or affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors. Amongst other matters, the members/depositors can seek from the Tribunal that the company, its directors or management should be restrained from taking specified actions. They may also seek damages or compensation from the company, its directors, auditors, any other expert, advisor, consultant or any other person for fraudulent, unlawful or wrongful act/conduct. The shareholders/members may also seek other suitable action against various parties involved in the fraudulent, unlawful or wrongful act/conduct.

**As per Section 184 of the Act and Rule 9 of Companies (Meetings of the Board and its Powers) Rules, 2014:**

a) Every Director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP-1.

b) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

c) All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

## **7.10 Non – Mandatory Requirements / Miscellaneous**

### *A. The Board*

A non-executive chairperson may be entitled to maintain a chairperson's office at the listed entity's expense and also allowed reimbursement of expenses incurred in performance of his duties.

### *B. Shareholder Rights*

A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.

### *C. Modified opinion(s) in audit report*

The listed entity may move towards a regime of financial statements with unmodified audit opinion.

### *D. Separate posts of chairperson and chief executive officer*

The listed entity may appoint separate persons to the post of chairperson and managing director or chief executive officer.

### *E. Reporting of internal auditor*

The internal auditor may report directly to the audit committee.



**ENCLOSURES  
PART III**

# PERFORMANCE EVALUATION- YARDSTICKS, FEEDBACK, FREQUENCY & REVIEW

## 1. Yardsticks of Performance Evaluation

### 1.1 Evaluation of Board as a whole

#### a) Structure of the Board:

- Whether Board has directors with proper mix of competencies
- Whether directors have enough experience
- Adequate gender diversity
- Selection and appointment of directors is objective, transparent and merit based.

#### b) Conduct of Board Meetings

- Frequency of Board meetings
- Whether Agenda points are circulated at least one week before the meeting
- Whether Agenda points are thoroughly analyzed with pros and cons
- Whether outstanding point of previous meetings followed up in the next board meeting
- Whether sufficient time allotted for discussion for each agenda point
- Whether the environment in the board meeting allows free flowing discussion, healthy debate and participation by all members.
- Whether the discussions generally add value to the decision making
- How does the Chairman manage dissenting views? In the event of a dissent, is the note of dissent recorded?

#### c) Recording of Minutes

- Whether minutes are recorded properly, clearly, accurately and completely
- Whether the draft minutes are circulated to all directors within 15 days after the meeting
- Whether dissenting views and note of dissent are recorded in the minutes

- Minutes are approved, finalized and recorded in the Register of minutes as per time schedule

#### **d) Functions of the Board**

- Whether Board reviews and guides Corporate Strategy, major plans of action, risk policy, annual budgets and business plans , sets performance objectives, monitors implementation and corporate performance, oversees major capital expenditures, acquisitions and divestments
- Whether Board devotes sufficient time to management of current and potential strategic issues

#### **e) Governance & Compliance**

- Whether Board devotes adequate time to examine governance and compliance issues
- Whether Board ensures the integrity of accounting and financial reporting systems including the independent audit , appropriate systems of control are in place, systems for risk management, financial and operational control, compliance with the law and relevant standards
- Whether Board oversees the process of disclosures and communications
- Whether the Board evaluates the compliance certificate from the CEO/CFO , auditors/practicing company secretary regarding compliance issues of Corporate Governance

#### **f) Evaluation of Risks**

- Whether high risk issues are appropriately reviewed
- Whether the Board is able to maintain a balance by avoiding exposure to excessive risks on one hand and overlooking of significant ones on the other.

#### **g) Stakeholder Management**

- Whether the Board has mechanisms in place to communicate and engage with various stakeholders
- Whether the Board treats shareholders and stakeholders equitably where board decisions affect different groups differently.
- Whether the Board acts diligently, ethically, judiciously and in the best of interest of the entity and the stakeholders
- Whether the Board regularly reviews the grievance redressal mechanism for investors and resolution of grievances thereof.

#### **h) Conflict of Interest**

- Whether the Board monitors and manages potential conflicts of interest between

itself, the management and the shareholders, including misuse of corporate assets and abuse in RPTs

- Whether adequate non-executive independent thinking members of the board are assigned to manage any potential conflicts of interest.

