

Technical Guide on the provisions of Independent Directors from Corporate Governance perspective



Corporate Laws & Corporate Governance Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

Good Corporate Governance is the manifestation of beliefs, values and actions to ensure maximum value creation to the stakeholders. Value creation is a term broader than wealth creation. The objective of corporate governance is to enhance shareholder value keeping in view the interest of other stakeholders.

Factors like Globalization, Global Competitiveness, Technology, Regulatory Changes and Shareholders Activism etc. have considerably expanded the role and duties of Independent Directors. They are responsible for ensuring better governance by actively involving in various committees set up by a company.

The role of Directors including the independent directors has undergone a significant change consequent to the changes in the economic and regulatory environment. The Companies Act, 2013 (the Act) and the SEBI Regulations are illustrations of legislations affecting the functioning of the Board.

The Independent Directors, being central to the Governance of Companies, play a key role in ensuring that the Companies work in the best interest of the shareholders and other stakeholders. Corporate Board Directors face the challenge of aligning the interests of the Board, management, shareholders and all other stakeholders. They are expected to represent the Company before the stakeholders at large. Therefore, it is necessary for them, especially the Independent Directors, to be aware of their roles and responsibilities in the changing global business environment.

The Institute of Chartered Accountants of India (ICAI) has always endeavoured to promote corporate governance in enterprises by disseminating up to date knowledge and creating awareness amongst its members and stakeholders at large. The purpose of bringing this publication is to enable them to derive a complete idea about the roles which they are expected to perform while serving on the Board so that they discharge their responsibilities effectively and contribute to the Boards especially in the backdrop of changing economic and regulatory scenario.

At this juncture, I compliment the efforts of CA. Chandrashekhar V. Chitale, Chairman, CA. Durgesh Kumar Kabra, Vice-Chairman and other members of the Corporate Laws & Corporate Governance Committee for bringing out a

comprehensive Technical Guide on such an important topic covering all the aspects and expectations from the Independent Directors. I sincerely believe that this publication will be of immense use to the members, directors, aspiring directors and other interested readers.

CA. Atul Kumar Gupta

President, ICAI

Date: 05th January, 2021

Preface

Good corporate governance practices are integral element for doing business and the Board of Directors being the focal point of the Corporate Governance framework need to play a progressively vital role for sustainable development of the company.

But when we talk about best practices of Corporate Governance, the role of Board of Directors is paramount, since they perform a pivotal role in fulfilling the three aspects of Corporate Governance which include accountability, transparency and equality of treatment for all stakeholders.

The board of directors is the apex body entrusted with the task of strategic planning, proprietary review of transactions, policy formulation and implementation of the same through the professionally managed team and it is composed of executive and non- executive directors.

As we all know that the Independent Directors are one of the most important pillars of the effective Corporate Governance system in companies and are treated as trustees of good governance. Over the years the expectations of stakeholders has enhanced from the independent directors and there are enormous responsibilities bestowed on them and are viewed as a solution to various corporate governance problems.

Considering the increasing role and responsibilities of the Independent Directors and the increasing expectations of stakeholders from them, the Corporate Laws & Corporate Governance Committee thought to bring out a publication- "Technical Guide on the provisions of Independent Directors from Corporate Governance perspective.

The Technical Guide aims to provide comprehensive guidance on the role responsibilities, duties, powers of Independent Directors with regard to the Companies Act, SEBI LODR and various other Laws. Important Frequently Asked Questions relating to the Independent Directors from part of the Guide.

The Guide also covers Specific issues and questions that should be considered in a performance evaluation of the entire Board by Independent Directors/ Parameters for Evaluation Of Board Of Directors/Performance Evaluation Of Independent Director/Non-Independent Director/Self-Appraisal

Check List. A separate chapter has been included regarding Special measures / relaxations given by the Government due to the pandemic.

Our sincere thanks to CA Atul Kumar Gupta, President ICAI and CA Nihar Niranjana Jambusaria, Vice-President ICAI for their encouragement and support in bringing out the publication.

We wish to place on record my sincere thanks to the then Chairman of the Committee CA. Debashis Mitra for initiating this publication and Convenor of the Study Group CA. Pramod Jain, Central Council member and member of the Committee and other Group members CA. Anil Sharma, CA. Arun Saxena, CA. Anil Gupta, CA. Sanjay Jain, CA. Avineesh Matta, CA. Deepak Bahl, CA. S. K. Dalmia and CA. Naval Bajaj who have contributed for bringing out this publication with valuable inputs.

We also wish to place on record my sincere thanks to all the Committee members, Special Invitees for their suggestions, support and guidance in finalizing this guide.

We commend the efforts made by the Secretary to the Committee CA Sarika Singhal and her team comprised of Ms Seema Jangid, CA. Deepa Agarwal and CA. Nikita Aggarwal for providing their technical and administrative support.

We sincerely believe that the members of the profession, industries and other stakeholders will find the publication immensely useful.

CA. Chandrashekhar Vasant Chitale
Chairman,
Corporate Laws & Corporate
Governance Committee, ICAI

CA. Durgesh Kumar Kabra
Vice-Chairman,
Corporate Laws & Corporate
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Date: 28th December, 2020

Contents

1.	Background and Introduction - Independent Directors.....	1
2.	Legal and Regulatory Framework relating to Independent Directors under the Companies Act, 2013	10
3.	Legal and Regulatory Framework relating to Independent Directors of Listed Entities	26
4.	Thresholds under the Companies Act 2013	46
5.	Role and Responsibilities of Independent Directors	50
6.	Training for Independent Directors	78
7.	Highlights of Chapter XI, XII and XIII of the Companies Act, 2013	86
8.	FAQs on Board of Directors and Duties of Directors	94
9.	Formats of Forms to be filed by Directors	109
10.	Statutory Compliances for the Company	118
11.	Performance Evaluation of Independent Directors	125
12.	Penal Provisions relating to Independent Directors	160
13.	Databank of Independent Directors and its Registration	168
14.	Special measures taken due to pandemic COVID-19	169

Chapter I

Background and Introduction – Independent Directors

Corporate governance is a system by which the corporates are governed with an embedded confirmation for enhancement of stakeholders' value, adherence to the best corporate practices, ethics, concern for environment and a commitment to social responsibility as a good corporate citizen.

Growing international integration of markets has given momentum to corporate governance. Corporate performance is now judged and measured not merely in terms of quantitative achievements but also in terms of its qualitative governance.

Corporate governance is fast rising as a conceptual tool to control and facilitate corporate operations across the world and needless to add that corporate governance represents value framework, ethical framework and moral framework under which business decisions are made. The three key aspects of corporate governance include inter-alia, accountability, transparency and equality of treatment for all the stakeholders.

Good Corporate Governance is the manifestation, beliefs, values and actions to ensure maximum value creation to the stakeholders. Value creation is a term broader than wealth creation. The objective of corporate governance is to enhance shareholder value keeping in view the interest of other stakeholders.

In a corporate entity the stakeholders are broadly classified as the shareholders, customers, employees, suppliers, regulators and the public at large. The stakeholders are those groups whose interests are affected by a Company's action or inaction. The Shareholders expect fair returns on their investment, the customers expect good quality products and services at the competitive rates, the employees expect better compensation package and welfare measures to see that working in a company matters most to them, the suppliers expect regular payment for the supply of goods / resources, the regulators insist timely payment of taxes and compliance with the laws, the public at large do demand corporate concern and care towards the natural resources available on the planet and eco-friendly conversion of natural resources into productive resources by the corporate.

Thus, the governance of the corporate can be termed as good if it results in stronger shareholder rights, higher share value, convincing profits, increased sales growth, motivated human resources, transparency in disclosures, compliance of the law in letter and spirit and of course, fulfilling social accountability.

1.1 Board of Directors

Since the pivotal role in the system of corporate governance is performed by the Board of directors, they are primarily accountable and responsible for governance of their companies. The direction and management of the corporate entity is in the hands of Board of Directors collectively and directors individually while acting for the corporate entity.

The board is the apex body entrusted with the task of strategic planning, policy formulation and implementation of the same through the professionally managed team headed by the Managing Director and / or Chief Executive officer of the company. The corporate entity's growth and prosperity, to a large extent, depends upon how the corporate entity is governed by the Board of Directors.

The rise in the corporate scandal worldwide, increased expectations of the stakeholders from the Board of directors, tight regulatory framework on the corporate entity and growing expectations for corporate social responsibility, have cumulatively emphasized more thrust on the ethics or Code of conduct for the Board of Directors collectively as well as the individual directors.

The board of directors are required to understand varied expectations of the stakeholders and are duty bound to ensure that the expectations of the stakeholders are met year to year through a sustainable growth by the corporate. Good governance, in fact, lies with proper balancing of power of the owners which demands value maximization and the power of management which demands maximum compensation for the efforts put in by them. It is imperative to ensure that the governing system must be on sound footing with commitment not only by the Board collectively but also by individual board members.

1.2 Independent Directors

The need for having a strong framework of corporate governance in the functioning of the company, insisted upon the requirement for having independent directors on the Board.

Background and Introduction – Independent Directors

The composition of the Board of Directors with proper proportion of executive and independent non-executive directors is of great importance for a sound and smooth governance system in a corporate entity.

A well balanced, professionally empowered and effective Board composition would strengthen the governance system in the competitive era. The quality of governance system is also linked directly to the competence, independence and individual commitment of the directors.

The concept of independent directors came into existence by the Treadway Report (USA) in the year 1987 which highlighted the need for proper control environment and independent audit committee.

For appointment as an Independent Directors (ID), in the opinion of the Board, he should be a person of integrity and possess relevant expertise and experience and 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. He should not be less than 21 years of age.

A person who has been appointed as an ID shall by 31st December, 2020 or who intends to get appointed as ID shall before such appointment, apply online to the institute (IICA) (<https://www.independentdirectorsdatabank.in/>) for inclusion of his name in the data bank till he continues to hold the office of an ID and pass the online proficiency self-assessment test within a period of two years from the date of inclusion of his name in the Data Bank.. He shall not be required to pass the test², if he has served, for a total period of not less than three years, as on the date of inclusion of his name in the databank:-

- (i) As a director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-
 - (a) listed public company; or
 - (b) unlisted public company having a paid-up share capital of rupees ten crore or more; or

¹ MCA Circular dated 28th September 2020

² MCA Circular dated 18th December 2020

- (c) body corporate listed on any recognized stock exchange or in a country which is a member State of Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organisation for Securities Commissions; or
- (d) bodies corporate incorporated outside India having a paid up share capital of US \$2 million or more; or
- (e) Statutory Corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or
- (ii) In the pay Scale of Director or above in the Ministry of Corporate Affairs or the Ministry of Finance or the Ministry of Commerce or Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling matters relating to corporate laws or securities laws or economic laws; or
- (iii) In the pay Scale of Chief General Manager or above in the Securities Exchange Board of India or Reserve Bank of India or the Pension Fund Regulatory and Development Authority of India and having experience in handling matters relating to corporate laws or securities laws or economic laws;

Further, for the purpose of calculation of the period of three years referred to in above, any period during which an individual was acting as a director or as key managerial personnel in two or more companies or bodies corporate at the same time shall be counted only once.

1.3 Indian Scenario

Specifically, the first institutional initiative on Corporate Governance in Indian Industry was taken by the **Confederation of Indian Industries (CII)** in 1996 that presented the draft Guidelines and the Code of Corporate Governance in April 1997. The Code recommended that the board should have a group of professionally acclaimed non-executive directors.

Report of the Kumar Mangalam Birla Committee on Corporate Governance constituted by SEBI in 1999 defined the term “independence” as “Independent directors are directors who apart from receiving director’s remuneration do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its

Background and Introduction – Independent Directors

subsidiaries, which in the judgement of the board may affect their independence of judgement” and strongly recommended having independent directors on the board of a company.

The SEBI Board then considered the recommendations of the Kumar Mangalam Birla Committee and decided to make the amendments to the listing agreement and then incorporated a new clause, namely **Clause 49 in the Listing Agreement** which includes provision regarding independent directors and defines the term Independent Directors.

Also, the **Reserve Bank of India** constituted another Consultative Group under the chairmanship of Dr. A.S. Ganguly to review the supervisory role of Boards of banks and financial institutions. The Group’s report was published in 2002. The most important suggestion of the Consultative Group was a format of undertaking to be obtained from independent/non-executive directors.

Thereafter, the then Ministry of Finance and Company Affairs constituted a **Committee on Corporate Audit and Governance under the Chairmanship of Shri Naresh Chandra**, which submitted its report in 2002. The report recommended that the non-executive directors should not be less than 50% of the board. It also emphasized the need for training for independent directors and it was recommended that Audit Committee members should be independent and have written charter for its functions.

Further, in its constant endeavor to improve the framework of Corporate Governance in India in line with the needs of a dynamic market, **SEBI constituted a Committee on Corporate Governance under the Chairmanship of Shri N.R. Narayana Murthy**, which submitted its report in 2003. The Report recommended that the company shall have an optimum combination of executive and non-executive directors. It also recommended that it is necessary to have a robust process in place for evaluation for non-executive board members.

Based on the recommendations of the said Committee including the establishment of whistleblower mechanism, the SEBI revised **Clause 49 of Listing Agreement in 2004**.

In 2005, **Dr. J.J. Irani Committee** made significant recommendations relating to the independent director in its report. The Committee was of the view that given the responsibility of the Board to balance various interests, the presence of independent directors on the Board of a Company would

improve Corporate Governance. The Committee was also of the view that a minimum of one-third of the total number of directors as independent directors should be adequate for a company having significant public interest, irrespective of whether the Chairman is executive or non-executive, independent or not. This was particularly important for public companies or companies with significant public interest.

Subsequently, the Ministry of Corporate Affairs (MCA), while striving towards its endeavour to ensure best Corporate Governance practices by corporates in India, had come out with a set of recommendatory guidelines, namely, the '**Corporate Governance Voluntary Guidelines, 2009**'.

In the meanwhile, the Department of Public Enterprises under the Ministry of Heavy Industries and Public Enterprises issued **Guidelines on Corporate Governance for Central Public Sector Enterprises in 2010**. These guidelines on Corporate Governance are formulated with the objective that the CPSEs follow the guidelines in their functioning and that the proper implementation of these guidelines would protect the interest of shareholders and relevant stakeholders. These guidelines are applicable to both listed as well as unlisted public sector enterprises.

Again in 2011, in encouraging the corporate sector to take into account the concerns of all the stakeholders, the Ministry of Corporate Affairs, Government of India has brought out "**National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business**" that will mainstream the subject of business responsibilities. The guidelines are a refinement over the Corporate Social Responsibility Voluntary Guidelines 2009. The objective of these guidelines is to help businesses to use their entrepreneurship to effectively contribute to economic and social betterment and to make their operation sustainable in a manner that enables them to meet their current needs without compromising the needs of the future generation.

With the enactment of the Companies Act, 2013 and the Rules thereon, the Government intended to improve corporate governance and to further strengthen regulations for the companies, keeping in view the changing economic environment as well as the growth of our economy. The Act introduced some of the new concepts in Corporate Governance like definition of Independent Directors along with the Code for Independent Directors and

Background and Introduction – Independent Directors

the Concept of Corporate Social Responsibility, Women Directors, Vigil mechanism.

The Securities and Exchange Board of India (SEBI) also has been ensuring from time to time that corporates needs to disclose their working by way of sending a report on the same along with the annual report of the company. Taking a cue of the global happenings, interests of the stakeholders, and others related to a corporate, many changes have been made by way of amendments in Clause 49 of the listing agreement. In the year 2000, the Securities and Exchange Board of India prescribed certain conditions for compliance of corporate governance in Clause 49 of the listing agreement and in October, 2004, it had further introduced various amendments in the said clause.

Further, Securities and Exchange Board of India (SEBI) in the year 2015 issued the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations') and amended the same from time to time intending to consolidate and streamline the provisions of existing listing agreements for different segments of capital markets such as equity shares (including convertibles), non-convertible debt securities, etc. and disclosure norms in relation thereto, ensuring better enforceability and alignment with the provisions of the Companies Act, 2013. SEBI has also accepted the propositions set by the committee constituted under the chairmanship of Mr. Uday Kotak which aims at making compliances and disclosures even more transparent.

To summarize, the major role that independent directors' in a company broadly play includes improving the overall corporate governance framework and risk management of the company. They are the trustees of good corporate governance.

International Scenario is given below for emergence of the concept of Independent directors

1.4 International Scenario

1. The Cadbury Report, UK (1992)

The highlights of the Cadbury Report are:

- The term independence was defined in the Report. Independence means "that apart from their directors' fees and shareholdings, they

TG on the Provisions of Independent Directors with Corporate ...

should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement.”

- Every public company to be headed by an effective board made up of a combination of executive and non-executive directors.
- Nomination Committee to carry out the selection process and to make recommendations to the Board for appointment.
- Non-executive directors to be appointed for a specified term.
- Remuneration Committee to be constituted of non-executive directors and to recommend to the Board remuneration of the executive directors.
- All listed companies should be required to constitute an Audit Committee consisting of non-executive directors to review financial statements and to investigate any matter within its terms of reference.

2. The Greenbury Report, UK (1995)

The highlights of the Greenbury Report are:

- Formation of Remuneration Committee
- Remuneration to non- executive directors

3. The Hampel Committee, UK (1998)

- The focus of the Hampel Committee was firmly on the finance issues addressed by Cadbury Committee and Greenbury Committee.
- The board should include a balance of executive directors and non-executive directors.

4. Derek Higgs Report, UK (2003)

The highlights of the Derek Higgs Report were:

- “A non-executive director is considered independent when the board determines that the director is independent in character and judgement and there are no relationships or circumstances which could affect, or appear to affect the director’s judgement.”
- Non-executive directors should constructively challenge and contribute to the development of strategy.

Background and Introduction – Independent Directors

- The senior independent director should be available to shareholders if they have a reason for concern to which the chief executive has failed to resolve.
- Non-executive directors should meet at least once in a year as a group without the chairman or executive director present.
- A comprehensive, formal, and tailored induction should always be provided to new non-executive directors to ensure an early contribution to the board.

5. Smith Report, UK (2003)

The highlights of the Smith Report were:

- Audit committees should include at least three members, who should all be independent non-executive directors.

6. The Sarbanes Oxley Act, US (2002)

The highlights of the Sarbanes Oxley Act were:

- Audit Committee members be independent and must be a member of the Board of Directors.

7. The New York Stock Exchange Rules (2002)

The highlights of the New York Stock Exchange Rules were:

- Majority of directors to be independent and strict independence criteria applied to all such directors.

Chapter II

Legal and Regulatory Framework relating to Independent Directors under the Companies Act, 2013

2 Legal and Regulatory Framework under the Companies Act, 2013

Chapter XI of the Companies Act, 2013 deals with appointment and qualification of directors. The provisions relating to Independent Directors are contained in sections 149 to 172 and Rules thereon i.e., The Companies (Appointment and Qualification of Directors) Rules, 2014. The Act has also introduced Schedule IV which is a Code for Independent Directors.

2.1 Definition of Independent Director (Section 2 (47) read with Section 149 (6))

Independent Director has been defined as a Director other than Managing Director or whole-time Director or nominee director, who:

- in the opinion of the Board is a person of integrity and possess relevant expertise and experience, (For govt company, the term "Board" shall be substituted with "Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government")
- is/was not the promoter of the company and its subsidiary or associate company,
- is not related to promoter or Director in the company, holding company, subsidiary company or associate company,
- has or had no pecuniary relationship other than remuneration as such director or having transaction not exceeding 10% 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 year or during the current year, (this requirement is not applicable in case of Government Company)

Legal and Regulatory Framework relating to Independent Directors ...

- none of whose relatives—
 - ✓ 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. The relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two percent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
 - ✓ 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;
 - ✓ 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
 - ✓ has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two percent. or more of its gross turnover or total income singly or in combination with the transactions referred above
- who, neither himself nor any of his relatives—
 - ✓ holds or has held the position of a KMP or is or has been employee of the company 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. In the case of a relative who is an employee, this restriction 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

TG on the Provisions of Independent Directors with Corporate ...