#### **i) Review of Board Evaluation:**

- Whether the Board monitors and reviews the Board evaluation framework

#### **j) Facilitation of Independent Directors**

- Whether the Board aids the functioning of IDs in performing effectively and takes their criticisms constructively.

#### **k) Board and Management:**

- Whether the Board regularly and fairly evaluates and monitors management, especially the CEO, and provides constructive feedback and strategic guidance
- Whether the Board selects, compensates, monitors and when necessary, replaces key managerial personnel based on such evaluation.
- Whether the management's remuneration is benchmarked to its own performance and to those of its industry peers, and is in sync with longer term interests of the entity and its shareholders
- Whether the Board encourages the executive management to take lead in strategic initiatives and key areas of the entity's focus
- Whether the level of independence of the management from the Board is adequate
- Whether the Board and the management are able to actively access each other and exchange information

#### **l) Succession Plan**

- Whether an appropriate and adequate succession plan is in place and is being reviewed and overseen regularly by the board.

#### **m) Professional Development**

- Whether sufficient induction and development programmes are available for the existing and new directors
- Whether continuous training is provided to keep the Board updated

## **1.2. Evaluation of Board Committees**

- a) Whether mandate, composition and working procedures are clearly defined and disclosed
- b) Whether the Committee has fulfilled its assigned functions and adheres to all applicable laws
- c) Whether the Committee has proper structure and meets regularly
- d) Whether adequate independence is ensured from the board
- e) Whether committees' recommendations contribute effectively to board decisions

## **1.3` Evaluation of Individual Directors (Including CEO, Independent Directors, Non IDs etc.)**

- a) Review of professional qualifications and prior experience
- b) Review of competency mix of the director which is required for effective functioning of the entity and the board.
- c) Review of knowledge possessed about the entity and the sector of business operation
- d) Whether the person understands and fulfills his roles and responsibilities as assigned by the board and law.
- e) Whether the person takes initiative, demonstrates highest level of integrity, attends board meetings regularly and contributes effectively.
- f) In case of Independent director, reviewing the degree of independence of the director as per law and whether the person exercises objective judgment and voices opinion freely.
- g) Do the directors keep themselves updated with the latest professional developments and emerging technologies?

## **1.4 Additional Criteria for Chairperson**

- a) Whether the Chairperson displays efficient leadership, is open-minded, decisive, courteous, displays professionalism, able to coordinate the discussion effectively and steers meetings towards consensus.
- b) Whether the Chairperson is impartial in conducting discussions, seeking views and dealing with dissent etc.

- c) Whether the Chairperson is sufficiently committed to the Board and has deep knowledge of the Company and the industry.
- d) Whether the Chairperson is able to keep Shareholder's and Stakeholders interests in mind during discussions and decisions.

It is desirable that evaluation questionnaires are so designed that they provide scope for grading, additional comments and suggestions instead of basic Yes/No answer types.

## **2. Frequency, Feedback & Review of Board Evaluation**

- **Frequency:** By mandate, it is required to undertake evaluation (either external or internal) on an annual basis. However, if the entity so desires, it may conduct such evaluations more frequently.
- **Feedback:** The effectiveness of any evaluation lies in the feedback. The feedback may be given orally or in a written format by either the Chairperson or the external assessor, as the case maybe. Each party assessed can be approached separately and in confidentiality to ensure maximum absorption of recommendations and full success of evaluation.
- **Review:** The Board evaluation process must be periodically reviewed and such responsibility lies with the Board of Directors in accordance with SEBI LODR. It may be reviewed whether the process, objectives and criteria in use needs updating, whether the actions are being followed up timely, whether the review itself is being done regularly and whether members feedback is being taken into account.

## **3. Action Plan**

Based on the evaluation's final responses and suggestions drawn subsequently, an action plan may be prepared detailing on areas of improvement, nature of actions, time lines, persons responsible for implementation, resources required etc. Such action plans or roadmap pave the path for a more meaningful and effective evaluation in the future.