- any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten percent. 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 a CEO or director of any non-profit organisation that receives twenty-five percent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company.
- who possesses such other qualifications as follows (Rule 5 of Companies (Appointment and Qualification of Directors) Rules, 2014 as amended from time to time:
 - ✓ 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.
 - ✓ None of the relatives of an independent director,
 - is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or
 - 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 an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.

2.2 Appointment, Qualifications, Resignation, Removal and Vacation

2.2.1 Appointment and Reappointment (Section 149 and Schedule IV)

Every listed public company shall have at least 1/3rd of total number of

Legal and Regulatory Framework relating to Independent Directors ...

directors as independent directors. In case of unlisted public companies, the Central Government may prescribe the minimum number of independent directors.

An unlisted public company shall have at least two independent directors in its Board if on the last date of the latest audited financial statements it has:

- paid-up capital INR 10.00 crores or more or
- having turnover of INR 100.00 crores or more or
- having aggregate outstanding loans or borrowings, debentures, deposits, exceeding INR 50.00 crores.

However, the following class of unlisted public companies shall not be required to comply with the above:

- joint venture,
- Wholly owned subsidiary or
- A dormant company (as defined in section 455).

Bearing in mind the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Independent director shall not hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director: An independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

In respect of retirement of directors by rotation, provisions of Section 152 (6) and (7) shall not be applicable to the appointment of independent directors.

Certain exemptions have been provided to Section-8 companies vide notification no G.S.R 466(E) dated 5th June, 2015 and notification no G.S.R 584 (E) dated 13.06.2017 and accordingly, Composition of Board of Directors of such companies may be decided by the Board itself and the ceiling on maximum number of directors shall not apply. Further, Section 8 company may appoint more than 15 directors by passing ordinary resolution.

Moreover, they have been given liberty for appointment of any person on the Board, and thus they need not appoint Independent Directors. As a result,

TG on the Provisions of Independent Directors with Corporate ...

the provisions related to Independent Directors as provided u/s 150 of the Companies Act, 2013 are not required to be followed by these type of companies

However, if any other Act, Rules, Regulations are applicable to such kind of companies which mandates appointment of Independent Directors then such provision of other law shall be applicable and adhered to.

Schedule IV to the Companies Act also contains the following guidelines relating to the appointment of whole-time directors:

- **Manner of appointment:**
 - a) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is an appropriate balance of skills, experience and knowledge in the Board to enable the Board to discharge its functions and duties effectively.
 - b) The appointment of an independent director(s) of the company shall be approved at the meeting of the shareholders.
 - c) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the Rules made thereunder and that the proposed director is independent of the management.
 - d) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out:
 - the term of appointment;
 - the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
 - the fiduciary duties that come with such an appointment along with accompanying liabilities;
 - provision for Directors and Officers (D and O) insurance, if any;
 - the Code of Business Ethics that the company expects its directors and employees to follow;

Legal and Regulatory Framework relating to Independent Directors ...

- the list of actions that a director should not do while functioning as such in the company; and
 - the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.
- e) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.
- f) The terms and conditions of the appointment of independent directors shall also be posted on the company's website.
- **Re-appointment after performance evaluation:**
- a) The re-appointment of independent director shall be on the basis of the report of performance evaluation.
- b) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.
- c) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

2.2.2 Qualifications and Disqualifications

The very first qualification is that the person has been allotted DIN or any other number and he shall furnish his DIN or such other number to the company. He shall also furnish a declaration that he is not disqualified under the Act.

He shall not act as a director unless he has given his consent to act as Director to the company (In Form DIR 2) and company has filed such consent (in Form DIR-12) with ROC within 30 days

A person is not eligible to be appointed as director If he (Section 164):

- is of unsound mind,
- is an un-discharged insolvent or,
- has applied for being adjudicated as insolvent and application is pending or,
- has been disqualified by an order passed by Tribunal or,

TG on the Provisions of Independent Directors with Corporate ...

- fails to pay calls on the shareholders and six months have elapsed from the last date of payment of call or,
- is the director of the company which has not filed financial statement and annual return for the period of continuous three financial years or failed to repay the deposit obtained by it and the interest thereon or failed to redeem any debt on the due date and pay interest thereon or failed to pay any dividend declared for one year or more.

Following additional dis-qualifications have been provided in the Act. A person is not eligible to be appointed as a director if he has:

- convicted for related party transaction at any time during last 5 years,
- not obtained DIN,
- not complied with the provision of section 165(1) i.e., holding office of directorship in more than 20 companies,
- convicted for any offence for imprisonment for 7 years or more or
- convicted imprisonment for not less than 6 months or a period of 5 years which has not lapsed.

Private company may by its Articles provide for additional disqualifications.

Where a person is appointed as a director of a company that is in default as given above, he shall not incur the disqualification for a period of six months from the date of his appointment. In case of conviction, the disqualifications shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

2.2.3 Maximum number of directorships (Section 165)

No person is allowed to hold office as a director, including any alternate directorship, in more than twenty companies at the same time.(after commencement of the Act) The maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

For reckoning the limit of directorships of twenty companies, the directorship in a Section 8 company and a dormant company shall not be included

Legal and Regulatory Framework relating to Independent Directors ...

However, section 8 companies can have any number of directors on the board.

2.2.4 Resignation (Section 168)

- The date of resignation of an Independent Director shall be the date of the receipt of letter from the Director or any date mentioned therein, whichever is later.
- An independent director who resigns from the Board of the company shall be replaced by a new independent director within three months from the date of such resignation.
- Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation the requirement of replacement by a new independent director shall not apply.

2.2.5 Removal (Section 169)

- A director can be removed by ordinary resolution after giving reasonable opportunity but the company cannot remove the Director appointed by the Tribunal.
- Special notice is required to be given to the members. An opportunity will be given to such Director for hearing. Director will be entitled to give representation.
- An independent director who has been removed from the Board of the company shall be replaced by a new independent director within three months from the date of such removal.
- The director who was removed will not be appointed by the Board as the Director.

2.2.6 Vacation of Office (Section 167)

A director shall vacate the office of director If he:

- incurs any disqualification specified in Section 164,
- incurs disqualification under section 164(2), the office of director shall become vacant in all the companies other than the company which is in default under that sub-section or,
- fails to attend meetings for a consecutive period of 12 months even if leave of absence is granted or,

TG on the Provisions of Independent Directors with Corporate ...

- acts in contravention of provision 164 (entering into contract or arrangement in which he is interested directly or indirectly) or,
- fails to disclose the interest in any contract u/s 184 or
- becomes disqualified by order of the Court or,
- is removed in pursuant to provisions of this act or,
- having been appointed a director by virtue of his holding any office in the holding, subsidiary or associate company, ceases to hold such office in that company.

Any intermittent vacancy of an independent director shall be filled by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later. Where a company ceases to fulfil any of the three conditions laid down for three consecutive years, it shall not be required to comply with the provisions relating to Independent Director until such time as it meets any of such conditions.

If due to the composition of the Audit Committee or by operation of law to a specified class of companies, a higher number of independent directors have been specified, it shall comply with that requirement.

2.3 Remuneration of Independent Directors (Section 149)

Not taking into account any of the provisions of the Act except the provisions of sections 197 and 198, an independent director is not entitled to any stock option however he may receive remuneration by way of fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members

2.4 Powers and Duties of Independent Directors

2.4.1 Powers (Section 179 and 181, 182 and 183)

An independent director has powers collectively as a member of the Board as well as an independent director. The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise or do according to the provisions of the Act or in the Memorandum of association or articles or in any regulations and not inconsistent therewith except powers which can be exercised, either under the Act or by the memorandum or articles by the company in general meeting.

Legal and Regulatory Framework relating to Independent Directors ...

The directors exercise the following powers on behalf of the company by means of passing a resolution in the meeting of the Board:

- To make calls on shareholders in respect of money unpaid on their shares;
- To authorize buy-back of securities under section 68;
- To issue securities, including debentures, whether in or outside India;
- To borrow monies;
- To invest the fund of the company;
- To grant loans or give guarantee or provide security in respect of loans;
- To approve the financial statement and the board's report;
- To diversify the business of the company;
- To approve amalgamation, merger or reconstruction;
- To take over a company or acquire a controlling or substantial stake in another company;
- To make political contributions;
- To appoint or remove key managerial personnel;
- To appoint internal auditors and secretarial auditor;

However, the Board of Section 8 companies can decide the matters relating to borrow monies; to invest the funds of the company and to grant loans or give guarantee or provide security in respect of loans by circulation instead of at a meeting.

The Board of Directors of a company may contribute to bona fide charitable and other funds. Prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial year.

A company (other than a Government company and a company that has been in existence for less than three financial years,) may contribute any amount directly or indirectly to any political party by passing a resolution, regardless of whatever stated in any other provisions of the Act

The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, , contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence, irrespective of anything contained elsewhere.

2.4.2 Restriction on powers of Board (Section 180)

Following are the restriction on powers of Board which are not applicable to a private company:

- to sell, lease or 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.
- to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed the aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business:

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 withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

- to remit, or give time for the repayment of, any debt due from a director.

In addition to the above-mentioned collective powers, the independent director has following powers also:

- Right to summon board meetings
- Right to receive notice of board meetings - Section 173(1)
- Right to receive draft circular resolution - Section 175(1)
- Right to make attendance and right to ask for leave of absence

Legal and Regulatory Framework relating to Independent Directors ...

- Right to participate and vote at board meetings (Section 175(1))
- Right to record his dissent - Section 118(4)
- Right to inspect minutes of board meetings
- Right to receive sitting fees - Section 197
- Right to inspect books of accounts- Section 128(4)
- Right to be heard at the general meetings - Section 169
- Right to compensation for loss of office – Section 202

2.4.3 Duties

The major responsibility of an independent director is to provide a general counsel and different perspective on matters. They should also provide guidance on particular issues before they are raised at board meetings. The specialist roles of an independent director will be carried out at the board sub-committee, especially in listed companies.

It is a primary responsibility of the board of directors to see that the expectation gap is bridged over a period of time by taking continuous improvement efforts at the corporate level as well through the managerial team involved in the company's operations. Lack of orientation by the board in bridging such an expectation gap would not only de-motivate the stakeholders but also hit on the sustainable growth model in the long run.

The role of individual director while dealing with the expectations of the stakeholders is very much important. The individual director is expected to be a leader of par excellence in understanding the stakeholders' problems and find out the early solutions.

The duties of independent directors are enlisted in Part III of Schedule IV which provide that an independent director shall—

- undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- 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;
- strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;

TG on the Provisions of Independent Directors with Corporate ...

- participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- strive to attend the general meetings of the company;
- 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;
- keep themselves well informed about the company and the external environment in which it operates;
- not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- 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;
- 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;
- report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- act within their authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- 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.

An independent director is very much a part of the Board and like the rest of the Board; he is involved in setting up the long term and short term strategies of the company.

The professional qualities of the independent directors will help the Board in arriving at correct and efficient measures for achieving its goals. Usually, independent directors will be appointed from amongst professionally and intellectually capable individuals having wide knowledge and experience in commerce, industry and related fields. Their knowledge and experience can be used by the company for improving its business strategies.

Being totally independent of the company or its management, the independent directors can provide a candid view of the faults or shortcomings of the company's game plan and can suggest measures for improvement.

2.5 Other Exemptions to Private Companies, Section-8 Companies and Government Companies

2.5.1 Other Exemptions to Private Companies

The other exemptions provided to private companies u/s 462 of the Companies Act, 2013 are as follows:

- Start up companies are required to hold only 2 meetings of the Board in a year
- For private companies interested director may also be counted for quorum in such meeting after disclosure of his interest pursuant to section 184.
- Section 184(2) shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest.
- The provisions relating to Loan to Directors etc as provided u/s 185 of the Companies Act, 2013 is not applicable to a private company
 - In whose share capital no other body corporate has invested money,
 - if the borrowings from such a company from banks or financial institution or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower, and
 - such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section i.e., section 185
- A member of the private company can vote on resolution, to approve any contract or arrangement which may be entered into by the company, even if such member is a related party:

2.5.2 Other Exemptions to Section-8 Companies

As per notification no G.S.R 466(E) dated 5th June, 2015 and notification no G.S.R 584 (E) dated 13.06.2017, following exemptions have been provided with regard to section 8 companies.

In case of section 8 company:

- A director appointed need not give its consent to the Board and also not required to file the same with the Registrar. Further, the provisions related to the consent from independent directors are also not applicable.
- Where articles of such companies provide for election of directors by ballot, provisions of Section 160 shall not apply
- Such companies are required to hold mandatorily only one meeting of Board of Directors within every six calendar months.
- They are required to have quorum of either eight members or twenty - five per cent. of its total strength whichever is less. Further, the quorum shall not be less than two members
- Since Section 8 companies are not required to appoint Independent Directors, the Audit Committee is not required to have Independent Directors
- Section 8 companies are exempted from constitution of Nomination and remuneration committee and stakeholders relationship committee
- Directors are required to disclose the interest if the transaction with reference to Section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.
- Exemption provided for loan and funding- Section 8 company in which 26% or more of paid-up share capital is held by the central government or one or more state governments or both, may give interest-free loan for funding industrial R&D projects in furtherance of its objects as stated in its Memorandum of Association

2.5.3 Other Exemptions to Government Companies

The other exemptions provided to Government Companies are as follows:

- A director appointed in a Government Company need not give its consent to the Board and also not required to file the same with the

Legal and Regulatory Framework relating to Independent Directors ...

Registrar where appointment of such director is done by the Central Government or State Government, as the case may be

- The provision of rotation of directors as provided under sub-section (6) and (7) of Section 152 is not applicable to:
 - a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
 - a subsidiary of a Government company, referred to in above, in which the entire paid-up share capital is held by that Government company
- The provisions w.r.t. right of persons other than retiring directors to stand for directorship u/s 160 and appointment of directors to be voted individually u/s 162 is not applicable to government companies as enumerated in above bullet point.
- The provisions w.r.t re-appointment of director as given under section 164(2) shall not be applicable in case of Govt. Companies
- Section 170 which deals with Register of Director and KMP and their shareholding shall not apply to Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments

Chapter III

Legal and Regulatory Framework Relating to Independent Directors of Listed Entities

3 Legal & Regulatory Requirements relating to Independent Directors under SEBI

The companies whose securities are listed on stock exchanges in India, in addition to the Companies Act, 2013 are also governed by the provisions of the Securities and Exchange Board of India Act, 1992 (SEBI Act) and Guidelines and Regulations issued by SEBI under the Act.

SEBI has issued the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) in 2015 wherein it replaced Clause 49 of the Listing Agreement.

LODR have been amended at a number of times since their applicability. Another regulation by SEBI which is important from independent directors' point of view is SEBI (Prohibition of Insider Trading) Regulations, 2015 (PITR).

These two Regulations contain a number of requirements and obligations to be complied with the companies and their Board of Directors.

3.1 Additional Requirements under Relevant Provisions of SEBI Act and Directions Issued under that Act

3.1.1 Requirements as per LODR

3.1.1.1 Definition of Independent Director (Regulation 16 (1) (b))

The term "Independent director" has been defined under the LODR which is wider than the definition under the Companies Act, 2013.

As per Regulations "Independent Director" means a non-executive director, other than a nominee director of the listed entity:

- who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;

Legal and Regulatory Framework Relating to Independent Directors ...

- who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or member of the promoter group of the listed entity;
- who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company
- who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- none of whose relatives has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- who, neither himself nor whose relative(s) —
 - a) holds or has held the position of 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;
 - b) 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 listed entity or its holding, subsidiary or associate company; or
 - any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
 - c) holds together with his relatives two per cent or more of the total voting power of the listed entity; or

- d) is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity;
- e) is a material supplier, service provider or customer or a lessor or lessee of the listed entity;
- who is not less than 21 years of age.
- 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.
- a non-executive director who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or member of the promoter group of the listed entity.

This definition clearly shows the conditions required to be fulfilled for the title of 'independent director' to be bestowed upon a director. An independent director essentially has to be a non-executive director i.e. a director who is not an employee of the company. But every non-executive director is not an independent director.

A non-executive director has to fulfil above stated requirements before he can be termed as an 'independent director'.

3.1.1.2 Composition of Independent Directors (Regulation 17)

The requirements provided by LODR are different from those under the Companies Act. As per the Regulations the composition of the board of directors of the listed entity shall be as follows:

- board of directors shall have an optimum combination of executive and non-executive directors with at least one-woman director and not less than fifty per cent. of the board of directors shall comprise of non-executive directors; Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019, and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;
- where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of

Legal and Regulatory Framework Relating to Independent Directors ...

independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors.

- where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.
- The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.
- where the listed company has outstanding SR equity shares, at least half of the board of directors shall comprise of independent directors.

3.1.1.3 Qualification of Independent Directors (Regulation 17)

- Listed entity shall not appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy-five years unless a special resolution is passed to that effect, and in such a case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.
- With effect from April 1, 2022³, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -
 - ✓ be a non-executive director;
 - ✓ not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013:
 - ✓ The board of directors shall lay down a code of conduct for all members of the board of directors and senior management of the listed entity.
 - ✓ The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.

³ Substituted for “April 1, 2020” by the SEBI (Listed Obligations and Disclosure Requirements) (Amendment) Regulations, 2020 w.e.f. 10.01.2020

3.1.1.4 Maximum number of directorships (Regulation 17A)

The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -

- a person shall not be a director in more than eight listed entities with effect from April 1, 2019, and in not more than seven listed entities with effect from April 1, 2020. A person shall not serve as an independent director in more than seven listed entities.
- any person who is serving as a whole-time director/managing director in any listed entity shall serve as an independent director in not more than three listed entities.

For the purpose of this sub-regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.

3.1.1.5 Remuneration (Regulation 17 (6))

Provisions relating to remuneration of Independent Directors are as follows:

- The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.
- The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without the approval of the Central Government.
- The approval of shareholders shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.
- The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, details of the remuneration thereof.
- Independent directors shall not be entitled to any stock option.
- The fees or compensation payable to executive directors who are promoters or members of the promoter group requires approval of the

Legal and Regulatory Framework Relating to Independent Directors ...

shareholders by special resolution in general meeting, if-

- ✓ the annual remuneration payable to such executive director exceeds rupees 5 crores or 2.5 per cent of the net profits of the listed entity, whichever is higher; or
- ✓ where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:

For this purpose, net profits shall be calculated as per section 198 of the Companies Act, 2013.

3.1.1.6 Corporate governance requirements with respect to subsidiary of listed entity (Regulation 24)

- At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.
- the term “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, for this purpose.

3.1.1.7 Obligations with respect to independent directors (Regulation 25)

Obligations with respect to Independent Directors of listed entities are as follows:

- No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.
- The maximum tenure shall be in accordance with the Companies Act, 2013 and rules made thereunder, in this regard, from time to time.
- shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.
- in the meeting referred above shall, *inter alia*-
 - ✓ review the performance of non-independent directors and the board of directors as a whole;

TG on the Provisions of Independent Directors with Corporate ...

- ✓ review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors;
- ✓ assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.
- shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of the board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in the regulations.
- who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by a listed entity at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later. Where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.
- The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following:
 - ✓ nature of the industry in which the listed entity operates;
 - ✓ business model of the listed entity;
 - ✓ roles, rights, responsibilities of independent directors; and
 - ✓ any other relevant information.
- shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.

Legal and Regulatory Framework Relating to Independent Directors ...

- The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director after undertaking a due assessment of the veracity of the same.
- With effect from October 1, 2018, the top 500 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.

3.1.2 Relaxations to Listed Entities on SME Exchange

The compliance with the corporate governance provisions as specified in regulations 17, 17A, 24 and 25 of LODR shall not apply, in respect of the listed entity which has listed its specified securities on the SME Exchange.

3.1.3 Requirements as per SEBI (Prohibition of Insider Trading) Regulations, 2015

An independent director is well connected to the management and the operations of the entity. Being a director, he is always aware of the sensitive areas and information of the entity. Therefore, it is the responsibility of the independent director that he would not disclose or communicate price sensitive information except for legitimate purposes, performance of duties, or discharge of legal obligations. Also, he would not take the benefit of this information and do not involve in Insider Trading.

3.1.3.1 Definition of Insider (Regulation 2)

"Insider" means any person who is:

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

3.1.3.2 Definition of Connected person (Regulation 2)

"Connected person" means,-

- any person who is or has during the six months prior to the concerned act,
- been associated with a company, directly or indirectly, in any capacity including
 - ✓ by reason of frequent communication with its officers or

TG on the Provisions of Independent Directors with Corporate ...

- ✓ by being in any contractual, fiduciary or employment relationship or
- ✓ by being a director, officer or an employee of the company or
- holds any position including a professional or business relationship between himself and the company whether temporary or permanent,
- that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

Further, the following persons shall also be deemed to be connected persons unless the contrary is established, -

- an immediate relative of connected persons specified in clause (i); or
- a holding company or associate company or a subsidiary company; or
- an intermediary as specified in section 12 of the Act or an employee or director thereof; or
- an investment company, trustee company, asset management company or an employee or director thereof; or
- an official of a stock exchange or of clearing house or corporation; or
- a member of the board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
- a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
- an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
- a banker of the company; or
- a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

**3.1.3.3 Definition of Unpublished Price Sensitive Information
(Regulation 2)**

"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:

- financial results;
- dividends;
- change in capital structure;
- mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- changes in key managerial personnel.

Therefore, not only an independent director but any person connected to him and have direct or indirect access or possess such price sensitive information such as his relatives or any entity in which he has control or possess some kind of interest, etc. are considered as "Insider" and they need to abide by these regulations.

3.1.3.4 Obligations to all Insiders (Regulation 3)

Regulation 3 intends to cast an obligation on all insiders (including independent directors) to handle such information with care and to deal with when transacting their business strictly on a need-to-know basis. It intends to lead organizations to develop practices based on need-to-know principles for the treatment of information in their possession. The regulation also intends to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information.

- insider shall not communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, the performance of duties or discharge of legal obligations.
- No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a

company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, the performance of duties or discharge of legal obligations.

- Any person who is in receipt of unpublished price sensitive information pursuant to a “legitimate purpose” shall be considered an “insider” for purposes of these regulations and due notice shall be given to such persons to maintain the confidentiality of such unpublished price sensitive information in compliance with these regulations.
- The board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

3.1.3.5 Requirement of Disclosure for every Insider (Regulation 6 and 7)

Regulation 6 and Regulation 7 deals with the disclosure requirements for every insider. The disclosures to be made by any person shall include those relating to trading by such person’s immediate relatives, and by any other person for whom such person takes trading decisions. While Regulation 6 provides for general disclosures, Regulation 7 requires key persons (which include independent directors also) of the organisation to specifically disclose information related to their holdings and trading.

- **Initial Disclosures**
 - ✓ Every promoter, member of the promoter group, key managerial personnel and director of every company whose securities are listed on any recognized stock exchange shall disclose his holding of securities of the company as on the date of these regulations taking effect, to the company within thirty days of these regulations taking effect;
 - ✓ Every person on appointment as key managerial personnel or a director of the company or upon becoming a promoter or member of the promoter group 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.

- **Continual Disclosures**

- ✓ Every promoter member of the promoter group, designated person 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;
- ✓ Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

- **Disclosures by other connected persons.**

- ✓ Any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.
- ✓ This is an enabling provision for listed companies to seek information from those to whom it has to provide unpublished price sensitive information. This provision confers discretion on any company to seek such information. For example, a listed company may ask that a management consultant who would advise it on corporate strategy and would need to review unpublished price sensitive information, should make disclosures of his trades to the company.

3.1.3.6 Institutional Mechanism for Prevention of Insider trading (Regulation 9A)

The regulations also provide that the managerial persons should take various measures to secure unpublished price sensitive information and prevent insider trading. The independent directors can play an important role in takes initiatives, framing and regulating policies to prevent insider trading in the company.

Regulation 9A elaborates in detail areas related to a good internal control system, the role of managerial persons and the Audit Committee to prevent

TG on the Provisions of Independent Directors with Corporate ...

insider trading in the organization. The independent directors should adhere and ensure compliance in respect of these regulations.

The Chief Executive Officer, Managing Director, or such other analogous person of a listed company, intermediary or fiduciary shall put in place an adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

- The internal controls shall include the following:
 - ✓ all employees who have access to unpublished price sensitive information are identified as designated person;
 - ✓ all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;
 - ✓ adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;
 - ✓ lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
 - ✓ all other relevant requirements specified under these regulations shall be complied with;
 - ✓ periodic process reviews to evaluate the effectiveness of such internal controls.
- The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with regulation 9 and sub-regulations (1) and (2) of this regulation.
- The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.

Legal and Regulatory Framework Relating to Independent Directors ...

- Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by the board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.
- The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
- If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

3.2 Requirements relating to registered Mutual Funds

All mutual funds registered with SEBI are governed by SEBI (Mutual fund) Regulations, 1996. It has been provided in Regulation 16(5) that an independent trustee should not be associated in any manner with the sponsor. Mutual funds are required to classify directors of its AMC and Trustee Company as “associate or independent” and composition of directors have to comply with the requirement of 50% or 2/3rd independent directors.

It has been clarified that the persons providing any type of professional services to the mutual fund, asset management company, Trustee Company and the sponsors shall be considered as associate directors of AMCs or trustee companies. The persons having any material pecuniary relationship with these entities which in the judgment of the trustees may affect the independence of directors shall be treated as associate directors

3.3 Additional requirements relating to Listed Indian Commercial Banks

In April 1994, itself the Reserve Bank of India has stipulated that all Indian commercial banks shall set up Audit Committees of the Board of the banks.

Reserve Bank also laid down the constitution, role and functions of such audit committees.

SEBI exempted public and private sector banks and financial institutions from implementation of recommendations of Committee on Corporate Governance issued vide its circular SMDPR/Policy/CIR-10/2000 dated February 21, 2000. Subsequently, at the request of SEBI, the Reserve Bank of India issued guidelines to all those commercial banks listed in stock exchanges through DBOD no. BC.112/08.138.001/2001-02 dated 4.6.2002 directing the banks to harmonise their corporate governance requirements with the requirements of SEBI, wherever considered appropriate.

3.4 Additional requirements related to Listed Public Sector Undertakings

Each Central Public Sector Enterprise (CPSE) is required to institutionalize good Corporate Governance practices broadly in conformity with the SEBI Guidelines. The non-listed CPSEs shall follow the Guidelines on Corporate Governance issued by the Department of Public Enterprises (DPE), which are mandatory.

In so far as listed CPSEs are concerned, they have to follow the SEBI Guidelines on Corporate Governance. In addition, they shall follow those provisions in Guidelines issued by DPE which do not exist in the SEBI Guidelines and also do not contradict any of the provisions of the SEBI Guidelines.

Important guidelines on Corporate Governance for listed and unlisted CPSEs are given below:

- The Board of Directors of the company shall have an optimum combination of Functional, Nominee and Independent Directors. The number of Functional Directors (including CMD/MD) should not exceed 50% of the actual strength of the Board. The number of Nominee Directors appointed by Government/other CPSEs shall be restricted to a maximum of two.
- In case of a CPSE listed on the Stock Exchanges and whose Board of Directors is headed by an Executive Chairman, the number of Independent Directors shall be at least 50% of Board Members; and in case of all other CPSEs (i.e. listed on Stock Exchange but without an

Legal and Regulatory Framework Relating to Independent Directors ...

Executive Chairman, or not listed CPSEs), at least one-third of the Board Members should be Independent Directors.

- The expression “Independent Director” shall mean a part-time Director of the company who:
 - a) apart from receiving Directors’ remuneration, does not have any material pecuniary relationship or transaction with the company, its Directors, its senior management or its holding company, its subsidiaries and associates which may affect the independence of the Director;
 - b) is not related to persons occupying management positions at the Board level or at one level below the Board;
 - c) has not been a senior executive or managerial personnel of the company in the immediately preceding three financial years;
 - d) Is not a partner or an executive, or was not a partner or an executive during the preceding three years, of any of the following:
 - the statutory audit firm or the internal audit firm or tax audit firm or energy audit firm or management audit firm or risk audit firm or insurance audit firm that is associated with the company, and
 - the panel advocate(s) or legal firm(s) or consultant(s) and consulting firm(s) or expert(s) that have a material association with the company.
 - e) is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares.
- Nominee Directors appointed by an institution that has invested in or lent to the company shall be deemed to be Independent Directors.
- All fees/compensation, if any, paid to part-time Directors, including Independent Directors, shall be fixed by the Board of Directors in compliance with the provisions stated in the DPE guidelines and the Companies Act.

A director shall not be a member in more than 10 committees or act as chairman of more than five committees across all companies in which he is a

director. Furthermore, it should be a mandatory annual requirement of every director to inform the company about the Committee positions he occupies in other companies and notify changes as and when they take place.

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. For the purpose of reckoning the limit under the sub-clause, chairmanship/membership of the audit committee and the Shareholders' Grievance Committee alone shall be considered.

3.5 Code of Conduct

- The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be circulated and also posted on the website of the company.
- All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by its Chief Executive.
- Guidelines and policies evolved by the Central Government with respect to the structure, composition, selection, appointment and service conditions of Boards of Directors and senior management personnel shall be strictly followed.
- There shall be no extravagance in expenditure on the part of Board members and senior management personnel. CPSEs executives shall be accountable for their performance in conformity with established norms of conduct.
- A clear definition of the roles and the division of responsibilities between the Board and the Management is necessary to enable the Board to effectively perform its role. The Board should have a formal statement of Board Charter which clearly defines the roles and responsibilities of the Board and individual Directors. The Board of each CPSE may be encouraged to articulate its Corporate Governance objectives and approach (within the broad parameters of these guidelines and the general perception of business risk) to satisfy the expectations of its majority shareholders and other stakeholders.

3.6 Additional requirements relating to Independent Directors in Indian Companies Listed Abroad

Regulation 72 of LODR provides that the listed entity shall comply with the corporate governance provisions as applicable in its home country and other jurisdictions in which its equity shares are listed. The listed entity shall submit to stock exchange a comparative analysis of the corporate governance provisions that are applicable in its home country and in the other jurisdictions in which its equity shares are listed along with the compliance of the same vis-à-vis the corporate governance requirements applicable under regulation 17 to regulation 27, to other listed entities.

The provisions of the Sarbanes Oxley Act, 2002 are applicable to those Indian companies which have issued securities in US markets either directly or through ADRs/GDRs as there is no specific exemption to non-US companies. Similarly, Indian subsidiary companies of US listed companies shall also have to comply with the provisions of the Act in full. In terms of the provisions of “SAS 70 – Reports on the Process of Transactions by Service Organisations”, the BPO industry in India shall be required to comply with the provision relating to internal control as mentioned in section 404 of the Act.

By section 301, the Act has amended Section 10A of the Securities Exchange Act, 1934 which requires the issuer to comply with standards relating to the audit committee. The section requires that the audit committee members shall be independent directors and shall not accept any consultancy, advisory or other compensatory fee from the issuer. He shall not be an affiliated person of the issuer or its subsidiaries.

In the case of Indian companies listed in any stock exchange in the USA are known as ‘foreign private issuers’ and are permitted to follow the home country practice in lieu of the provisions of this Section 303A, except that such companies are required to comply with the requirements of Sections 303A.06, 303A.11 and 303A.12(b) and (c).

The term foreign private issuer means any foreign issuer other than a foreign government except for an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

- More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and

TG on the Provisions of Independent Directors with Corporate ...

- Any of the following:
 - ✓ The majority of the executive officers or directors are United States citizens or residents;
 - ✓ More than 50 percent of the assets of the issuer are located in the United States; or
 - ✓ The business of the issuer is administered principally in the United States.

303A.06 deals with the Audit Committee and provides that

- Listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Exchange Act.
- The Audit Committees shall be required to establish a procedure for receipt, retention, treatment of complaints received by the issuer regarding accounting, internal accounting control and audit matters, the confidential, anonymous submission by the employees regarding questionable accounting and auditing matters

303A.11 deals with Foreign Private Issuer Disclosure and provides that

- Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards.
- Foreign private issuers must make their U.S. investors aware of the significant ways in which their corporate governance practices differ from those required of domestic companies under NYSE listing standards. However, foreign private issuers are not required to present a detailed, item-by-item analysis of these differences. Such a disclosure would be long and unnecessarily complicated. Moreover, this requirement is not intended to suggest that one country's corporate governance practices are better or more effective than another. The Exchange believes that U.S. shareholders should be aware of the significant ways that the governance of a listed foreign private issuer differs from that of a U.S. listed company. The Exchange underscores that what is required is a brief, general summary of the significant differences, not a cumbersome analysis.
- A foreign private issuer that is required to file an annual report on Form 20-F with the SEC must include the statement of significant

Legal and Regulatory Framework Relating to Independent Directors ...

differences in that annual report. All other foreign private issuers may either (i) include the statement of significant differences in an annual report filed with the SEC or (ii) make the statement of significant differences available on or through the listed company's website. If the statement of significant differences is made available on or through the listed company's website, the listed company must disclose that fact in its annual report filed with the SEC and provide the website address.

303A.12 deals with Certification Requirements and provides that

- Each listed company CEO must certify to the NYSE each year that he or she is not aware of any violation by the listed company of NYSE corporate governance listing standards, qualifying the certification to the extent necessary. The CEO's annual certification regarding the NYSE's corporate governance listing standards will focus the CEO and senior management on the listed company's compliance with the listing standards.
- Each listed company CEO must promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any non-compliance with any applicable provisions of this Section 303A.
- Each listed company must submit an executed Written Affirmation annually to the NYSE. In addition, each listed company must submit an interim Written Affirmation as and when required by the interim Written Affirmation form specified by the NYSE.

Chapter IV

Thresholds under the Companies Act 2013

4 Thresholds under the Companies Act' 2013

Various Thresholds under the Companies Act 2013 are given below:

S. No.	Particulars	Criteria for appointment
1.	Independent Directors	The following class or classes of Companies shall have at least two directors as independent directors: - ⁴The Public Companies having paid up share capital of 10 crore rupees or more; - The Public Companies having turnover of 100 crore rupees or more; - The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees; If a company is required to appoint a higher no. of independent directors due to composition of Audit Committee, such higher no. of independent directors.
2.	Women Director	The following class of Companies shall appoint at least one-woman director: - Every listed company; - Every other public company having: - Paid up share capital of 100 crore rupees or more;

^{4&3} The following classes of unlisted public company shall not be covered under sub-rule (1), namely: -

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

Thresholds under the Companies Act 2013

		ii) Turnover of 300 crore rupees or more
3.	Key Managerial Personnel	Every listed company and every other public company having a paid-up share capital of 10 crore rupees or more shall have whole-time key managerial personnel.
4.	Audit Committee/ Nomination Committee	The Board of directors of every listed public companies and the following classes of companies shall constitute an Audit Committee and a Nomination and remuneration Committee of the Board: - ³All public companies with a paid-up capital of 10 crore rupees or more; - All public companies having turnover of 100 crore rupees or more; - All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.
5.	Stakeholders Relationship Committee	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 Stakeholder Relationship committee.
6.	Establishment of Vigil Mechanism	Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances: - - The Companies which accept deposits from the public; - The Companies which have borrowed money from banks & public financial institutions in excess of 50 crore rupees.
7.	Auditor	All unlisted public company having paid up share capital of Rs. 10 crore or more;

TG on the Provisions of Independent Directors with Corporate ...

		2. All private limited companies having paid up share capital of Rs. 50 crore or more; 3. All companies having paid up share capital of below threshold limit mentioned in (1) and (2) above, but having public borrowings from financial institutions, banks or public deposits of Rs. 50 Crores or more shall not appoint or reappoint: - a) An individual as auditor for more than one term of 5 consecutive years; and b) An audit firm as auditor for more than two terms of five consecutive years.
8.	Internal Auditor	The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, which may be either an individual or a partnership firm or a body corporate namely: - 1. Every listed company; 2. Every unlisted public company having: - a) Paid up share capital of 50 crore rupees or more during the preceding financial year; or b) Turnover of 200 crore rupees or more during the preceding financial year; or c) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; d) Outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; 3. Every private company having: - a) Turnover of 200 crore rupees or more during the preceding financial year; or

Thresholds under the Companies Act 2013

		b) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year;
9.	Corporate Social Responsibility	Every company having: - 1. Net worth of Rs. 500 crore or more; 2. Turnover of Rs. 1000 crore or more; 3. Net Profit of Rs. 5 crore or more; During immediately preceding financial year shall constitute a Corporate Social Responsibility Committee.

Chapter V

Role and Responsibilities of Independent Directors

5 Role of Independent Directors in General

5.1 Code of Conduct

An independent director shall abide by the provisions specified in Schedule IV to the Companies Act, 2013. Schedule IV is a Code for Independent Directors. It is a guide to professional conduct for independent directors. Adherence to these standards by independent directors is a must. The Code required that an independent director shall:

- uphold ethical standards of integrity and probity;
- act objectively and constructively while exercising his duties;
- exercise his responsibilities in a bona fide manner in the interest of the company;
- devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- 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;
- not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining a direct or indirect personal advantage or advantage for any associated person;
- refrain from any action that would lead to loss of his independence;
- where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- assist the company in implementing the best corporate governance practices.

Role and Responsibilities of Independent Directors

The independent directors shall:

- help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- bring an objective view in the evaluation of the performance of board and management;
- scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- safeguard the interests of all stakeholders, particularly the minority shareholders;
- balance the conflicting interest of the stakeholders;
- determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

5.1.1 Conduct in Board Meetings

- Like any other director, an Independent Director is also required to disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change in such manner as prescribed by the provisions of Section 184 of the Act and related rules.
- If an Independent director is, in any way, whether directly or indirectly, concerned or interested in a contract or arrangement entered into or proposed contract or arrangement to be entered into, with a body corporate, with a firm or other entity in which he is interested, shall

TG on the Provisions of Independent Directors with Corporate ...

disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

- As required by Part VII of Schedule IV of the Act, the independent directors of the company shall hold at least one meeting⁵ in a financial year, without the attendance of non-independent directors and members of the management.
- All the independent directors of the company shall strive to be present at such meeting and shall:
 - ✓ review the performance of non-independent directors and the Board as a whole;
 - ✓ review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - ✓ assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.
- The Act casts onerous responsibility on all the directors (which also includes independent directors) to take active steps and inform the Board about their interest in other entities. It is also expected that the directors submit a list of relatives along with their PAN to enable management to determine whether any transaction is with a related party and to track the transactions with such persons. Further, the list should be refreshed as and when there is any change.
- As required by the provision of Section 188 and related rules thereunder, no company shall enter into any contract or arrangement with a related party except with the consent of the Board of Directors given by a resolution at a meeting of the Board however if any director is interested in such contract or arrangement with a related party, he

⁵ MCA General Circular No 11/2020 dated 24th March 2020, allows that for the FY 2019-20, if the Independent Directors of a company have not been able to hold such a meeting, it shall not be viewed as a violation. The IDs however may share their views amongst themselves through telephone or e-mail or any other mode of communication; if they deem it to be necessary

Role and Responsibilities of Independent Directors

shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

- Where the Audit Committee has been constituted under Section 177 of the Act, the committee shall take part in approval, ratification or any subsequent modification of transactions of the company with related parties.
- The Audit Committee may also make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

5.1.2 Disclosures

As per Code of Conduct prescribed in Schedule IV of the Companies Act, 2013, it is the duty of the independent director that:

- at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the board in every financial year or wherever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence,
- he complies the provisions of section 149 of the Companies Act, 2013 and
- he meets the criteria of independence and continue to keep that throughout his tenure. He does not get appointed in or associated with the company in any other capacity either directly or indirectly.

Regulation 25 (8) of LODR requires that every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.

The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director after undertaking due assessment of the veracity of the same.