(SEBI's Guidance Note on Board Evaluation dated 05 Jan 2017, Item VIII of Schedule IV of Companies Act 2013, Chapter XI Companies Act 2013 and Para 58 of Companies (Amendment) Act 2017 refers) ■

# A SAMPLE OF DIRECTOR'S EVALUATION FORM

*(To be reviewed by Directors other than director being evaluated)*

Name of the Director: \_\_\_\_\_

Category: Executive/ Non-Executive

Review Period:

Date of Review:

Use the following scale in completing the sections below:

## Rating

- 4 Regularly exceeds expectations, exceptional, rare (Exemplary)
- 3 Almost always meets expectations and sometimes exceeds them (Good)
- 2 Sometimes meets expectations but needs improvement to fully satisfy them (Fair)
- 1 Does not meet expectations, needs significant improvement (Unsatisfactory)

FACTORS	RATING: 1 2 3 4	COMMENTS
<b>Participation at Board/ Committee Meetings</b>		
1. Effectively Contributes to strategy and other areas impacting company performance.		
2. Demonstrates a willingness to devote time and effort to understand the Company and its business and a readiness to participate in board meetings and events outside the meeting room, such as site visits?		
3. Ensures that the company values are adequately reflected in the way the company is run.		
4. Gives fair chance to other members to contribute, participates actively in the discussions and is consensus oriented.		
5. Effectively reviews the financial performance of the company and suggests corrective actions.		

6. Strives towards adapting best practices in governance while also fully complying with the laws of land.		
7. Effectively reviews the risk management framework in the company and provides appropriate direction for corrective actions where necessary.		
<b>Communication and Relationship</b>		
6. Builds and cultivates important high-level strategic relationships.		
7. Is effective in garnering respect for organisation and work.		
<b>Knowledge and Skill</b>		
8. Understands governance, regulatory, financial, fiduciary and ethical requirements of the Board / Committee.		
9. Brings his/her experience and credibility to bear on the critical areas of performance of the organization with the latest developments in areas such as corporate governance framework, technology, financial reporting and the industry and market conditions.		
10. Ability to present his/ her views convincingly yet diplomatically in the Boardroom as well as Board committees' discussions.		
11. Stays updated and come fully prepared for discussion of agenda items.		
<b>Integrity and Attributes</b>		
12. Has maintained high standards of ethics, transparency and integrity in the actions.		
Overall rating of performance during the review period:		
Summary of strengths, areas needing improvement, and general comments on expectations and competencies:		
Reviewed by:		
Signature:		





# FAQ'S ON ORGANIZATION FOR NON-EXECUTIVE INDEPENDENT DIRECTORS (ONEID)

## 1. What is Organization for Non-Executive Independent directors (ONEID)?

IOD has established a separate wing called 'Organization for Non Executive Independent Directors' (ONEID), as an affiliated organ of the Institute of directors. This has been set up to look after the interests of Corporate

'Independent Directors', encompassing their impanelment, placements, periodic training to keep them updated and networked. It also acts as a watchdog of Independent Directors, with Government and SEBI with regard to the rules, remuneration, legal responsibilities.

## 2. Why ONEID maintains a panel of Independent Directors?

The Companies Act, 2013 envisages a slew of changes to rules governing the functioning as well as social responsibilities of companies, and makes it mandatory for all Listed and specified public companies to have at least one-third of the total number of directors as Independent Directors. Central government may prescribe the minimum number of Independent Directors in case of any class or classes of public companies. ONEID maintains a panel of qualified and willing Independent Directors for placement.

## 3. Who would benefit from ONEID?

ONEID's Panel of qualified and willing Independent Directors and its assistance in their training and suitable placements, would be of great value to both the independent Directors and the Corporate World. For example, Senior executives placed as Nominee Directors of Corporate as well as professionals desirous of joining the pool of Independent Directors would benefit from membership of ONEID. Similarly, ONEID can help find suitable independent Directors for corporate boards.

#### **4. How can we get certified for Corporate Directorship and become a member?**

IOD's Professional Development Program, specifically designed for Directors, i.e. Masterclass for Directors', a 3 days weekend condensed certification training program. It offers a whole new vista of opportunities, especially for those who wish to join the pool of Non-Executive Independent Directors. The details are available on the website

#### **5. Can we submit the application online?**

The application form can be submitted online by clicking on <http://certifiedcorporatedirectors.com>. The online application system on this ONEID portal helps processing of your application quickly. On successful submission of the form online, you will get a registration number for future reference. We prefer you to add attachments to your profile as PDF files. If this is not possible, please use doc or jpg file formats. Please ensure that the total size of the documents does not exceed 1 MB.

#### **6. What happens after I submit the application for the empanelment?**

The submitted form will be placed before a dedicated Committee for review. Once approved by that Committee, you will be empanelled and informed accordingly.

#### **7. Can I update my profile after I have been empanelled?**

Yes, you may update your profile by logging in to the ONEID's website at anytime. <http://certifiedcorporatedirectors.com>

#### **8. Can IOD help me in obtaining 'Directors Identification Number' (DIN)?**

Yes. ONEID will guide you suitably through [oneid@iodglobal.com](mailto:oneid@iodglobal.com).

Any person intending to apply for DIN shall have to make an application in eForm DIR-3 and should follow the procedure mentioned on <http://www.mca.gov.in/MinistryV2/dinprocess.html> or can simply consult a Company Secretary for the purpose.

#### **9. How do I register as a Corporate Entity with ONEID?**

Please login to ONEID - <http://certifiedcorporatedirectors.com>, with your corporate details.

**10. What are the ONEID charges for various services provided to Independent Directors?**

There will be no fee/charge for empanelment of applicants as Independent Director, if they are active members of IOD, for one year from becoming a member. For others too, at present, there is no fee, but it is likely to be introduced by 01 April, 2018.

**11. Who will be the Contact Person for any queries related to submission of our application forms?**

In case of any queries related to submission of the application forms, can be emailed to [oneid@iodglobal.com](mailto:oneid@iodglobal.com). You may call at +91-11- 41636294, 41636717 if desired. ■

# SAMPLE CODE OF CONDUCT FOR DIRECTORS & SENIOR MANAGEMENT OF XYZ LIMITED

The members of the Board of Directors of XYZ LTD. acknowledge and accept the scope and extent of their duties as Directors. They have a responsibility to carry out their duties in an honest and business-like manner and within the scope of their authority, as set forth in the laws of India as well as in the Memorandum and Articles of association of the Company. They are entrusted with and are responsible for the oversight of the assets and business affairs of XYZ Ltd. in an honest, fair, diligent and ethical manner. As Directors, they must act within the bounds of the authority conferred upon them and with the duty to make and enact informed decisions and policies in the best interests of the Company. The Board of Directors has adopted the following Code of Conduct and the Directors and senior managers are expected to adhere to the standards of care, loyalty, good faith and the avoidance of conflicts of interest that follow.

## Code of Conduct

Board Members and senior managers will:

- act in the best interests of, and fulfil their fiduciary obligations to the Company;
- act honestly, fairly, ethically and with integrity;
- conduct themselves in a professional, courteous and respectful manner and not take improper advantage of their position;
- will deal fairly with all stakeholders;
- comply with all applicable laws, rules and regulations;
- act in good faith, responsibly, with due care, competence and diligence, without allowing their independent judgment to be subordinated;
- not use the Company's property or position for personal gain;
- will not accept from or give to stakeholders, gifts or other benefits not customary in normal social intercourse;
- not use any information or opportunity received by them in their capacity as

Directors or senior management in a manner that would be detrimental to the Company's interests;

- act in a manner to enhance and maintain the reputation of the Company;
- disclose any personal interest that they may have regarding any matters that may come before the Board and abstain from discussion, voting or other wise influencing a decision on any matter in which the concerned Director has or may have such an interest;
- abstain from discussion, voting or otherwise influencing a decision on any matters that may come before the board in which they may have a conflict or potential conflict of interest;
- respect the confidentiality of information relating to the affairs of the Company acquired in the course of their service as Directors or senior management, except when authorized or legally required to disclose such information;
- not use confidential information acquired in the course of their service as Directors or senior management for their personal advantage or for the advantage of any other entity;
- help create and maintain a culture of high ethical standards and commitment to compliance;

A Director or senior manager who has concerns regarding compliance with this Code should raise those concerns with the Chairman of the Board and the Chairman of the Audit Committee, who will determine what action shall be taken to deal with the concern. In the extremely unlikely event that a waiver of this Code for a Director would be in the best interest of the Company, the Audit Committee and the Board of Directors must approve it.

There may be situations in which a Director would be in breach of his duty of confidentiality to another entity were he to disclose a conflict of interest to the Board of the Company. In such a situation, it shall be sufficient for the Director concerned to abstain from any participation in the matter concerned, without disclosing the nature of the conflict.

For this purpose “senior management” shall mean members of management one level below the executive directors and shall include all functional heads.

Directors and senior managers will annually sign a confirmation that they have read, have complied with and will continue to comply with this Code.