5.1.3 Notices, Agenda, Participation

The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of the board of directors. The independent director shall insist:

- that proper and timely notice shall be given to him by the company so that he can plan his attendance for the meeting,
- that notice should accompany with agenda for business to be transacted in the forthcoming meeting,
- that agenda papers are received in advance so as to allow him to go through the agenda properly,
- that table agenda shall not be taken up unless the matter is really urgent in nature,

The independent director should record his presence in the meeting by signing the Attendance Register. If for any reason, he is not in a position to attend any meeting, he should take leave of absence.

The independent director should actively participate in the proceedings in the meetings. He should listen carefully to questions raised by other participants and raise questions to further the discussion. He should not hesitate in asking for help from others if any matter being discussed is not clear to him. He should make notes of all the important points discussed and decisions taken in the meetings. He should also insist on recording his observations by the secretary of the meeting so that those can be recorded in the minutes of the meetings.

If due to any exigencies, an independent director is not attending any particular meeting but has any reservation on any of the agenda items, he should ask the secretary to place the same before the meeting in his absence.

5.1.4 Draft Minutes, Recording Dissent

The independent director should insist that the draft of the minutes of the meeting is given to him for his review. If he finds that either the minutes are not prepared properly or some proceedings have been wrongly noted or some important observation has not been recorded properly, he should inform the secretary of the meeting about it and insist on making necessary changes in the draft minutes.

Role and Responsibilities of Independent Directors

If he was chairman of the meeting of which minutes have been drafted, he should insist on recording the minutes of the meeting duly approved by all the participants well in time.

He should ensure that his dissent, if any, on any particular resolution/ decision taken in the meeting, is recorded properly and unambiguously

5.1.5 Separate Meeting of Independent Directors

- The independent directors of the company shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management;
- All the independent directors of the company shall strive to be present at such meeting;
- The meeting shall:
 - ✓ review the performance of non-independent directors and the Board as a whole;
 - ✓ review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - ✓ assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

5.2 Role of Independent Directors in Board Committees

5.2.1 General

Due to the large size of the corporate, it has been proved beyond doubt that the committee form of governance is best suited and effective for good governance. The Committees provide the required thrust on the issues before arriving at the recommendations to the Board. This has been recognised by the legislature also.

The Companies Act, 2013 as well as LODR have provisions for the compulsory formation of certain committees and have also prescribed for the specific activities to be carried out by such committees. Both the Companies Act as well as LODR have given importance to the inclusion of independent directors in such committees.

The individual independent directors are nominated on various such committees. The directors while acting on such committees must take up the assignment professionally. The individual directors while acting in various committees might come across several expectations, perceptions of the stakeholders. Such expectations and perceptions are required to be chalked out properly and a summary of their recommendations on such expectations should be discussed in the board of directors meeting for further deliberations and decisions in the best interest of the company as well as the stakeholders.

Independent directors play a very important role in ensuring good corporate governance. They are expected to become agents of change in the governance structure of companies. Successful corporate governance depends on the efficient functioning of the Board of Directors. The independent directors, as an integral part of the Board, can assure the success of the Board in its endeavour.

Independent directors play important roles on many board committees, particularly those that have a direct effect on the company's management. Board committees are usually constituted for some special purpose and the directors who become members of such committees are appointed for their specialized knowledge in the particular field which the committee is handling. Non-committee members of the board can rely on committee recommendations under the faith that the committees are well equipped to handle their functions. The specialized knowledge and independence of the independent directors make them useful members of various Board committees.

5.2.2 Audit Committee

5.2.2.1 *As per the Companies Act, 2013*

Section 177 of the Act, read with Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014, requires the constitution of an Audit Committee in case of the following companies:

- Every listed public company; or
- Every public company having paid-up capital of ten crores rupees or more; or
- Every public company having turnover of one hundred crores rupees or more; or

Role and Responsibilities of Independent Directors

- Every public company, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crores rupees or more.

The provisions also require that the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. Further, the majority of members of the Committee including its Chairperson shall be persons with the ability to read and understand the financial statements.

As the majority of the members of the Audit Committee are independent directors, they play a very important role in ensuring good corporate governance in the company. Being independent, they can expressly review and monitor the following aspects for the benefits of the company:

- Cooperation with independent auditors and effectiveness of the audit process;
- Review and examination of the financial statements of the company;
- Discuss and comment on the auditors' report thereon;
- Evaluation of internal financial controls and risk management systems;
- Investigate into the affairs and conduct of the company.
- Approval of transactions with related parties at arm's length and keeping in mind the interests of the company;
- Scrutiny of inter-corporate loans and investments;
- Valuation of undertakings or assets of the company, wherever it is necessary;
- Monitoring the end use of funds raised through public offers and related matters;
- Obtain professional advice from external sources for the smooth operations of the company.

5.2.2.2 As per SEBI LODR

Similarly, Regulation 18 of LODR requires formation of Audit Committee by every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

- The audit committee shall have minimum three directors as members.

TG on the Provisions of Independent Directors with Corporate ...

- Two-thirds of the members of the audit committee shall be independent directors and in case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors.
- All members of the audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- Explanation (1).- For the purpose of this regulation, “financially literate” shall mean the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.
- Explanation (2).- For the purpose of this regulation, a member shall be considered to have accounting or related financial management expertise if he or she possesses 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 chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.
- The chairperson of the audit committee shall be an independent director and he shall be present at Annual general meeting to answer shareholder queries.
- The Company Secretary shall act as the secretary to the audit committee.
- The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee. Occasionally the audit committee may meet without the presence of any executives of the listed entity.
- The listed entity shall conduct the meetings of the audit committee in the following manner:
 - ✓ The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.

Role and Responsibilities of Independent Directors

- ✓ The quorum for an audit committee meeting shall either be two members or one-third of the members of the audit committee, whichever is greater, with at least two independent directors.
- ✓ The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise if it considers necessary.
- The role of the audit committee and the information to be reviewed by the audit committee has been specified in Part C of Schedule II to the Regulations.
 - ✓ A qualified and independent Audit Committee shall be set up, giving the terms of reference.
 - ✓ The Audit Committee shall have minimum of three Directors as members. Two-thirds of the members of the audit committee shall be Independent Directors.
 - ✓ The Chairman of the Audit Committee shall be an Independent Director.
 - ✓ All members of the Audit Committee shall have knowledge of financial matters of Company, and at least one member shall have good knowledge of accounting and related financial management expertise.

Explanation 1: The term “knowledge of financial matters of Company” means the ability to read and understand basic financial procedures and statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation 2: A member will be considered to have accounting and related financial management expertise if he or she possesses 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 chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

- ✓ The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries; However, in case the Chairman is unable to attend due to unavoidable reasons, he may nominate any member of the Audit Committee.
- ✓ The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the Committee. The Audit Committee may also meet without the presence of any executives of the company. The Finance Director, Head of Internal Audit and a representative of the Statutory Auditor may be specifically invited to be present as invitees for the meetings of the Audit Committee as may be decided by the Chairman of the Audit Committee.
- ✓ The Company Secretary shall act as the Secretary to the Audit Committee.

5.2.3 Nomination and Remuneration Committee

5.2.3.1 As per the Companies Act, 2013

Section 178 of the Act, read with Rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014, requires the constitution of Nomination and Remuneration Committee in case of the following companies:

- Every listed public company; or
- Every public company having paid-up capital of ten crores rupees or more; or
- Every public company having turnover of one hundred crores rupees or more; or
- Every public company, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crores rupees or more.

The Nomination and Remuneration Committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors.

The independent directors can play a vital role in formulating the criteria for determining qualifications, positive attributes and independence of a director

Role and Responsibilities of Independent Directors

and also help in identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria so laid down. They can also recommend to the Board, the appointment and removal for the directors, key managerial personnel and other employees, and the manner for effective evaluation of the performance of Board.

While formulating policy relating to the remuneration for the directors, key managerial personnel and other employees, the independent director shall also 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.

5.2.3.2 As per SEBI LODR

Regulation 19 of LODR requires the formation of Nomination and remuneration committee on the following terms and conditions:

- the committee shall comprise of at least three directors;
- all directors of the committee shall be non-executive directors; and
- at least fifty percent of the directors shall be independent directors and in case of a listed entity having outstanding SR equity shares, two-thirds of the nomination and remuneration committee shall comprise of independent directors.
- The Chairperson of the nomination and remuneration committee shall be an independent director. The chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

TG on the Provisions of Independent Directors with Corporate ...

- The quorum for a meeting of the nomination and remuneration committee shall be either two members or one-third of the members of the committee, whichever is greater, including at least one independent director in attendance.
- The Chairperson of the nomination and remuneration committee may be present at the annual general meeting, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries.

5.2.3.3 CPSE Guidelines

Each CPSE shall constitute a Remuneration Committee comprising of at least three Directors, all of whom should be part-time Directors (i.e. Nominee Directors or Independent Directors). The Committee should be headed by an Independent Director. CPSE will not be eligible for Performance Related Pay unless the Independent Directors are on its Board. Remuneration Committee will decide the annual bonus/variable pay pool and policy for its distribution across the executives and non-unionized supervisors, within the prescribed limits.

5.2.4 Risk Management Committee

- Regulation 21 of LODR requires the board of directors to constitute a Risk Management Committee.
- The majority of members of the Risk Management Committee shall consist of members of the board of directors and in case of a listed entity having outstanding SR equity shares, at least two-thirds of the Risk Management Committee shall comprise of independent directors.
- 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.
- 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.
- The provisions of this regulation shall be applicable to the top 500 listed entities, determined on the basis of market capitalization, as at the end of the immediate previous financial year.

5.2.5 Corporate Social Responsibility Committee

As per the provisions of Section 135, every company having net worth of rupees five hundred crores or more, or turnover of rupees one thousand crores or more or a net profit of rupees five crores or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Where a company is not required to appoint an independent director, it shall have in its Corporate Social Responsibility Committee two or more directors.

The independent directors can play an important role in:

- formulating, recommending to the Board and approving, Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as per the related provisions of the Act and Rules thereunder.
- ensuring that the activities indicated in the Policy are undertaken by the company.
- recommending the amount of expenditure to be incurred on the activities indicated in the policy;
- ensuring that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years in pursuance of the Policy;
- monitoring the Corporate Social Responsibility Policy of the company from time to time.

5.2.6 Stakeholders Relationship Committee

5.2.6.1 As per the Companies Act

Section 178 also provides for the constitution of The Stakeholders Relationship Committee in case a company consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year. The Committee shall consist of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. The Committee shall consider and resolve the grievances of shareholders, debenture holders and other security holders of the company.

5.2.6.2 As per SEBI LODR

Regulation 20 of LODR required a listed entity to constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders.

- The chairperson of this committee shall be a non-executive director.
- At least three directors, with at least one being an independent director, shall be members of the Committee and in case of a listed entity having outstanding SR equity shares, at least two-thirds of the Stakeholders Relationship Committee shall comprise of independent directors.
- The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.

5.2.6.3 CPSE Guidelines

As per CPSE Guidelines, at least one Independent Director on the Board of Directors of the holding company shall be a Director on the Board of Directors of its subsidiary company.

- The Audit Committee of the holding company shall also review the financial statements of its subsidiary company. The minutes of the Board meetings of the subsidiary company shall be placed at the Board meeting of the holding company. The management should periodically bring to the attention of the Board of Directors of the holding company, a statement of all significant transactions and arrangements entered into by its subsidiary company. For the purpose of these guidelines, only those subsidiaries whose turnover or net worth is not less than 20% of the turnover or net worth respectively of the Holding company in the immediate preceding accounting year may be treated as subsidiary companies.
- As per CPSE Guidelines, the Board should implement policies and procedures which should include:
 - ✓ staff responsibilities in relation to fraud prevention and identification
 - ✓ responsibility of fraud investigation once a fraud has been identified

Role and Responsibilities of Independent Directors

- ✓ process of reporting on fraud related matters to management
- ✓ reporting and recording processes to be followed to record allegations of fraud
- ✓ requirements of training to be conducted on fraud prevention and identification.

5.2.7 Responsibilities

An independent director has responsibilities towards not only the company and its shareholders but also towards other stakeholders. A director is in a fiduciary position in relation to the company. He must exercise his powers for the benefits of the company and must not misuse the fiduciary relationship.

The key responsibilities of independent directors can be said to include the following:

- **Strategic direction:**

As an outsider, the independent director may have a clearer or wider view of external factors affecting the company and its business environment than the inside directors. Thus he can play a major role in the strategy formation of the company by providing creative thinking and acting as a constructive critic.

- **Value Addition:**

An independent director shall add value to the decision-making process of the Board of Directors by giving his positive inputs and constructive criticism, wherever required.

- **Monitoring:**

Independent directors should take the responsibility of monitoring the performance of executive management, especially with regard to the progress made towards achieving the determined company strategy and objectives

- **Communication:**

The effectiveness of the company Boards can be increased through outside contacts and opinions. Therefore, it is the responsibility of the independent directors to connect the business and board with networks of potentially useful people outside the organization.

TG on the Provisions of Independent Directors with Corporate ...

The responsibilities of the independent directors towards the company, its shareholders and other stakeholders can be summarised as below:

5.2.7.1 Towards the Company

An Independent Director has the following responsibilities towards the company:

- Shall strive to acquire as soon as possible a sufficiently broad knowledge of the company's business in order to work effectively on its Board of Directors.
- Shall strive to become familiar with the company's business, management structure and management personnel, the specifics of its business and markets, the types of commercial secrets with which he may come into contact, and the terms and conditions governing the use of such secrets.
- is expected to become familiar with the production, technological, social, environmental, financial and other specifics of the company's business, to gain an overview of its most important and typical clients, and to visit the company's sites or main production (service) areas.
- Shall make every effort to attend all meetings of the Board of Directors.
- Shall endeavour to make his contribution to the company's successful development, image enhancement and growth of shareholder value.
- Shall assist the Board in establishing vision, mission and values, and in formulating strategy.
- Shall assist the company in implementing best corporate governance and transparency standards.
- Be ready to participate in the work of committees of the Board of Directors, such as the Strategic Planning Committee, Audit Committee and Remuneration Committee. In case such committees do not exist, an Independent Director may come up with the initiative to create such committees within the Board of Directors.
- Shall inform the company's management and the Board of Directors of the negative consequences that may arise as a result of the failure to comply with the generally accepted corporate governance standards.

Role and Responsibilities of Independent Directors

- Shall act within his authority, assist in protecting the legitimate interests of the company and its shareholders from illegal actions taken by third parties.
- Shall make decisions for the benefit of the company and all of its shareholders. When making decisions on material issues, an Independent Director shall strive to possess sufficiently complete and accurate information to enable a reasoned and balanced decision. He shall strive to ensure that the Board of Directors is supplied with the necessary information in advance. He shall pay special attention to the internal mechanisms of providing information, financial control and risk management.
- Shall make reasonable efforts to ensure that proposed decisions do not violate the law or infringe the legitimate interests of shareholders.
- In case of a conflict, he shall take an objective and unbiased attitude based on the principles of legitimacy, justice and equal treatment of all of the company's shareholders. An Independent Director shall strive to settle such conflicts internally as soon as possible.
- Where there is a difference of opinion an Independent Director is advised to insist upon writing his outlook in the minutes of the Board of Directors' meeting.
- Shall have the right to solicit advice from independent experts, if so required, when making a decision on issues that are objectively difficult.
- In relation with the company, an Independent Director shall adhere to the principle of openness with respect to himself as well as his affiliated parties.
- An Independent Director's stake in the company, including those held in trust, and the personal transactions of the Independent Director and his affiliated parties involving shares and other assets of the company and derivative instruments shall be disclosed to the Board of Directors.
- Is advised to transfer all of his shares in the company from nominal custodianship to his own account in the shareholders' register.
- Be fully aware of all liabilities arising from the performance of his duties as a member of the Board of Directors of the company.

TG on the Provisions of Independent Directors with Corporate ...

- Shall get acquainted with all applicable laws and regulations in order to clearly understand potential liabilities arising from performing the duties as a Board member. In case the company's securities are traded on international markets, the Independent Directors are also recommended to get accustomed to liabilities arising under the legislations of different countries. In case no liability insurance is provided by the company, an Independent Director may come up to the Board of Directors with the initiative of introducing such liability insurance.
- Is recommended to get acquainted, if possible, prior to his election, with the company's by-laws, governing the remuneration of Board members.
- Shall not take information received from the management at its face value but shall make due enquiries and take suitable steps to ensure the correctness and reliability of the information.

5.2.7.2 Towards the Shareholders

An Independent Director has the following responsibilities towards the Shareholders:

- Shall, within the limits of his authority, protect the rights and legitimate interests of all the company's shareholders and help establish a healthy relationship between the company's shareholders and management.
- Shall make every possible effort in his capacity as a member of the Board of Directors to ensure that the company is properly managed in the interest of all of its shareholders.
- Shall strive to understand the expectations of shareholders and to make the company aware of those expectations and of shareholders' views on various issues of importance thereto.
- Shall strive to implement transparency within the company and expand the scope of additional voluntary disclosures.
- When preparing and organizing shareholder's meetings, an Independent Director shall endeavour to ensure that the shareholders are provided with as complete information as possible on all items of the meeting's agenda.

Role and Responsibilities of Independent Directors

- Shall endeavour to ensure that information required by shareholders for the purpose of evaluating the company's annual performance is included in the annual report.
- May, on his own initiative, disseminate information with regard to material facts, if such information has not been published by the company within the timeframe established by law.
- Shall strive to be accessible and open to shareholders.
- Shall have a publicly available mailing and e-mail address.

5.2.7.3 Towards Other Stakeholders

An Independent Director has the following responsibilities towards the Stakeholders:

- When dealing with third parties, an Independent Director shall be loyal to the company and its shareholders and protect their interests. An Independent Director shall not maintain any relations with third parties, including the company's competitors and affiliated parties, if such relations are known to cause direct or indirect damage to the image, business or legitimate interests of the company and its shareholders, regardless of whether such relations benefit the Independent Director or his affiliated parties.
- When dealing with the investment community and stock market analysts, an Independent Director shall make every possible effort to enable all the parties concerned to have simultaneous access to the information disclosed. However, an Independent Director shall not disclose information about the company that might affect the value of the company's shares, other assets or business, to a specific group of persons on special conditions related to either the scope or the time-frame of such disclosure.
- An Independent Director shall divulge only accurate information that may be disclosed under applicable laws and shall not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans which may harm the company's business unless such disclosure is expressly approved by the Board of Directors or is required by law.

5.3 Disclosures to be made in the section on Corporate Governance of Annual Report as per SEBI LODR

Following disclosures shall be made as per Schedule III and V of SEBI LODR

5.3.1 LODR Schedule III- Events which shall be disclosed without application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

(7B) Resignation of auditor including reasons for resignation: In case of resignation of an independent director of the listed entity, within seven days from the date of resignation, the following disclosures shall be made to the stock exchanges by the listed entities:

- (i) Detailed reasons for the resignation of independent directors as given by the said director shall be disclosed by the listed entities to the stock exchanges.
- (ii) The independent director shall, along with the detailed reasons, also provide a confirmation that there are no other material reasons other than those provided.
- (iii) The confirmation as provided by the independent director above shall also be disclosed by the listed entities to the stock exchanges along with the detailed reasons as specified in sub-clause (I) above.

5.3.2 Disclosures in the section on the corporate governance of the annual report as per Schedule V of SEBI LODR:

- 1) A brief statement on listed entity's philosophy on code of governance.
- 2) Board of directors:
 - (a) composition and category of directors (e.g. promoter, executive, non-executive, independent non-executive, nominee director - institution represented and whether as a lender or as equity investor);
 - (b) attendance of each director at the meeting of the board of directors and the last annual general meeting;
 - (c) number of other board of directors or committees in which a director is a member or chairperson, and with effect from the Annual Report for the year ended 31st March 2019, including

Role and Responsibilities of Independent Directors

- separately the names of the listed entities where the person is a director and the category of directorship;
- (d) number of meetings of the board of directors held and dates on which held;
 - (e) disclosure of relationships between directors inter-se;
 - (f) number of shares and convertible instruments held by non-executive directors;
 - (g) weblink where details of familiarisation programmes imparted to independent directors are disclosed.
 - (h) A chart or a matrix setting out the skills/expertise/competence of the board of directors specifying the following:
 - (i) With effect from the financial year ending March 31, 2019, the list of core skills /expertise /competencies identified by the board of directors as required in the context of its business(es) and sector(s) for it to function effectively and those actually available with the board; and
 - (ii) With effect from the financial year ended March 31, 2020, the names of directors who have such skills/expertise/competence
 - (i) confirmation that in the opinion of the board, the independent directors fulfill the conditions specified in these regulations and are independent of the management.
 - (j) detailed reasons for the resignation of an independent director who resigns before the expiry of his tenure along with a confirmation by such director that there are no other material reasons other than those provided
- 3) Audit committee:
- (a) brief description of terms of reference;
 - (b) composition, name of members and chairperson;
 - (c) meetings and attendance during the year.
- 4) Nomination and Remuneration Committee:
- (a) brief description of terms of reference;

TG on the Provisions of Independent Directors with Corporate ...

- (b) composition, name of members and chairperson;
 - (c) meeting and attendance during the year;
 - (d) performance evaluation criteria for independent directors.
- 5) Remuneration of Directors:
- (a) all pecuniary relationship or transactions of the non-executive directors vis-à-vis the listed entity shall be disclosed in the annual report;
 - (b) criteria for making payments to non-executive directors. Alternatively, this may be disseminated on the listed entity's website and reference drawn thereto in the annual report;
 - (c) disclosures with respect to remuneration: in addition to disclosures required under the Companies Act, 2013, the following disclosures shall be made:
 - (i) all elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc.;
 - (ii) details of fixed component and performance linked incentives, along with the performance criteria;
 - (iii) service contracts, notice period, severance fees;
 - (iv) stock option details, if any and whether issued at a discount as well as the period over which accrued and over which exercisable.
- 6) Stakeholders' grievance committee:
- (a) name of non-executive director heading the committee;
 - (b) name and designation of compliance officer;
 - (c) number of shareholders' complaints received so far;
 - (d) number not solved to the satisfaction of shareholders;
 - (e) number of pending complaints.
- 7) General body meetings:
- (a) location and time, where last three annual general meetings held;

Role and Responsibilities of Independent Directors

- (b) whether any special resolutions passed in the previous three annual general meetings;
 - (c) whether any special resolution passed last year through postal ballot – details of voting pattern;
 - (d) person who conducted the postal ballot exercise;
 - (e) whether any special resolution is proposed to be conducted through postal ballot;
 - (f) procedure for postal ballot.
- 8) Means of communication:
- (a) quarterly results;
 - (b) newspapers wherein result normally published;
 - (c) any website, where displayed;
 - (d) whether it also displays official news releases; and
 - (e) presentations made to institutional investors or to the analysts.
- 9) General shareholder information:
- a) annual general meeting - date, time and venue;
 - b) financial year;
 - c) dividend payment date;
 - d) the name and address of each stock exchange(s) at which the listed entity's securities are listed and a confirmation about payment of annual listing fee to each of such stock exchange(s);
 - e) stock code;
 - f) market price data- high, low during each month in the last financial year;
 - g) performance in comparison to broad-based indices such as BSE sensex, CRISIL Index etc;
 - h) in case the securities are suspended from trading, the director's report shall explain the reason thereof;
 - i) registrar to an issue and share transfer agents;

- j) share transfer system;
 - k) distribution of shareholding;
 - l) dematerialization of shares and liquidity;
 - m) outstanding global depository receipts or American depository receipts or warrants or any convertible instruments, conversion date and likely impact on equity;
 - n) commodity price risk or foreign exchange risk and hedging activities;
 - o) plant locations;
 - p) address for correspondence.
 - q) list of all credit ratings obtained by the entity along with any revisions thereto during the relevant financial year, for all debt instruments of such entity or any fixed deposit programme or any scheme or proposal of the listed entity involving mobilization of funds, whether in India or abroad.
- 10) Other Disclosures:
- a) disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large;
 - b) details of non-compliance by the listed entity, penalties, strictures imposed on the listed entity by stock exchange(s) or the board or any statutory authority, on any matter related to capital markets, during the last three years;
 - c) details of the establishment of vigil mechanism, whistleblower policy, and affirmation that no personnel have been denied access to the audit committee;
 - d) details of compliance with mandatory requirements and adoption of the non-mandatory requirements;
 - e) weblink where policy for determining 'material' subsidiaries is disclosed;
 - f) weblink where policy on dealing with related party transactions;

Role and Responsibilities of Independent Directors

- g) disclosure of commodity price risks and commodity hedging activities.
 - h) Details of utilization of funds raised through preferential allotment or qualified institutions placement as specified under Regulation 32 (7A).
 - (i) number of complaints filed during the financial year
 - (ii) number of complaints disposed of during the financial year
 - (iii) number of complaints pending as on the end of the financial year.
 - i) a certificate from a company secretary in practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/Ministry of Corporate Affairs or any such statutory authority.
 - j) where the board had not accepted any recommendation of any committee of the board which is mandatorily required, in the relevant financial year, the same to be disclosed along with reasons thereof.

However, the clause shall only apply where recommendation of / submission by the committee is required for the approval of the Board of Directors and shall not apply where prior approval of the relevant committee is required for undertaking any transaction under these Regulations.
 - k) total fees for all services paid by the listed entity and its subsidiaries, on a consolidated basis, to the statutory auditor and all entities in the network firm/network entity of which the statutory auditor is a part.
 - l) disclosures in relation to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- 11) Non-compliance of any requirement of corporate governance report of sub-paras (2) to (10) above, with reasons thereof, shall be disclosed.

TG on the Provisions of Independent Directors with Corporate ...

- 12) The corporate governance report shall also disclose the extent to which the discretionary requirements as specified in Part E of Schedule II have been adopted.
- 13) The disclosures of the compliance with corporate governance requirements specified in regulation 17 to 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 shall be made in the section on corporate governance of the annual report.
- 14) Declaration signed by the chief executive officer stating that the members of the board of directors and senior management personnel have affirmed compliance with the code of conduct of the board of directors and senior management.
- 15) Compliance certificate from either the auditors or practicing company secretaries regarding the compliance of conditions of corporate governance shall be annexed with the directors' report.
- 16) Disclosures with respect to demat suspense account/ unclaimed suspense account

The listed entity shall disclose the following details in its annual report, as long as there are shares in the demat suspense account or unclaimed suspense account, as applicable:

- (i) aggregate number of shareholders and the outstanding shares in the suspense account lying at the beginning of the year;
- (ii) number of shareholders who approached listed entity for transfer of shares from suspense account during the year;
- (iii) number of shareholders to whom shares were transferred from suspense account during the year;
- (iv) aggregate number of shareholders and the outstanding shares in the suspense account lying at the end of the year;
- (v) that the voting rights on these shares shall remain frozen till the rightful owner of such shares claims the shares

NOTE:

The Securities Exchange Board of India (SEBI), vide circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020, had extended the timeline for submission of financial results by listed entities for the

Role and Responsibilities of Independent Directors

quarter/half-year/financial year ended 31st March 2020 to 31st July 2020 due to the impact of the CoVID-19 pandemic. Further, SEBI has received representations requesting extension of time for submission of financial results for the quarter/half year ended June 30, 2020. After consideration, it has been decided to extend the timeline for submission of financial results under Regulation 33 of the LODR Regulations, for the quarter/half year/financial year ended 30th June 2020, to

15th September, 2020.

Details are available at https://www.sebi.gov.in/legal/circulars/jul-2020/extension-of-time-for-submission-of-financial-results-for-the-quarter-half-year-financial-year-ended-30th-june2020_47183.html

Chapter VI

Training for Independent Directors

6 Training requirements for Independent Directors

Various training requirements for Independent Directors are given below:

6.1 Financial Literacy

6.1.1 Knowledge to Read Financial Statements

The independent director must have the knowledge to read financial statements. He must have knowledge of various terms used in financial management. He should have a fair knowledge of using techniques for interpretation of financial statements/data. Many of the information required for decision making may be instantly available in the various forms of disclosures made in the financial reports. Study of the Balance sheet, Profit & Loss Account and cash flow statement should not be carried out in isolation. Such statements should be read conjointly with Accounting Policies, Notes to the Accounts and Auditors Report.

He should make comparative study of financial data with base year or benchmarks already fixed. Extra-ordinary High or Low figures may be replaced by the figures obtained through the technique of interpolation/extrapolation. Necessary adjustments must be made for changes in accounting policies, prior period adjustments and extraordinary items.

Some of the techniques which can be used for interpretation of financial statements are listed below:

- Trend Analysis
- Comparative Analysis
- Ratio Analysis

In Trend Analysis, Income Statements or Balance Sheets are compared for a number of years to find out the trend. Such comparison may be made with the help of absolute figures or by the help of percentages, calculated taking the previous year as the base.

Comparative Analysis refers to the comparison of the performance of a Company with that of a similar Company or the performance of the industry as a whole.

Ratio analysis is done by comparing the ratios of the Company with that of a competing company or industry as a whole. A ratio is a statistical yardstick that provides a measure of the relationship between two accounting figures. A ratio may be expressed as a co-efficient, proportion and percentages as well.

Types of Ratios

- Liquidity ratios.
- Solvency ratios.
- Activity ratios.
- Profitability ratios.
- Owner's ratios.

Liquidity is the ability of a Company to meet its short-term obligations like payment of creditors, expenses payable etc. A Company that is not liquid may sooner or later find itself in a situation of insolvency. The following are the key liquidity ratios:

Current ratio – {current assets / current liabilities}

Acid Test ratio – {quick assets / current liabilities}

Cash ratio – {cash+ mkt sec / current liabilities}

Working Capital to ratio – {sales / average working capital}

Operating Cash Flow ratio. {op. Cash Flow / Current Liabilities}

Solvency is concerned with long term risk of the company i.e. its ability to service long term debts. The following are key liquidity ratios:

1. Interest Coverage ratio – {PBDITA/ Interest}
2. Debt Coverage ratio – {PBDIA / Due Instalment + Int. on long term debt}
3. Debt Equity ratio – {Total Outside Liabilities / Tangible Net worth}

Activity Ratios measures the efficiency with which assets are converted into sales. Key activity ratios are as follows:

TG on the Provisions of Independent Directors with Corporate ...

1. Inventory Turnover Ratio – {Cost of Goods Sold/ Avg. Inventory}
2. Debtors Turnover Ratio – {Net Sales / Avg. Debtors}
3. Fixed Assets Turnover Ratio – {Sales / Fixed Assets}
4. Assets Turnover Ratio – {Sales / Total Assets}

Profitability ratios explain the ability of the company its profitability and comparison of the same with other companies in the segments and industry average. Key profitability ratios are as under:

1. Net Profit Margin Ratio – {Net profit / Sales}
2. Gross Profit Margin Ratio – {Gross Profit / Sales}
3. Return on Total Assets Ratio – {PAT / Sales}
4. Return on Equity – {PAFESH / Equity Share Capital}

Ownership ratios are useful to judge the current status of the investment in the company. Key ownership ratios are as under:

1. Earnings Per Share – {PAFESH / NO. of Equity Shares}
2. Price Earnings Ratio – {MPS /EPS }
3. Market Book Ratio – {MPS/ Book Value per Share}
4. Dividend Pay Out Ratio – {DPS / EPS}

It should be kept in mind that ratios and other statistical techniques are just tools and personal judgment is more important. Conclusions from the analysis are not sure results but pointing to the probability of the matters needing investigation. It is not prudent to draw conclusions without further investigations, wherever required.

6.1.2 Knowledge of Accounting Standards

Sub section (5) of sec 134 of the Act requires a Directors' Responsibility Statement to be included in the Board's Report indicating therein inter alia that in the preparation of annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departure. The Statement shall also indicate that the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and the profit or loss of the company for that period.

Every profit and loss account and balance sheet of the company shall comply with the accounting standards and where they do not comply, the company shall disclose in its profit and loss account and balance sheet, the deviation from the accounting standards, the reasons for such deviation and the financial impact, if any arising due to such variation.

Therefore, an independent director must have a fair knowledge of all the accounting standards issued by the Institute of Chartered Accountants of India and prescribed by the Central government in consultation with the National Advisory Committee on Accounting Standards. Whenever the management has made any change in the accounting policies, the independent director must make discreet enquiries for reasons for making the change or whether the changed accounting policy is in accordance with the prescribed accounting standard. Any change in accounting policy is permitted only when it is made to comply with the requirements of any Accounting Standard or to enable the better and fairer presentation of the state of affairs and operating results of a company.

6.1.3 Understanding of Non-Financial Information

Though knowledge to read financial statements is important for an independent director but equally important are his skills to understand non-financial information. Non-financial information includes;

- Knowledge of various laws (labour, environmental) applicable to the company and their compliances
- Human resource policies (including employees' satisfaction, training and gender bias policies)
- Corporate social responsibilities
- Risk assessment and risk mitigation plan
- Business Continuity plan
- Succession plan
- Disaster management policy
- Whistle-blower policy
- Quality Policy
- SWOT analysis

6.2 Orientation

6.2.1 Knowledge of the Industry and Governing Laws

The independent director must have knowledge of the industry in a particular company in which he is a director. Each industry has some peculiar features, some special statute, and some special risk factors. He should have knowledge of other market players in the same industry and their performance parameters. Similarly, sometimes a particular industry is subject to some specific economic statute. The independent director must have a fair knowledge of the provisions of the specific statute in addition to knowledge of basic corporate laws.

6.2.2 Understanding the Company and Its Environment

An independent director requires understanding and obtain knowledge about the nature of the company including its operations, ownership, and corporate and governance structure. The independent director should look into various areas such as:

Internal Environment

- Sources of funds, whether owned or borrowed, leasing arrangements, banking arrangements
- Sources of revenue, its product, or service segments.
- Associates, Joint Ventures, outsourcing of activities.
- Production facilities and its location, warehouses, corporate and branch offices,
- Employment arrangements
- Research and development activities undertaken, if any
- Related Parties and transactions with them.
- Major subsidiaries and associated entities.
- Investments in other entities including partnerships, joint ventures and special-purpose entities, acquisitions, or divestitures.
- Investments and dispositions of securities and loans.
- Financial reporting such as Accounting Principles, Revenue recognition practices, Foreign currency assets, liabilities and transactions, unusual or complex transactions.

External Environment

- Industry specific standards,
- Supplier and customer relationships,
- Technological developments
- Types of markets and competitive environments including demand, supply, and price competition.
- Energy supply and cost
- Legislations and regulatory framework that might significantly affect the entity's operations
- Taxation laws (direct and indirect taxes)
- Government policies currently affecting the conduct of the entity's business such as monetary, including foreign exchange controls, fiscal, financial incentives and tariffs or trade restrictions policies.
- Environmental requirements affecting the industry and the entity's business
- interest rates and availability of financing, and inflation or currency revaluation

Internal Controls

After obtaining the knowledge of the company, the independent director should obtain knowledge of the internal control system of the company whether they have been implemented properly and in an efficient manner. This will help him to identify the areas of business risks.

The independent director shall ensure that the company has a process for identifying business risks relevant to financial reporting, estimating the significance of the risks, the likelihood of their occurrence and actions to address those risks. He should evaluate whether the process is appropriate to its circumstances and determine if there is deficiency in internal control with regard to the company's risk assessment process. If the company has not established such a process he shall discuss with management whether business risks have been identified and how they have been addressed. He shall evaluate whether the absence of controls represents a significant deficiency in the internal control system.

If the company has an internal audit function, he shall obtain an understanding of the nature of the internal audit function's responsibilities, its organisational status, and the activities performed, or to be performed. It will help the independent director to easily understand the company and its environment, including internal control, and financial reporting process.

Information System

The independent director shall also obtain an understanding of the information system related to its reporting processes, including the following areas:

- The procedures, within both information technology (IT) and manual systems, by which the transactions are initiated, recorded, processed, corrected as necessary.
- The related accounting records, with their supporting information. The records may be in either manual or electronic form;
- How the information system captures events and conditions, other than transactions, that are significant to the reporting process.
- Process and account for system overrides or bypasses to controls
- The financial reporting process used to prepare the entity's financial statements, including significant accounting estimates and disclosures;
- Controls used to record non-recurring, unusual transactions, or adjustments.

The use of IT affects the way that control activities are implemented. Controls over IT systems are effective when they maintain the integrity of information and the security of the data such systems process and include effective general IT-controls and application controls.

The use of IT systems also possesses significant risks attached to it. The independent director shall also obtain an understanding of how the company identifies and responds to these risks. He can also carry out self-test checks which include edit checks of input data, and numerical sequence checks with manual follow-up of exception reports or correction at the point of data entry.

6.3 Training at Specialised Institutions

The company concerned shall undertake training programme for its new Board members (Functional, Government, Nominee and Independent) in the

Training for Independent Directors

business model of the company including risk profile of the business of the company, responsibility of respective Directors and the manner in which such responsibilities are to be discharged. They shall also be imparted training on Corporate Governance, model code of business ethics and conduct applicable for the respective Directors.

There are institutions that provide specific training to independent directors on the related subjects. All premier business schools have such programs. Moreover, a number of regulators have set up special institutions for providing training to executives in their specified domains.

Chapter VII

Highlights of Chapter XI, XII and XIII of the Companies Act, 2013

7 Highlights of Chapters of Companies Act related to Independent Director

Following are the highlights of Chapter XI, XII and XIII of the Companies Act, 2013:

Chapter No.	Sections	Particulars
XI	149- 172	APPOINTMENT AND QUALIFICATIONS OF DIRECTORS • Every Company shall have a Board of Directors which includes a minimum of three/two directors in a Public/Private Company respectively. The maximum limit of directors in the Company has been fixed at 15 but to add more directors Special Resolution can be passed. In prescribed class or classes of companies, there should be at least 1 woman director. (Section 149) • Out of all the Directors, at least one director shall be a person who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.⁶ • The Act provides provision for limiting the liability of Independent Director and non-executive director not being promoter or key

⁶ MCA General Circular No. 11 /2020 dated 24th March 2020 and General Circular No-36/2020 dated 20th October 2020- Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, under Section 149 of the CA-13 shall not be treated as a non-compliance for the financial year 2019-20 and 2020-21

Highlights of Chapter XI, XII and XIII of the Companies Act, 2013

		managerial personnel. (Section 149) • Independent Directors- Defined in Section 149 (5) a) Qualifications as may be prescribed b) Term up to 5 consecutive years prospectively but not for more than two consecutive terms c) Reappointment by Special Resolution d) Cooling off period for three years • Panel of ID's to be maintained by a body/institute notified by the CG facilitating appointment of Independent Director (Section 150) • Listed company may have one director by small shareholder (Section 151) • The company and the independent directors shall abide by the provisions of (Code of Conduct) specified in Schedule IV of the Act. • At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. [Section 152(6)c] • The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot. [Section 152(6)(d)] • If any individual or director of a company
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		makes any default in case of appointment of director, intimating wrong or obtaining more than one Director Identification Number then such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues. • Every listed public company shall have at least one-third of the total number of directors as independent directors Companies existing as on date of commencement of this Act have been provided a transition period of 1 year for the compliance of this provision. (Section 163) • A person cannot become directors in more than 20 companies and out of this 20, he cannot be director of more than 10 public companies. This does not include directorship in a dormant company. (Section 165) • A transitional period of 1 year is provided to persons acting as director to comply with the requirement of maximum number of directorship and they have to intimate their choice to each of company where they wish to continue as director and also to the Registrar. Duties of Director (Section 166) • A director of a company shall act in accordance with the articles of the company. • A director of a company shall 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 the
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Highlights of Chapter XI, XII and XIII of the Companies Act, 2013

		environment. • A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment. • A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company. • A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company. • A director of a company shall not assign his office and any assignment so made shall be void. • If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees Resignation of Director (Section 168) • The Act prescribes the duties of the directors towards the company • Directors are required to mandatorily forward their resignation along with the detailed reason for resignation also to the Registrar within 30 days of resignation in the prescribed manner. • The notice for removal of director can only be given by prescribed number of members or members holding prescribed number of shares or voting power.
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XII	173- 195	MEETINGS OF BOARD AND ITS POWERS • At least 4 meetings should be held each year. There is no requirement of holding the meeting every quarter; the only requirement is that not more than 120 days shall elapse between two consecutive meetings. (Section 173 (1))⁷ • The Act provides that Director can participate in the Board meeting through video conferencing or other audio-visual mode as may be prescribed. (Section 173 (2)) • Notice of not less than seven days in writing is required to call a board meeting and notice of meeting to all directors shall be given, whether he is in India or outside India by hand delivery or by post or by electronic means. (Section 173 (3)) • The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher. The participation of director at Board meeting through video conferencing or by other electronic means shall be counted for the purpose of Quorum. (Section 174) • Every Listed Company and such other company as may be prescribed shall form Audit Committee comprised of minimum 3 directors with majority of the Independent Directors and majority of members of committee shall be person with ability to read and understand financial statement. ✓ Vigil mechanism to be established in the prescribed manner by every listed
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⁷ MCA General Circular No. 11 /2020 dated 24th March 2020- the mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA-13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September. Accordingly, as a one-time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13

Highlights of Chapter XI, XII and XIII of the Companies Act, 2013

		company or such class or classes of companies, as may be prescribed. (Section 177) • Every listed company and prescribed class or classes of companies, shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one half shall be independent directors. • Every company which consists of more than one thousand 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. (Section 178) • The limits for political contribution by the company have been changed. The contribution shall not exceed 7.5% of the average net profits of the Company during the three immediately preceding financial years. (Section 182) • Disclosure of interest by every director has been made mandatory. The disclosure shall be made at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made. • In case of private company also, an interested director cannot vote or take part in the discussion relating to any matter in which he is interested. (Section 184) • The requirement of permission of CG for giving loan to Director has been dispensed with. (Section 185)
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TG on the Provisions of Independent Directors with Corporate ...