Adopted by the Board of Directors of XYZ Limited on \_\_\_\_\_



# ESSENTIAL DILIGENCE CHECKS FOR NEWLY APPOINTED INDEPENDENT DIRECTORS

## 1. Due Diligence checklist for considering a board position is:

- a) What's the company I am considering? Does it have a well-articulated vision?
- b) What's the market segment it operates? Am I familiar with it, and my interest?
- c) What's company size/annual revenue? Main product lines?
- d) What can I bring to this board? Knowledge, skill, Experience, Contacts, Strategic vision.
- e) Do I know, why am I being considered?
- f) Who do I know on this board? Can I truly be independent? Is that OK for me?
- g) Is there a possible clash of interest that needs discussion?
- h) What are my information sources?
  - i. Public data
  - ii. Contacts
  - iii. Company execs, that I want to talk to
  - iv. Look at past few board meeting agendas/minutes?
- l) Can I speak to?
  - i) CEO, CFO, Board Chairman
  - ii) Fellow board members
  - iii) Representative of key customers
  - iv) Head of HR, Sales, Marketing
- j) Ethical practices & code of conduct-Do they match with my value system?
- k) Am I satisfied about:

- i) Company financials. Operating cash flow against ongoing requirements.
  - ii) Legal affairs of the company. Any ongoing litigations.
  - iii) D&O policy of the company. Any D & O insurance covering liability & defence costs?
  - iv) Expectations of me.
  - v) Compensation, I would get. (Is it worth the effort?)
  - vi) My ability to find time for this position.
  - vii) Company vision and process to review vision.
  - viii) Process to collect market intelligence, competitive information, customer feedback.
  - ix) Access to senior management outside of board meetings
  - x) Relationship between board members. Operating Culture, Conflict Management within board.
  - xi) Am I comfortable with chairman of the board, CEO, Audit Committee Chairman?
  - xii) Customer relationship, feedback and satisfaction.
- l) What's my gut feeling about accepting the role?

## **2. Risk Management Director's overarching role in continuous risk management is:**

- a) Does the risk profile reflect the significant risks, faced by the company?
- b) Is the executive management candidly bringing up analysis with respect to market movements, competition, human resources, regulatory changes etc?
- c) Process for keeping risk profile and mitigation response updated.
- d) Alignment between board and management on key risks.
- e) Active actions to monitor, reduce and eliminate risks

## **3. 'Orientation' for new Directors**

- a) Primary contact point in the organization for admin matters.
- b) Organization structure and Who's who in the organization's executive

management and board.

- c) Key investors and investment pattern.
- d) Business stakeholders - Important customers, Competitors, Channel Partners etc.
- e) Non business stakeholders - Regulatory authorities, statutory auditors.

#### **4. Board Meeting Goals**

- a) Pre-meeting goals - Be clear about what you want out of this meeting: What needs to get decided, what needs to be discussed and what is needed to be gotten quickly out of the way. Have management provide enough information, well in advance, to have meaningful debate in board meeting.
- b) Actual meeting - Maximum of in-person time should be spent on most important agenda items. This calls for a substantial pre-meeting discussion about board meeting agenda — what is important, what is essential (approving stock options?) with key stakeholders. A good board member will seek a meeting with Key executives — CEO, CFO, Company Secretary etc. to get sense for where to focus the energies.
- c) Post meeting actions — during the meeting, it may be expected of you to make introductions, setup discussions, provide coaching to someone. Ensure that these get into your calendar, and you act on it by the expected date.

#### **Before Meeting**

1. Have I received confirmation over email / phone about board meeting date venue?
2. Have I received a 'good' information packet along with the meeting details?
3. Is the meeting agenda in place 7 days prior to meeting?
4. Have I considered agenda and looked at possibility of rearranging the items? What items are important for you?
5. Have I scheduled 1-1 calls with key stakeholders, peer direction – to go deeper into issues?
6. Have I initiated request for additional details on agenda items, of my interest?
7. Do I have non-agenda items to be proposed (where information can be provided off-line).



8. Overall, do I have clarity on the objectives of the meeting?
9. Do I have my questions, requests, analysis ready?
10. Is there a functional presentation requested by me? If that cannot be part of the meeting, can it be arranged separately for me?