		• Inter corporate investments not to be made through more than 2 layers of investment companies. (Section 186) • No approval of CG is required for entering into any related party transactions and for appointment of any director or any other person to any office or place of profit in the company or its subsidiary. (Section 188) • A company shall not enter into any arrangement by which a director of the company or of its holding company or any person connected with him can acquire assets for the consideration other than cash from the company & vice versa without the approval of company in general meeting. (Section 192) • Section 194, Omitted by the Companies (Amendment) Act, 2017 w.e.f 09.02.18 • Section 195, Omitted by the Companies (Amendment) Act, 2017 w.e.f 09.02.18.
XIII	196- 205	APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL • If the Managing Director, Whole-time Director, or Manager exceeds the age of 70, they may still be appointed by passing a special resolution. • In case, no such special resolution is passed but votes cast in favor of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made. • Independent director not entitled to stock option and may receive remuneration only by way of fees or commission.

Highlights of Chapter XI, XII and XIII of the Companies Act, 2013

		Where a company is required to restate its financial statement due to fraud or non-compliance with any requirement under this Act and the Rules made thereunder, the company shall recover from any past or present managing director or whole-time director or manager who, during the period for which the financial statements are required to be re-stated, the remuneration received (including stock option) arisen due to such statement or non-compliance in excess of what would have been paid to the managing director, whole-time director or manager under such re-stated financial statements. (Section 197) • Every company belonging to such class or description of companies as may be prescribed shall have Managing Director, or Chief Executive Officer or Manager and in their absence, a whole-time director and Company Secretary. Same person shall not be the Chairperson and MD or CEO at the same time (Unless articles provide) (Section 203) • Secretarial Audit compliance report in case of certain class of companies to be annexed with the Board's report. (Section 204)
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Chapter VIII

FAQs on Board of Directors and Duties of Directors

8 FAQ's on the important aspects of Board of Directors and their duties

1. How Board meetings are to be conducted?

As per Companies Act 2013, a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

A meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

In case of the absence of independent directors from such a meeting of the Board, 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.

The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of quorum under this sub-section.

2. What should be the gap between two Board Meetings?

As per Section 173⁸ of the Companies Act 2013 and Secretarial Standard 1, every company shall hold the first meeting of the Board of Directors within

⁸ MCA General Circular No. 11 /2020 dated 24th March 2020- the mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA-13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September. Accordingly, as a one-time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13

thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

3. What is the procedure for Passing of Resolutions by Circulation?

Section 175 of the Companies Act, 2013, talks about Passing of Resolutions by Circulation. 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.

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.

A resolution 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.⁹

4. What is the difference between Ordinary and Special Resolutions?

As per Section 114 of the Companies Act 2013:

(1) A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

(2) A resolution shall be a special resolution when—

⁹ Subject to relaxations provided due the pandemic

- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) the notice required under this Act has been duly given; and
- (c) the votes cast in favour of the resolution, whether on a show of hands or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

5. What are the duties of the directors?

Each Director has a fiduciary duty towards the company. All the powers entrusted to the Directors are only exercisable by them in this fiduciary capacity. The duties of Directors can be discussed under the following broad heads:

- A. Fiduciary duties;
- B. Common law duties;
- C. Specific duties prescribed under the Companies Act;
- D. Additional duties in case of a listed company; and
- E. Other statutory duties.

6. What are the Duties of a director under the Companies Act 2013?

Section 166 of the Companies Act 2013 prescribes the following duties to be discharged by the directors:

- 1) A director of a company shall act in accordance with the Articles of the company
- 2) A director of a company shall 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
- 3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

FAQs on Board of Directors and Duties of Directors

- 4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- 5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- 6) A director of a company shall not assign his office and any assignment so made shall be void.
- 7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

7. What are the Specific Duties of a director under the Companies Act 2013?

In addition to the above, the Companies Act, 2013 prescribes following specific duties to be performed by a director:

I. Administration and Compliance

Directors are vested with a number of administrative responsibilities in order to enable them to manage and administer the company. These administrative responsibilities include, amongst others, the following:

Filing returns with the Registrar of Companies Approval of the Company's Documents	1. Directors must file a return of allotment of shares in the prescribed manner with the Registrar, stating the number and nominal amount of shares comprising the allotment, the names, addresses and occupations of the allottees, and the amount, if any, paid or due and payable on each share. (Section 42) Rule 14(4) of Chapter III prescribes that a return of allotment of securities under Section 42 shall be filed with the Registrar within thirty days of allotment in Form No. PAS.3 and with the fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list
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TG on the Provisions of Independent Directors with Corporate ...

	of all securities holders containing- i) The full name, address, Permanent Account Number and E-mail ID of such security holder; ii) The class of security held; iii) The date of allotment of security iv) The number of securities held, nominal value and amount paid on such securities; and particulars of the consideration received if the securities were issued for consideration other than cash 2. Directors must file a copy of resignation along with detailed reasons for the resignation with the Registrar within 30 days of resignation in such manner as may be prescribed. (Section 168)
Convening Shareholders' Meetings	Directors must convene the different kinds of shareholders' meetings as provided in the Companies Act, within their stipulated periods. For example: • The first AGM should be convened within nine (9) months from the date of closing of the first financial year of the Company; (Section 96) and • An extraordinary general meeting must be convened by the Directors on a requisition by members holding at least ten percent (10%) of the paid-up share capital of the company as on the date carries (In the case of Company having share Capital). • An extraordinary general meeting must be convened by the Directors on a requisition by members holding at least ten percent (10%) of the total voting power of all the members having on the said date a right to vote. (In the case of a Company not having share capital).

FAQs on Board of Directors and Duties of Directors

Approval of the Company's Documents	Directors must approve the Balance Sheet and Statement of Profit and Loss Account of the company before it is signed on their behalf.
Audit Requirements	In cases of winding up or liquidation, the Directors must ensure that the books of account of the company are completed and audited up to the date of winding up order issued by the Company Court.

II. Restriction on Activities and Disclosure of Information

The Companies Act, 2013 has prescribed and / or supplemented the common law duties with certain other obligations on Directors that relate to their position, including the following:

Declaration of Interest	Directors, who are concerned or interested in a proposed contract or arrangement with the company in any way, must disclose the nature of their concern or interest to the Board.
Consent to act as a Director	Every person who has been appointed to hold the 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.
Disqualification of Directors	Every director shall inform the company concerned about his disqualification under Section 164 (2), if any, in Form DIR-8 before he is appointed or re-appointed.
Removal of disqualification	Any application for removal of disqualification of directors shall be made in Form DIR-10.
Intimation of changes in particulars specified in DIN application.	Every individual who has been allotted a Director Identification Number under the Rule 12 of Chapter XI of the Companies Act, 2013 shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6.
Receipt of Compensation	Directors must not receive, in connection with a transfer of property or shares of the company, any

TG on the Provisions of Independent Directors with Corporate ...

		payment as compensation for loss of profit or in consideration for retirement from office. If they do so, they must hold such an amount in trust for the company.
Attending Board Meetings		Directors are under an obligation to attend the board meetings as prescribed by the Articles, or such as may be called by the chairman (if any) of the Board, otherwise any absenteeism from all the meetings held during a period of twelve months with or without seeking leave of absence of the Board will result in that Director or Directors vacating their respective offices. (Section 167)

8. What are the other important duties of directors?

The other important duties of Directors as specified under other Acts are as follows:

Duties under Foreign Exchange Management Act	The Foreign Exchange Management Act, 1999, and the regulations issued thereunder, provide the legal framework for any transaction between an Indian entity and a foreign entity. It specifies that in case of contravention of any of its provisions or any rule, direction or order thereunder by a company, the person who at the time of the contravention was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the provisions and shall be liable to be proceeded against. If the offence is committed with the consent or connivance of, or is attributable to the neglect of the Director, such Director shall be deemed to be guilty and liable to be proceeded against. For example: under the Foreign Exchange Management (Transfer or Issue of Securities by a Person Outside India) Regulations, 2000, a foreign entity can invest in an Indian company that undertakes activities in the construction-
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FAQs on Board of Directors and Duties of Directors

	development of real estate sector, by way of Foreign Direct Investment, without requiring any approvals. However such investment by the foreign entity is subject to certain guidelines prescribed in that Regulation. Non-compliance with such conditions would be a contravention and any person being a Director of such company contravening those conditions can be found guilty.
Duties under the Negotiable Instruments Act	Under the Negotiable Instruments Act, 1881, if a company issues, and later dishonour a cheque which was presented for discharge of debt or other liability, every person who at the time of such dishonour was in charge of overall control of the day-to-day business of the company (both under the law and as a matter of fact), shall be deemed to be guilty of the offence and shall be liable to be proceeded against. If the offence is committed with the consent or connivance of, or is attributable to the neglect of the Director, such Director shall be deemed to be guilty and liable to be proceeded against. However, if such person has been appointed as a Director by virtue of his holding in any office or employment in the central government or state government or a financial corporation owned or controlled by the state or the central government, he shall not be liable for prosecution.
Duties under the Competition Act	The Competition Act, 2002 prescribes certain specific duties to be discharged by Directors. 1. Combination: The Competition Act, 2002, imposes certain limits to be examined, and adhered to, by Directors and requires that the merger or amalgamation or acquisition does not amount to a resultant enterprise being a combination. 2. Duty to file report with Commission: Directors must show that such a combination under the

TG on the Provisions of Independent Directors with Corporate ...

	Competition Act, 2002, is not likely to cause an appreciable adverse effect on competition within the relevant market in India, if the assets or the turnover of the newly created or remaining company amounts to a combination by exceeding the prescribed limits. Therefore, it is the duty of the Director under this legislation, to give notice to the Competition Commission, in the form as may be specified and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within seven (7) days of the company's approval of the merger or amalgamation proposal. The Commission shall then conduct such investigations, inquiries and pass any orders. No combination shall come into effect until two hundred and ten (210) days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders, whichever is earlier.
Duties under Labour Laws	In legislations such as the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Payment of Gratuity Act, 1972, the term 'employer' with respect to any establishment (in cases other than a factory), means the person who, or the authority which, has the ultimate control over the affairs of the establishment. Where the said affairs are entrusted to a Manager or a Managing Director, such Manager or Managing Director is considered the 'employer'. However, this liability is not one imposed on all Directors or Managers uniformly; it is only imposed on those Directors or Managers who are in overall control of the affairs of the company (this implies control over the day-to-day affairs of the company). Those Directors who are only in control of certain aspects, or are aware of the policy of the company, but are not in charge of it, would not be held liable. The Managing Director or the Manager, will, in his

FAQs on Board of Directors and Duties of Directors

	capacity as the 'employer', have the duty to ensure the welfare of the employees. He will also be responsible to make necessary statutory registrations or contributions, as applicable, from time to time.
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9. Liabilities of Directors under Corporate Governance as well as the Companies Act 2013.

Some of the provisions of the Companies Act, 2013 provide that the Members or the Directors of a company will be personally liable if:

(1) A company carries on business for more than six months after the number of its members has been reduced below seven in the case of a public company and two in the case of a private company. Every person who was a member of the company during the time when it carried on business after those six months and who was aware of this fact, shall be severally liable for all debts contracted after six months,

(2) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day. If a company makes an offer or accepts monies in contravention of this section, the directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

(3) An officer of the company or any other person acts on its behalf and enters into a contract or signs a negotiable instrument without fully writing the name of the company, then such officer or person shall be personally liable,

(4) In the course of winding up of the company, it appears that the business of the company has been carried on with intent to defraud the creditors of the company or any other person or for any fraudulent purpose,

all those who were aware of such fraud shall be personally liable without any limitation of liability.

10. What are the details to be incorporated in the Board's Report?

As per Section 134 of Companies Act 2013, there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

- a) the web address, if any, where annual return referred to in Sub-Section (3) of Section 92 has been placed;
- b) number of meetings of the Board;
- c) Directors' Responsibility Statement;
- ¹⁰(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government.
- d) a statement on declaration given by independent directors under Sub-Section (6) of Section 149;
- e) in case of a company covered under Sub-Section (1) of Section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under Sub-Section (3) of Section 178;
- f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
 - (i) by the auditor in his report; and
 - (ii) by the company secretary in practice in his secretarial audit report;
- g) particulars of loans, guarantees or investments under Section 186;
- h) particulars of contracts or arrangements with related parties referred to in Sub-Section (1) of Section 188 in the prescribed form;
- i) the state of the company's affairs;

¹⁰ Inserted vide Companies Amendment Act 2015 as notified on 26th May, 2015

FAQs on Board of Directors and Duties of Directors

- j) the amounts, if any, which it proposes to carry to any reserves;
- k) the amount, if any, which it recommends should be paid by way of dividend;
- l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
- m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
- n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
- o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
- p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal [annual evaluation has been made by the Board of its own performance and that of its committees and individual directors];
- q) such other matters as rules may be prescribed.

Rule 8 of Chapter IX provides that

- (1) The Board's Report shall be prepared in the standalone financial statement of the company and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.
- (2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in Sub-Section (1) of Section 188 in the Form AOC-2.
- (3) The report of the Board shall contain the following information and details, namely: -

(A) Conservation of energy-

- (i) the steps taken or impact on conservation of energy;

- (ii) the steps taken by the company for utilizing alternate sources of energy;
- (iii) the capital investment on energy conservation equipment's;

(B) Technology absorption-

- (i) the efforts made towards technology absorption;
- (ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
- (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-
 - a) the details of technology imported;
 - b) the year of import;
 - c) whether the technology been fully absorbed;
 - d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and
- (iv) the expenditure incurred on Research and Development.

(C) Foreign Exchange Earning and Outgo- The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

(4) Every listed company and every other public company having a paid-up share capital of twenty-five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

(5) In addition to the information and details specified in sub-rule (4), the report of the Board shall also contain -

- (i) the financial summary or highlights;
- (ii) the change in the nature of business, if any;
- (iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
- (iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;

FAQs on Board of Directors and Duties of Directors

- (v) the details relating to deposits, covered under Chapter V of the Act-
 - a) accepted during the year;
 - b) remained unpaid or unclaimed as at the end of the year;
 - c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-
 - at the beginning of the year;
 - maximum during the year;
 - at the end of the year;
- (vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;
- (vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in the future;
- (viii) the details in respect of the adequacy of internal financial controls with reference to the Financial Statements.

11. What are the details to be incorporated in the Board's Report as a Directors' Responsibility Statement?

The Board's report shall also include a **Directors' Responsibility Statement**, indicating therein, -

- (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

TG on the Provisions of Independent Directors with Corporate ...

- (d) the directors had prepared the annual accounts on a going concern basis; and
- (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.— For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

The Board’s report and any annexure thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

Chapter IX

Formats of Forms to be filed by Directors

9 Formats of Forms to be filed by Directors

9.1 FORM DIR-2 - Consent to act as a director of a company

FORM DIR-2

Consent to act as a director of a company

Pursuant to section 152(5) and rule 8 of Companies
(Appointment and Qualification of Directors) Rules, 2014

To

Organisation's Name

City

Subject: Consent to act as an independent director

I, **Mr. A** hereby give my consent to act as an Independent director of X Ltd pursuant to sub-section (5) of section 152 of the Companies Act, 2013 and certify that I am not disqualified to become a director under the Companies Act, 2013.

1. Director Identification Number (DIN):
2. Name (in full): **A**
3. Father's Name (in full):
4. Address:
5. E-mail id:
6. Mobile no.:
7. Income-tax PAN :
8. Occupation:
9. Date of birth:

10. Nationality:
11. No. of companies in which I am already a Director and out of such companies the names of the companies in which I am a Managing Director, Chief Executive Officer, Whole time Director, Secretary, Chief Financial Officer, and Manager. **As Per Annexure-A**
12. Particulars of membership No. and Certificate of practice No. if the applicant is a member of any professional Institute.

DECLARATION

I declare that I have not been convicted of any offence in connection with the promotion, formation or management of any company or LLP and have not been found guilty of any fraud or

misfeasance or of any breach of duty to any company under this Act or any previous company law in the last five years. I further declare that if appointed my total Directorship in all the companies shall not exceed the prescribed number of companies in which a person can be appointed as a Director.

Date:

Signature

Place:

Attachments:

1. Proof of identity
2. Proof of residence

Annexure-A

S. No.	Company Name	CIN	Designation
1.	C. Ltd		Director
2.	D. Ltd		Director
3.	E. Ltd		Director
4.	F. Ltd		Director
5.	G. Ltd		Director
6.	H. Ltd		Director
7.	I. Ltd		Director
8.	J. Ltd		Director
9.	K. Ltd		Director

9.2 FORM DIR-8 - Intimation by Director

FORM 'DIR-8'

Intimation by Director

[Pursuant to Section 164(2) and rule 14(1) of Companies (Appointment and Qualification of Directors) Rules, 2014]

Registration No. of Company :

Nominal Capital Rs. :

Paid-up Capital Rs. :

Name of Company :

Address of its Registered Office :

To,

The Board of Directors of XYZ Ltd.

I, **Mr. A S/o Mr. X**, resident of (**Address**) Director in the company hereby give notice that I am/was a director in the following companies during the last three years

Name of the Company	Date of Appointment	Date of Cessation

I further confirm that I have not incurred disqualification under section 164(2) of the Companies Act, 2013 in any of the above companies, in the previous financial year, and that I, at present, stand free from any disqualification from being a director.

Date:

Signature

Place:

DIN No:

9.3 Appointment as Additional Director

Private & Confidential

Date:

Dear Mr. A

APPOINTMENT AS ADDITIONAL DIRECTOR

I am pleased to confirm that the Board of Directors of X Company has resolved that you be offered a position as an Additional Director of the Company. The purpose of this letter is to confirm the basis of your appointment should you be willing to accept.

Would you please sign and return the attached copy in acknowledgement.

Term of Appointment

Your appointment will be made pursuant to the Company's Constitution and is initially for the period expiring at the next Annual General Meeting, at which time shareholders will consider your re-election for a further period.

You may resign by notice in writing at any time and, under the Companies Act 2013 and the Constitution of the Company, your appointment may cease in certain prescribed circumstances.

Role of Director

You will be expected to participate as an active member of the Board in:

Board meetings and General Meetings

I estimate that you would need to commit to at least 10 days per month to fulfil your directorial duties, including adequately preparing for meetings, attendance and undertaking allocated follow-up tasks, office and site visits as necessary, as well as being available for adhoc discussions from time-to-time.

Remuneration & Expenses

You will be entitled to a Director's fee of Rs Nil per annum.

You will be reimbursed for all approved expenses incurred in your role as a Director. In addition, should you be requested to perform other work for the Company, outside the scope of usual Directors' duties, you may be entitled to re-imbursements as agreed with the Board at that time.

Disclosure

To enable compliance with the Companies, Act 2013, and the Constitution of the Company you are required to make certain disclosures related to and/or which might affect your role as a Director.

Formats of Forms to be filed by Directors

These include:

Giving notice to the Board of any relevant or material personal interest or conflict in relation to the affairs or business of the Company; promptly advising details of any interests, or changes thereto, in the Company's shareholdings.

Deed of Indemnity

Under the Companies Act 2013 and the Constitution of the Company you have certain rights with respect to access to Company documents and to be indemnified for certain liabilities arising from your conduct or duties as a Director.

Independent Advice

With the approval of the Board you may seek independent professional advice, at the Company's expense, on any matter connected with the discharge of your responsibilities as a Director. Copies of this advice must be made available to, and for the benefit of, all Board members, unless the Board otherwise agrees.

Company Policies

As an officer of the Company, you will be expected to act at all times in accordance with the Company's Constitution and comply with the Company's corporate policies and procedures that relate to your role as a Director covering such areas as corporate governance, privacy and travel. Copies of these will be provided to you.

Confidentiality

In your role as a Director you will be in possession of confidential information about the Company and its affairs. You may only use that information in the proper performance of your duties or as required by law; you must not use it to gain advantage for yourself or others, or to the detriment of the Company.

We look forward to your acceptance of the abovementioned offer.

Thanking You

Yours' faithfully

For X Company

Mr. A

Promoter Director

DIN:

(Address)

Date :

Place :

9.4 FORM MBP 1 - Notice of interest by director

FORM MBP - 1

Notice of interest by director

[Pursuant to section 184 (1) and rule 9(1)]

To

The Board of Directors,

X Company

Dear Sir(s)

I, **Mr. A S/o Mr. Y**, resident of **(Address)**, Director of the company hereby give notice of my interest or concern in the following companies, bodies corporate, firms or other association of individuals:

SI No.	Names of the Companies /bodies corporate /firms / association of individuals	Nature of interest or concern / Change in interest or concern	Shareholding	Date on which interest or concern arose /changed

Place: -----

Date:-----

Signature:-----

Name: -----

DIN :-----

9.5 Self-Declaration Forms

SELF – DECLARATION

To

Date:

The Board of Directors

X Ltd

Address

Sub: Self Declaration

I, **Mr.** _____, **r/o** _____ Director
on the Board of X Ltd comply with all the criteria of director and hereby
certify that :

1. I have been/ not have been resident in India throughout the
year. (strike out inapplicable)
2. I am fit and proper persons for holding the position of a
Director.

Declaration

I do hereby declare and confirm that the above said information is true and correct to the best of my knowledge as on this date and I take responsibility for its correctness and shall be liable for any fine or other penalty imposed if any infringement is made in the rules of the company, its directors or if the same is found wrong or incorrect in the future.

I further undertake to intimate immediately upon changes, if any, to the Company for updating of the same.

Thanking you

Yours faithfully,

SELF – DECLARATION

To

Date:

The Board of Directors

X Ltd

Address

Sub: Self Declaration

I, **Mr.** _____, **r/o** _____
Independent Director on X Ltd comply with all the criteria of Independent director and hereby certify that :

1. I have been/ not been resident in India throughout the year.
(strike out inapplicable)
2. I am fit and proper persons for holding the position of a Director.
3. I met the eligibility criteria specified in regulation 5(5)/5(6) throughout the year i.e an independent director shall be an individual-
 - (a) who is a person of ability and integrity;
 - (b) who has expertise in the field of finance, law, management or insolvency;
 - (c) who is not an insolvency professional;
 - (d) who is not a relative of the directors of the Governing Board;
 - (e) who had or has no pecuniary relationship with the insolvency professional agency, or any of its directors, or any of its shareholders holding more than ten percent of its share capital, during the immediately preceding two financial years or during the current financial year;
 - (f) who is not a shareholder of the insolvency professional agency;
 - (g) who is not a member of a governing council/Board of Directors of any of the shareholders holding more than ten per cent. of the share capital of the insolvency professional agency.

4. I confirm that I meet the criterion under Declaration of Independence vide section 149(6) of Companies Act,2013.

Declaration

I do hereby declare and confirm that the above said information is true and correct to the best of my knowledge as on this date and I take responsibility for its correctness and shall be liable for any fine or other penalty imposed if any infringement is made in the rules of the company, its directors or if the same is found wrong or incorrect in the future.

I further undertake to intimate immediately upon changes, if any, to the Company for updating of the same.

Thanking you

Yours faithfully,

Chapter X

Statutory Compliances for the Company

10 Statutory Compliances related to Registrar of Companies (ROC), Taxation and Audit

10.1 Registrar of Companies¹¹

There are certain mandatory compliances for Companies which have been registered with the ROC

I. Board Meetings - Section 173 of the Companies Act 2013

- Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation.
- minimum of four board meetings of Directors shall be held every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board¹²
- 1/3rd of the total number of directors or minimum 2 whichever is greater should be present at the meeting and be intimated at least 7 days prior about the agenda of the meeting.
- Minutes of the board meeting is to be kept at the registered office of the company.

¹¹ No additional fees shall be charged for late filing during a moratorium period from 01st April to 31st December' 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date, which will not only reduce the compliance burden, including financial burden of companies/ LLPs at large but also enable long-standing noncompliant companies/ LLPs to make a 'fresh start'. The Circulars specifying detailed requirements in this regard are being issued separately.

¹² MCA General Circular No. 11 /2020 dated 24th March 2020- the mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA-13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September. Accordingly, as a one-time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13.

Statutory Compliances for the Company

II. **Annual General Meeting (AGM)- Section 96 of the Companies Act 2013**

- Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting
- It shall be specified in the notice that such meeting has been called
- Not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.
- Every annual general meeting shall be called and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated subject to the conditions.
- However, the Ministry of Corporate Affairs (the MCA) has allowed companies to hold annual general meeting (AGM) in a manner similar to the one provided in, which deal with conduct of extraordinary general meeting (EGM) and by virtue of the same the companies have been allowed the holding of annual general meeting (AGM) through video conferencing (VC) or other audio-visual means (OAVM). Further, companies whose financial year ended on 31st December 2019, have already been allowed to hold their AGM by 31st December, 2020¹³ and due to the continuous challenges being faced by the companies, the Registrar of Companies extended the time period till 31st December, 2020 for conducting of AGM (other than the first AGM) for the companies whose financial year ended on 31st March, 2020 without seeking any extension through filing of form GNL-1.

In view of the continuing restrictions on the movement of persons at several places in the country, it has been decided that the companies be allowed to conduct their AGM through video conferencing (VC) or other audio-visual means (OAVM), during the calendar at year 2020, subject to the fulfilment of the following requirements:

¹³ Registrar of Companies of various regions have extended the time for holding of Annual General Meeting (AGM) for the financial year ended on 2019-20 by three months from the due date by issuing Circulars for respective States on 08.09.20.

A. Companies where e-voting is required

- (i) The framework provided in para 3 -A of EGM circular - I and the manner and mode of issuing notices provided in sub-para (i)-A of EGM Circular – II shall be applicable for conducting the AGM. (Please refer our Announcement of EGM).
- (ii) In AGM, besides ordinary business, any special business. If unavoidable, shall be transacted.
- (iii) Financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), shall be sent by email to members and the other persons entitled to receive.
- (iv) Before sending the notices and copies of the financial statements, etc., a public notice by way of advertisement be published at least once in a vernacular language and in English language in respective language newspaper mentioning therein:
 - Statement that the AGM will be convened through VC / OAVM as per applicable legal prescriptions.
 - The date and time of the AGM through VC / OAVM
 - Availability of notice of the meeting on the website of the company (on stock exchange by listed entities)
 - For members who are holding shares in physical form or who have not registered their email addresses with the company – stating they can cast vote through e-voting/remote e-voting.
 - Manner for registration of unregistered members for registration
 - Manner to mandate receiving dividends directly in member's bank account.
- (v) The company, upon normalization of the postal services, is allowed to dispatch the dividend warrant/cheque by post for dividend remaining unpaid.
- (vi) Where Company has received permission to conduct AGM physically, then the persons attending such meetings physically as well as persons attending the meeting through VC/OAVM shall be reckoned for the purpose of quorum. All resolutions shall continue to be passed through the facility of e-voting system.

Statutory Compliances for the Company

B. For Companies where e-voting is not required:

- (i) AGM can be conducted by Companies which has in its records, the email addresses of half the number of prescribed category of members.
- (ii) Manner for registration of unregistered members for registration
- (iii) The framework provided in para 3 -A of EGM circular - I and the manner and mode of issuing notices provided in sub-para (i)-A of EGM Circular – II shall be applicable for conducting the AGM.
- (iv) In AGM, besides ordinary business, any special business. If unavoidable, shall be transacted.
- (v) Financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), shall be sent by email to members and the other persons entitled to receive.
- (vi) The company, upon normalization of the postal services, is allowed to dispatch the dividend warrant/cheque by post for dividend remaining unpaid.

The companies shall also ensure all other compliances associated with the provisions relating to general meeting viz. making of disclosures, inspection of related documents/ register by members or authorisations for voting by bodies corporate etc as provided in the law are made through electronic mode.

III. Board's Report- Section 134 of the Companies Act 2013

- Every company to forward to its members along with its Financial Statement, the Board of Director's Report. The Report of Board of Directors should be "ATTACHED" to the Balance Sheet laid before the AGM.
- A director's report is intended to explain to shareholders, the overall financial position of the Company and its operation & Business Scope. In Companies Act, 2013, lot of sections makes it mandatory to make disclosure in Boards report.
- As per Section 134(6) Board Report and annexure thereto shall be signed by.
 - its 'CHAIRPERSON' if he is authorized by Board of director;

TG on the Provisions of Independent Directors with Corporate ...

- Where he is not so authorized by at least 2 (Two) Director, one of whom shall be a Managing Director;
- if there is no Managing Director then by Two Directors
- Further, every director has to disclose about his directorship in other companies every year. This shall be done by giving a declaration in writing to the company every year in a specified Directors' Report format.

IV. Auditor's Appointment- Section 139(1) of the Companies Act 2013 (Form ADT-1)

- Companies must appoint their First Auditor within 30 days of incorporation.
- The First Auditor will be appointed for five years
- The appointment must be filed using Form ADT-1.
- When an auditor is appointed by the company then within 15 days from the date of the Annual General Meeting, form ADT-1 is to be filed with the registrar of the company.

V. Disclosure of Interest by Director – Section 184 of the Companies Act 2013

- All the directors of the company are required to fill the form MBP-1 to disclose their interest in any other company.
- Such disclosure is to be made every year on the first Board Meeting.
- In case of appointment of a new director qualification of the director is to be taken as a declaration.
- Every Director of the Company in each financial year has to file with the Company disclosure of non-disqualification in Form DIR-8

VI. Filing of Financial Statements – Section 137 of the Companies Act, 2013

- A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements are duly adopted at the annual general meeting of the company.

Statutory Compliances for the Company

- It shall be filed with the Registrar within thirty days of the date of annual general meeting in form AOC-4, with such fees or additional fees.

VII. Filing of Annual Return – Section 92 of the Companies Act, 2013

- Every company shall prepare an annual return in form MGT-7 containing the particulars for the end of financial year such as:
 - its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
 - its shares, debentures and other securities and shareholding pattern;
 - its members and debenture-holders along with changes therein since the close of the previous financial year;
 - its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
 - meetings of members or a class thereof, Board and its various committees along with attendance details;
 - remuneration of directors and key managerial personnel;
 - penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
 - matters relating to certification of compliances, disclosures as may be prescribed;
 - details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors and
 - such other matters as may be prescribed,
- It shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.

VIII. Maintenance of Statutory registers

- Maintaining statutory registers, Minutes of Board Meeting books, Minutes of AGM books, creditors meeting, debenture holder meetings are mandatory.

10.2 Non-ROC Compliances

In addition to the ROC Compliances, the Companies must comply to some other forms or returns on a monthly/quarterly/annual basis such as:

- TDS/TCS payment
- GST payment and GST filing
- Other payments of periodic dues
- Filing of quarterly TDS returns
- Advance tax payment
- Filing of IT returns
- Filing of tax audit reports
- Tax audits

Chapter XI

Performance Evaluation of Independent Directors

11 Performance Evaluation of Independent Directors as per the Companies Act and SEBI LODR

Main provisions under Companies Act with respect to Board Evaluation

As per Section 134(3)- There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include— (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

As per Section 178(2)- The Nomination and Remuneration Committee shall 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 carry out evaluation of every director's performance.

SCHEDULE IV: CODE FOR INDEPENDENT DIRECTORS

II. Role and functions. (2) The independent directors shall bring an objective view in the evaluation of the performance of board and management;

V. Re-appointment: The re-appointment of the independent director shall be on the basis of the report of performance evaluation.

VII. Separate meetings:

1. The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors

and members of management;¹⁴

2. All the independent directors of the company shall strive to be present at such meeting;
3. The meeting shall:
 - a) review the performance of non-independent directors and the Board as a whole;
 - b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

1. The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.
2. Based on the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Rule 8 (4) of the Companies (Accounts) Rules, 2014

Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Main provisions under SEBI LODR with respect to Board Evaluation

¹⁴ For the financial year 2019-20, if the IDs of a company have not been able to hold such a meeting, the same shall not be viewed as a violation. The IDs, however, may share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary

CHAPTER II: 4(2)(f)(ii): Key functions of the board of directors-

(9) Monitoring and reviewing the board of director's evaluation framework.

Chapter IV: 17(10):

The performance evaluation of independent directors shall be done by the entire board of directors. However, the directors who are subject to evaluation shall not participate in such evaluation:

25: (3) The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.

(4) The independent directors in the meeting referred in sub-regulation (3) shall, inter alia-

- (a) review the performance of non-independent directors and the board of directors as a whole;
- (b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors;
- (c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

Schedule II (PART D) (A) ROLE OF NOMINATION AND REMUNERATION COMMITTEE:

Role of the committee shall, inter-alia, include the following:

- 2. formulation of criteria for evaluation of the performance of independent directors and the board of directors;
- 4. identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.
- 5. whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

Schedule V: Corporate Governance Report.

The following disclosures shall be made in the section on the corporate governance of the annual report.

- (4) Nomination and Remuneration Committee:
- (d) performance evaluation criteria for independent directors.

Sample Checklists have been developed for performance evaluation:

- Specific issues and questions that should be considered in performance evaluation of the entire Board by Independent Directors
- Parameters for Evaluation of Board of Directors
- Performance Evaluation of Independent Director/Non-Independent Director
- Self-Appraisal Check List
- Schedule IV of The Companies Act, 2013
- Meetings of The Board

SEBI has also issued Guidance note on Performance Evaluation which is provided at the end of this Chapter.

11.1 Specific issues and questions that should be considered in a performance evaluation of the entire Board by Independent Directors

Some of the specific issues and questions that should be considered in performance evaluation of the entire Board by Independent Directors are set out below:

S.No.	Assessment Criteria	Rating	Remarks/ Comments
1.	Preparation for the Board meeting is done diligently.		
2.	The Board of Directors of the Company is effective in decision making.		
3.	Constructive and Thought Provoking Questions are asked which shows the level of participation		

Performance Evaluation of Independent Directors

4.	The Board of Directors is effective in developing a corporate governance structure that allows and encourages the Board to fulfil its responsibilities.		
5.	Availability to management and other board members when required.		
6.	The information provided to Directors prior to Board Meetings meets your expectations in terms of length and level of detail.		
7.	The Board reviews the organisation's performance in carrying out the stated mission on a regular basis.		
8.	Constructive working relationship with fellow directors and senior management is maintained.		
9.	The Company's systems of control are effective for identifying material risks and reporting material violations of policies and law.		
10.	The Board of Directors is effective in providing necessary advice and suggestions to the Company's management.		
11.	Is the Board as a whole up to date with the latest developments in the regulatory environment and the market?		
12.	Board meetings are conducted in a manner that encourages open communication, meaningful participation, and timely resolution of issues.		
13.	The Board Chairman effectively and appropriately leads and facilitates the		

TG on the Provisions of Independent Directors with Corporate ...

	Board meetings and the policy and governance work of the Board.		
14.	The Board appropriately considers internal audit reports, management's responses, and steps towards improvement.		
15.	The Board oversees the role of the Independent Auditor from selection to termination and has an effective process to evaluate the Independent Auditor's qualifications and performance.		
16.	The Board considers the Independent Audit plan and provides recommendations.		

11.2 Parameters for Evaluation of Board of Directors

Some of the parameters for evaluation of the effectiveness of the Board of Directors are as follows:

S. No.	Parameters of Board Evaluation	Description of the Parameters
1.	Board Structure	• The state and quantum of being diverse during the work. • Composition and constitution of the Board and Committee. • There is a high level of participation in board discussions • The board has productivity recruitment and induction processes • Possession of appropriate skills and competencies of the Directors for the post. • Board and Committee charters. • Frequency of meetings held.

Performance Evaluation of Independent Directors

		• The board currently contains a sufficient range of expertise to make it an effective governing body • The processes followed by the Board.
2.	Board's Role in Governance	• Board members are familiar with the current mission statement. • The board has approved a mission statement that is appropriate for his current role in a Company. • The board focuses its attention on long-term significant policy issues. • Clear understanding of the Company's strategies. • The board has articulated policies relating to our main areas of service delivery. • The company has developed a strategic plan and monitors its implementation regularly
3.	Dynamics and Functioning	• The board is knowledgeable about current activities and services. • Annual Board calendar. • The board periodically considers amendments to the range of programs and services in the light of changed circumstances • Information availability. • Interactions and communication with CEO and senior executives. • The agenda of the Board. • The board fully understands the external environment in which it is operating.

TG on the Provisions of Independent Directors with Corporate ...

		• Chair person's role in the Company.
4.	Marketing and Resourcing	• The board has approved an effective marketing and communications strategy for the Company. • The board has established effective customer and stakeholder consultation processes. • The board understands the fundraising or resourcing strategy for a company. • The board assists the fundraising/ Resourcing in practical ways-providing contacts or participating directly.
5.	Financial Reporting Process, Internal Controls, Risk Management	• The board discusses thoroughly the annual budget of a company and its implications before approving it. • The board receives regular financial reports that are accurate, timely and clearly comprehensible. • The board has approved risk management strategies • The board has agreed to the key financial indicators and monitor these routinely. • Abusive related party transactions • Whistleblower mechanism

11.3 Performance Evaluation of Independent Director/Non-Independent Director

Certain specific issues and questions should be considered for the performance evaluation of Independent Director/Non-Independent Director, in which the concerned director being evaluated shall not be included:

Performance Evaluation of Independent Directors

S. No.	Assessment Criteria	Rating	Remarks/ Comments
Independent Director			
1.	Rendering independent, unbiased opinion and resolution of issues at meetings		
2.	Proactive behavior		
3.	Raising concerns to the board		
4.	Attendance and active participation of the director's and not perfunctorily.		
5.	Safeguard of confidential information		
6.	Strategic and lateral thinking.		
7.	Commitment to the role.		
8.	Safeguarding interest of whistle-blowers under vigil mechanism		
9.	Timely inputs on the minutes of the meetings of the board and committees, if any		
10.	Fiduciary responsibilities as a board member.		
Non-Independent Director			
1.	Leadership quality which suggests driving any function or identified initiative based on domain knowledge and experience.		
2.	Proactive behaviour.		
3.	Application of knowledge for rendering advice to Management for resolution of business issues.		
4.	Compliance with policies of the Company, ethics, code of conduct, etc.		