### **Post meeting**

11. Have I made my version of minutes for key items on agenda?
12. Am I expected to take follow-up actions – such as making introductions, calling up someone?
13. What was my level of engagement? Effectiveness? Was it an 'information update' meeting? ■

# PENAL PROVISIONS AS PER COMPANIES ACT 2013

Section	Particulars	Penalty to the Company	Penalty to Other Persons	
			Other person	Penalty
127	Failure to distribute dividends within 30 days	Simple Interest 18% p.a.	Directors	a. Imprisonment Upto 2 years and b. Fine Per day of default Rs. 1,000
137(3)	Contravention of the provisions of section 136 [Copy of financial statement to be filed with Registrar]	Fine Rs. 1000 but not more than Rs. 10,00,000	MD and CFO or any other director or all directors	a. Imprisonment Upto 6 months or/and b. Fine Min. Rs. 1,00,000 and Max. Rs. 5,00,000
159	Contravention of the provisions of the sections 152, 155 & 156		Individual or Director	a. Imprisonment Upto 6 months and b. Fine Max. Rs. 50,000 c. Further fine if continuing default Per day of default Rs. 500
165	Acceptance of directorship in contravention of section 165(1)		Director	Fine Min. per day Rs. 5000 and Max. per day Rs. 25,000

166	Contravention of the provisions of the section 166 [Duties of Directors.]		Director	Fine Min. Rs. 1,00,000 and Max. Rs. 5,00,000
172	Contravention of the provisions of the sections 149 to 171 (both inclusive) for which no separate penalty is given	Fine Min. Rs. 50,000 And Max. Rs. 5,00,000	Director	Fine Min. Rs. 50,000 And Max. Rs. 5,00,000
184	Contravention of the provisions of the section 184(1) & (2) [Disclosure of interest by director]		Director	Imprisonment Upto 1 year or/and Fine Max. Rs. 1,00,000
185	Any loan is advanced or a guarantee is given or provided in contravention of the provisions of section 185 [Loan to directors, etc.]	Fine Min. Rs. 5,00,000 And Max. Rs.25,00,000	Officer in default or Director and the person to whom any loan is advanced etc.	Imprisonment Upto 6 months or/and Fine Min. Rs. 5,00,000 And Max. Rs. 25,00,000
188(5)	Entering into or authorising the contract or arrangement in violation of the provisions of section 188		Director or Employee - listed companies	Imprisonment Upto 1 year or/and Fine Min. Rs. 25,000 And Max. Rs. 5,00,000
			Director or Employee - other companies	Fine Min. Rs. 25,000 And Max. Rs. 5,00,000
189(6)	Failure to comply with the provisions of section 189 [Register of contracts and arrangements in which directors are interested] and the rules made there under		Director	Fine 25,000

191	Contravention of the provisions of section 191 [Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares]		Director	Fine Min. Rs. 25,000 And Max. Rs. 1,00,000
203(5)	Contravention of the provisions of section 203 [Appointment of KMP]	Fine Min. Rs. 1,00,000 and Max. Rs. 5,00,000	Director and KMP	a. Fine Rs. 50,000 b. Further fine if continuing default Per day, upto Rs. 1,000
207(4)	Disobeyance of directions issued by the Registrar or the inspector under section 207 [Conduct of inspection and Inquiry]		Director or Officer in default	Imprisonment Upto 1 year and Fine Min. Rs. 25,000 And Max. Rs. 1,00,000
217(6)	Disobeyance of directions issued by the Registrar or the inspector under section 217 [Procedure, powers, etc., of inspectors]			
447	Punishment for fraud		Any person who is found to be guilty of fraud involving an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower	Imprisonment Upto 5 years and Fine Max. Rs. 20,00,000
			Any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower	

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Helping Boards Be Even More Effective Problem Solving Units

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  2. Independent Director by R.I. Tricker.
  3. The ID; The Role and Contribution of Non-Executive Director by IOD, Uk with E&Y.
  4. Boards that Lead by Prof Ram Charan, Prof Dennis Carrey and Prof Michael Useem.
- 



# MCA Forms

S.no.	Subject	Form No. (Reference)
1.	Application for inclusion of name in databank of ID	DIR – 1 (Para 5.3.2)
2.	Consent to act as a director of a company	DIR – 2 (Para 5.3.3)
3.	Application for allotment of DIN	DIR – 3 (Para 5.5.2)
4.	Verification of applicant for application for DIN	DIR – 4 (Para 5.5.3(a)(iv))
5.	Application for surrender of DIN	DIR – 5 (Para 5.5.5(g))
6.	Intimation of change in of Directors to be given to the Central Government	DIR – 6 (Para 5.5.6)
7.	Verification of applicant for change in DIN particulars	DIR – 7 (Para 5.5.6(a))
8.	Intimation by Director regarding his disqualification	DIR – 8 (Para 5.14(b) (v))
9.	Report by the Company to registrar regarding disqualification of the director	DIR – 9 (Para 5.14(c))
10.	Form for application for removal of Disqualifications of Directors	DIR – 10 (Para 5.14(c))
11.	Notice of resignation of a director to registrar (Forwarding copy of resignation letter by the Director)	DIR – 11 (Para 5.12(b))
12.	Particulars of appointment of Directors & KMP and the changes among them, including details of resignation of the Directors (Notice of Resignation or other changes by the company)	DIR – 12 (Para 5.12(a))
13.	Notice of interest by Director	MBP – 1 (Para 7.5(a))



## Golden Peacock Awards

*A Strategic tool to Lead the Competition*

**G**olden Peacock series of Awards, established by the Institute Of Directors, India in 1991 are regarded as a competitive benchmark of Corporate Quality and Excellence. The winning of the Golden Peacock Award is the most powerful way to build your brand image, and global recognition. Today, no other business award receives the kind of respect, recognition, prestige and adulation among peers, that Golden Peacock does. The winning organization gets a competitive advantage, in driving business in this tumultuous world.

If corporates are to leverage human capital for competitiveness, much will depend on their ability to nurture knowledge and entrepreneurship in tandem. Awards are the most powerful way, to motivate and mobilize intellectual assets and spur them to achieve greater heights in business performance. It is a strategic tool, to lead the competition.

These Annual Awards, 15 National and 3 Global, have a meticulously defined and transparent selection criterias, and are determined by a highly elaborate and independent three layer assessment process. Any organization, large, medium or small, in manufacturing or service sector, in government, public or private sector, research organizations and NGOs are eligible to apply for these awards. The Individual Leadership Awards are based on service profile and national achievements, and determined through nominations only. ■

# INSTITUTE OF DIRECTORS

Institute Of Directors (IOD) was established in India on 12 July 1990, as an apex association of Directors under the India's 'Societies Registration Act XXI of 1860' to improve their professional competence. It has since grown to associate with more than 31,000 senior executives from Govt, PSU and Private organisations. IOD organises a number of international events each year, in India and certain other select countries.

From the personal development of directors, IOD soon embraced the role of Corporate Governance and boardroom development, followed by organisation-wide transformation as a whole. It consolidated its position further through MOUs, with related associations globally. IOD publishes a number of professional books, handbooks, and periodicals throughout the year, to keep the directors updated.

IOD's 'Masterclass for Directors' covers training in corporate directorship, and 'Golden Peacock Awards' in 15 different corporate disciplines, and other flagship initiatives aim to improve the competitiveness of individual directors and their organisations. The 'Masterclass', is a condensed programme for top management and also prepares participants for the role of Independent Directors of companies. No business award today, receives the kind of recognition and adulation among peers that Golden Peacock does. Both have become global benchmarks.

IOD has also setup a special wing called 'Organisation for Non-Executive Independent Directors' (ONEID), mandated to look after the training, placement and networking of Independent Directors. IOD's 'Board Research and Advisory' wing provides specialised advisory services in the areas of Board & Directors' Performance Evaluation and Corporate Governance Compliances.

IOD's activities extend from training, publications, and monthly lectures to workshops and Global networking through national and international directors Conventions, on issues such as Risk Management, Corporate Ethics, Leadership, Quality, Environment, Climate Change, Occupational Health and Safety, Corporate Governance, Cyber Security, Competition Law, Sustainability and Corporate Social Responsibility etc. ■



**Building  
Tomorrow's  
Boards**

## Institute Of Directors

M-56 A, Greater Kailash Part - II (Market), New Delhi-110048  
Board Nos.: +91-11- 41636294, 41636717, 41008704  
Fax: +91-11- 41008705 • Email: [info@iodglobal.com](mailto:info@iodglobal.com)  
Web: [www.iodglobal.com](http://www.iodglobal.com)

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