TG on the Provisions of Independent Directors with Corporate ...

5.	Understanding of risks associated with the business		
6.	Reporting of frauds, violation etc.		
7.	Safeguarding of interest of whistleblowers under vigil mechanism		
8.	Timely inputs on the minutes of the meetings of the Board and Committee, if any		

11.4 Self-Appraisal Check List

To ensure his performance to the satisfaction of the Board of Directors, the independent director must carry out self-appraisal. A checklist for Self-Appraisal is stated below:-

S.No.	Particulars	Rating on 10
I.	Before Acceptance of Appointment as Director	
A.	Aspects to be examined	
a)	The business activities of the company.	
b)	Current financial position of the company.	
c)	Past activities of the company on corporate governance issues.	
d)	Background, track record, reputation and integrity of promoters and majority shareholders.	
e)	Track record of the company over the past few years.	
f)	The current size and structure of the Board and the proportion of executive and non-executive directors on the Board.	
g)	The size and structure of Board committees and their mode of functioning.	
h)	The ownership of the company, i.e. shareholders of the company and attitude of the management towards the shareholders.	

Performance Evaluation of Independent Directors

i)	Material litigations by or against the company.	
j)	Policy for Insurance cover for directors and the company's policy on indemnifying directors.	
k)	Soundness of internal regulations of the company.	
l)	Any specific qualifications or skills prescribed by the company for directorship and the director's own suitability for the post taking into account, the qualifications prescribed.	
B.	Documents examined	
a)	Prospectus for public issues, issued by the company in the past few years.	
b)	Annual accounts and balance sheets of the company for the past few years.	
c)	Annual report to the shareholders for the past few years.	
d)	Memorandum and Articles of Association of the company.	
e)	Terms of reference of the various Board Committees.	
f)	Analyst reports on the company	
g)	Press reports on the Company	
C.	Procedural compliance	
a)	Not disqualified from accepting appointment as director u/s 164 or 196 of the Companies Act, 2013	
b)	Satisfies the criteria for appointment specified in Part 1 of Schedule V of the Companies Act, 2013	
c)	In case Government Approval is required, the same is obtained before you are appointed as a director;	
d)	A valid Director Identification Number (DIN) has been acquired, which is a pre-requisite for appointment as a Director on the board of an Indian company	

TG on the Provisions of Independent Directors with Corporate ...

e)	Ascertain whether not a director of more than 20 (twenty) Companies at the same time. • maximum number of public companies in which a person can be appointed as a director shall not exceed ten whereas directorship in private companies that are either holding or subsidiary company of a public company shall be included. • The limit of the directorship shall not be applicable for a dormant company	
f)	Remuneration payable is within the limits prescribed in Part 2 of Schedule V of the Companies Act, 2013	
g)	Holding of any qualification shares is required as per the Articles of Association of a company	
h)	Appointment should be informed to all statutory authorities to which such information is to be provided, including the Registrar of Companies and the applicable Stock Exchange	
i)	Filing of E-forms: - • The company shall file e-Form DIR-12 for the appointment of Managing Director or Manager; • The company shall file e-Form MGT-14 for the appointment of Managing Director. Filing of such e-form is required for any resolution relating to the appointment, reappointment or renewal of the appointment, or variation of the terms of appointment, of Managing Director; and • In case of public companies, it shall file e-Form MR-1 within 60 days of such appointment of Managing Director or Manager.	
j)	Necessary entry of the requisite particulars is made in the register of directors and key managerial personnel and their shareholding (under Section 170 of the Act)	

Performance Evaluation of Independent Directors

k)	The appointed director discloses his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in Form MBP-1 (under Section 184 of the Act). Such disclosure shall be made at the first board meeting in which he participates as a director and thereafter at the first board meeting in every financial year or whenever there is any change in the disclosures already made, then at the first board meeting held after such change. Such disclosure made by the Managing Director shall be noted in the minutes of the board meeting.	
D.	Other Considerations	
a)	In case of private company or public company, a company shall not appoint or continue the employment of any person as Managing Director or Manager who is below the age of 21 years or has attained the age of 70 years. However, the appointment of a person who has attained the age of 70 years may be made by passing a special resolution.	
b)	One understands the responsibilities to be performed as a director (including that the director has a fiduciary duty to the Company as well as instances where you could be considered to be an officer-in-default for violations of applicable laws)	
c)	When appointed as an independent director, ensures that criteria of being considered an 'independent director' in terms the listing agreement is applicable to the Company.	
d)	One can meet the expectations for the contribution	
e)	Adequate Corporate Governance procedures as per the Act and the listing agreement are in place.	

TG on the Provisions of Independent Directors with Corporate ...

E.	Introduction to the Company	
a)	Meeting dignitaries such as:- • CEO/CFO; • Other directors (including recently retired directors); • Senior management team; • Auditor; • Company lawyer	
b)	Obtain a briefing on the history and strategy of the company	
c)	Understand major drivers of performance and key performance indicators	
d)	Getting a SWOT analysis of the company	
e)	Getting background/resume on other directors and key members of the management team;	
f)	Understanding relationships and roles within management team	
g)	Understanding who are the key suppliers or customers	
h)	Understanding the status of relationships with employees and unions	
i)	Obtaining an industry briefing	
j)	Getting auditor's input and perceptions on historical accounts and disclosure issues	
k)	Understanding the key legal relationships, any past or current litigation and issues with compliance and regulators	
F.	Review of MOA & AOA	
a)	Reviewing the Memorandum and Articles of Association to determine the powers as well as any restrictions on the powers of the Board of Directors of the Company	

Performance Evaluation of Independent Directors

b)	Reviewing the company's filings with SEBI and other regulatory authorities to ensure that the Company has made full and timely disclosure to the market.	
II.	Duties & Responsibilities	
a)	Whether comparison with Peers, Industry Comparatives and future business outlook with concrete action plans as well as Road Map for sustainable growth for the company, actions being taken and periodic reporting thereon have been duly discharged through various meetings?	
b)	Whether the conduct of business, quality products and services, wealth creation, financial reports and disclosure, conflict of interest etc. has been laid down for the Board to establish a healthy atmosphere for the Company?	
c)	Is the Board composition as per applicable law (i.e include the relevant number of non-executive and independent directors as per applicable regulations on such date) and do each of such directors discharge their roles as required?	
d)	Any directors (or officers) that exercise undue control over the company's assets or affairs, especially if they form a part of or represent the promoter group	
e)	Whether the Business Continuity Plan (BCP) and Disaster Recovery Policy (DRP) have been drawn with minute details and tested periodically?	
A.	Understanding Relationship between Shareholders and Directors	
a)	Making sure that all the monies and assets of the company are employed solely for the purpose of the company	

TG on the Provisions of Independent Directors with Corporate ...

b)	Must account to the company for all of its property under control	
c)	Must act unanimously (with all other directors) unless the company provides otherwise	
d)	Must understand the personal liability since it acts as a representative of the company	
B.	Related Party Transactions (RTP)	
a)	Duty to disclose interest in contract, arrangement, etc in which the company is entering into, to the board of directors	
b)	Appropriate approvals to be obtained by the Company when entering into RTP where some RTP may require Government approvals as well	
c)	If one is holding a place of profit or any of the related parties are holding a place of profit with the company, one needs to ensure that such appointment is approved at a shareholders meeting of the company.	
d)	Remuneration payable to a related party exceeds an amount that is prescribed by law; then Government approval has been taken for such appointment.	
e)	Process of detailed verifications report from internal auditors on Loans sanctioned	
C.	Interpretation of Financial Statements	
a)	The Independent Director possesses financial literacy including knowledge to read Financial Statements as well as Accounting Standards, understanding of Non-Financial Statements and the Knowledge of Industry and Governing Laws.	
b)	Shall be able to judge Quarterly Financial Results with comparatives and	

Performance Evaluation of Independent Directors

c)	Shall be able to give detailed reasons for variances in the financial results presented and discussed in the Audit Committee and then in the Board Meetings.	
d)	Directors on the Board of the Company are required to prepare and place at each annual general meeting of the Company, a director's report in such form as is prescribed.	
e)	Comparative study of financial data with techniques for interpretation of financial statements based on various analytical procedures (as briefed below) is in place • Trend Analysis • Comparative Analysis • Ratio Analysis	
f)	Ensure maintenance of records and registers that a Company is required to maintain	
g)	Ensure filing of certain returns and filings, both under the Companies Act as well as other legislations that may be applicable to the Company.	
h)	The periodic meetings of the Board, Committee and the Shareholders required to be held as per Companies Act, 2013.	
III.	Power of Board & its Delegation	
a)	With shareholders consent at a general meeting, delegation of authority can be made	
b)	The director may be held liable for acts taken by the person to whom one had delegated authority.	
c)	The powers of Board by means of resolutions passed at meetings are as follows: • to make calls on shareholders in respect of money unpaid on their shares;	

TG on the Provisions of Independent Directors with Corporate ...

	• to authorise buy-back of securities under section 68; • to issue securities, including debentures, whether in or outside India; • to borrow monies; • to invest the funds of the company; • to grant loans or give guarantee or provide security in respect of loans; • to approve financial statement and the Board's report; • to diversify the business of the company; • to approve amalgamation, merger or reconstruction; • to take over a company or acquire a controlling or substantial stake in another company; • any other matter which may be prescribed:	
d)	The company and the independent directors shall abide by the provisions specified in Schedule IV of the Companies Act, 2013.	
IV.	Vacation of Office	
A.	In case of winding up of Company	
a)	Powers ceased upon winding up unless such powers have been duly extended by the liquidator or the shareholders meeting (in case of a voluntary winding up) or the creditors (in case of creditors voluntary winding up).	
B.	Retirement from Directorship	
a)	Unless the Articles of Association of a Company provide for retirement by rotation of all the Directors of a Company, at least 2/3rd of the total number of directors would need to retire by rotation at every annual general meeting of the company. (The retiring directors can be re-appointed.)	

Performance Evaluation of Independent Directors

C.	Resignation	
a)	Company needs to be informed about the resignation as per the terms of the conditions that are applicable as per the appointment made.	
b)	Resignation cannot be withdrawn, the director is re-appointed.	
c)	Ensure that the Company informs all relevant authorities (including the Registrar of Companies and the Stock Exchange) of the resignation.	
d)	If any security for borrowings of the Company has been given, one should ensure that the same have been duly discharged and vacated by the lenders.	
D.	Vacation	
a)	Disqualifications under section 164 attracted whereas if 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)	Absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board	
c)	Acts in contravention of the provisions of <u>section 184</u> relating to entering into contracts or arrangements in which he is directly or indirectly interested;	
d)	Fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;	
e)	Becomes disqualified by an order of a court or the Tribunal	

TG on the Provisions of Independent Directors with Corporate ...

f)	Convicted by a court of any offence, whether involving moral turpitude or <u>otherwise</u> and sentenced in respect thereof to imprisonment for not less than six months:	
g)	Removed in pursuance of the provisions of this Act;	
h)	Having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.	
E.	Removal	
a)	Issuance of special notice and an opportunity to be heard is given at the shareholder's meeting.	
V.	Liabilities	
A.	Against the Company	
a)	The directors will have to make good for any loss on account of:- • Breach of trust where directors make secret profits of the Company • For dishonest act to make personal profits • For the activities of co-directors • Entering into an ultra-vires act where the director is personally liable.	
B.	Towards Third Parties	
a)	Personal liability of directors towards the following:- • Including in the prospectus any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead	

Performance Evaluation of Independent Directors

	• For failure to repay application money on non-receipt of minimum subscription • Failure to repay application money on refusal to list shares by the stock exchange • For acting in their own name without mentioning the name of the Company • For acting beyond the powers of the Company • When the liability has been made unlimited by the Memorandum. • For any liability at the Company at the winding up	
C.	Criminal Liability	
a)	Will be liable with fine and imprisonment or both for fraud or non-compliance of any statutory provision • Misstatement of prospectus • Failure to file return on allotment with the Register • Failure to give the notice to the registrar for conversion of share to stock • Failure to issue share certificate and debenture certificate • Failure to maintain register of members and register of debenture holders • Default in holding Annual General Meeting • Failure to provide Annual Accounts and Balance Sheet • Failure to hold office in more than 20 Companies	
VI.	Indemnification	
a)	The law provides that no director unless he is a managing director, manager or in whole-time employment of the company, shall be entitled to any compensation for loss of office, or as	

TG on the Provisions of Independent Directors with Corporate ...

	consideration for retirement from office or in connection with such loss or retirement.	
b)	Number of Companies obtains Directors and Officers liability insurance to mitigate the risk of the Director's liabilities. However, understand that an insurance policy would not cover willful default, fraud, misfeasance, breach of duty, or breach of trust of which you may be guilty.	

11.5 Meetings of The Board

A note of the participation of the directors in the meetings of the board, as well as various committees during the year and number of resolutions on which dissented, needs to be maintained:

Participation in the meetings of the board as well as various committees during last year and number of resolutions on which dissented					
S. No	Type of Meeting	No. of Meetings held in last year	No. of Meetings Attended	No. of Resolutions dissented	Remarks

11.6 Guidance Note on Evaluation of Board as issued by SEBI

A. Background of Board Evaluation in India

India has moved recently from a voluntary Board evaluation under Clause 49 of the Listing Agreement (SEBI) and Corporate Governance Voluntary Guidelines of MCA (2009) to a mandatory Board evaluation under Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR).

The Companies Act, 2013 and SEBI LODR provide for several mandatory provisions for Board Evaluation on who is to be evaluated, who is to evaluate such persons, disclosure requirements, etc. The main provisions of Companies Act, 2013 and SEBI LODR on Board Evaluation as applicable to listed entities is attached at **Annexure A1** and summarized as under:

Performance Evaluation of Independent Directors

1. Role of the Nomination and Remuneration Committee (NRC):

- a. NRC shall formulate criteria for evaluation of the performance of independent directors and the board of directors.
- b. NRC shall carry out an evaluation of every director's performance.
- c. NRC shall determine whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

2. Role of independent directors:

- a. In the meeting of independent directors of the company (without the attendance of non-independent directors and management), such directors shall:
 - i. review the performance of non-independent directors and the Board as a whole.
 - ii. review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors.
 - iii. assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.
- b. The independent directors shall bring an objective view in the evaluation of the performance of board and management.

3. Evaluation of independent directors:

The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

4. Disclosure requirements:

- a. A statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors shall be included in the report by the Board of Directors placed in the general meeting.
- b. The performance evaluation criteria for independent directors shall be disclosed in the section on the corporate governance of the annual report.

B. Subject of Evaluation

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

1. Board as a whole
2. Committees of the Board
3. Individual Directors and Chairperson (including Chairperson, CEO, Independent Directors, Non-independent directors, etc.)

C. Process of Evaluation

The process of evaluation is generally elaborate, stretching across pre-evaluation, evaluation and post-evaluation processes including, inter alia, the following:

1. Identifying the objectives of evaluation:

Identifying the objectives of the evaluation is the first and crucial step in the Board Evaluation process. Clear identification of objectives is key to streamlining the process of evaluation, analyzing the results and taking appropriate and corrective action. The objectives may be:

- a) General objectives- Standard Objectives for all Board evaluations of the entity
- b) Specific objectives- Objectives specific to the current Board evaluation based on recent events, new issues of concern, etc.

2. Criteria of evaluation

The criteria for evaluation under different categories depend on the role the person/group plays in the organization. For instance, the evaluation of the Chairperson may evaluate the person's leadership, coordination and steering skills, etc. which may be different from the role of other directors. The criteria for every evaluation may be decided at every level depending on the functions, responsibilities, competencies required, nature of business, etc. As per SEBI LODR, the primary responsibility of formulation of criteria lies on the NRC.

Indicative criteria that may be used for different directors/groups are:

Performance Evaluation of Independent Directors

A. Board as a whole

a. Structure of the Board:

- i. **Competency of directors:** (*Different* competencies may be identified as may be required for effective functioning of the entity and the Board) -Whether Board as a whole has directors with a proper mix of competencies to conduct its affairs effectively.
- ii. **Experience of directors:** Whether Board as a whole has directors with enough experience to conduct its affairs effectively.
- iii. **Mix of qualifications:** Whether the Board as a whole has directors with a proper mix of qualifications to conduct its affairs effectively.
- iv. **Diversity in Board under various parameters:** Gender/background/competence/experience, etc. – Whether there is sufficient diversity in the Board on the aforesaid parameters.
- v. **Appointment to the Board:** Whether the process of appointment to the board of directors is clear and transparent and includes provisions to consider diversity of thought, experience, knowledge, perspective and gender in the board of directors.

b. Meetings of the Board:

- i. **Regularity of meetings:** Whether meetings are being held on a regular basis
- ii. **Frequency:**
 - Whether the Board meets frequently
 - Whether the frequency of such meetings is enough for the Board to undertake its duties properly
- iii. **Logistics:** Whether the logistics for the meeting is being handled properly- venue, format, timing, etc.
- iv. **Agenda:**
 - Whether the agenda is circulated well before the meeting
 - Whether the agenda has all relevant information to take decision on the matter
 - Whether the agenda is up to date, regularly reviewed and involves major substantial decisions

TG on the Provisions of Independent Directors with Corporate ...

- Whether the quality of agenda and Board papers is up to the mark (explains issues properly, not overly lengthy, etc.)
- Whether outstanding items of previous meetings are followed-up and taken up in subsequent agendas
- Whether the time allotted for every item (especially substantive items) in the agenda of the meeting is sufficient for adequate discussions on the subject
- Whether the Board is able to finish discussion and decision on all agenda items in the meetings
- Whether adequate and timely inputs are taken from the Board members prior to setting of the Agenda for the meeting
- Whether the agenda includes adequate information on Committee's activities

v. Discussions and dissent:

- Whether the Board discusses every issue comprehensively and depending on the importance of the subject.
- Whether the environment of the meeting induces free-flowing discussions, healthy debate and contribution by everyone without any fear or fervour
- Whether the discussions generally add value to the decision making
- Whether the Board tends towards groupthink and whether critical and dissenting suggestions are welcomed
- Whether all members actively participate in the discussions
- Whether overall, the Board functions constructively as a team

vi. Recording of minutes:

- Whether the minutes are being recorded properly- clearly, completely, accurately and consistently.
- Whether the minutes are approved properly in accordance with set procedures.
- Whether the minutes are timely circulated to all the Board members

Performance Evaluation of Independent Directors

- Whether dissenting views are recorded in the minutes

vii. Dissemination of information:

- Whether all the information pertaining to the meeting are disseminated to the members timely, frequently, accurately, regularly
- Whether Board is adequately informed of material matters in between meetings

c. **Functions of the Board:**

(Functions of the Board have been specified in detail in Chapter II of SEBI LODR and Companies Act)

- i. **Role and responsibilities of the Board:** Whether the same are clearly documented E.g. Difference in roles of Chairman and CEO, Matters reserved for the Board, etc.

ii. **Strategy and performance evaluation:**

- Whether significant time of the Board is being devoted to the management of current and potential strategic issues
- Whether various scenario planning is used to evaluate strategic risks
- Whether the Board overall reviews and guides corporate strategy, major plans of action, risk policy, annual budgets and business plans, set performance objectives, monitored implementation and corporate performance, and oversees major capital expenditures, acquisitions and divestments.

iii. **Governance and compliance:**

- Whether adequate time of the Board is being devoted to analyse and examine governance and compliance issues
- Whether the Board monitors the effectiveness of its governance practices and makes changes as needed
- Whether the Board ensures the integrity of the entity'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.

- Whether the Board oversees the process of disclosure and communications.
- Whether the Board evaluates and analyses the compliance certificate from the auditors / practicing company secretaries regarding compliance of conditions of corporate governance.

iv. Evaluation of Risks:

- Whether the Board undertakes a review of the high-risk issues impacting the organization regularly
- In assessment of risks, whether it is ensured that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the entity to excessive risk.

v. Grievance redressal for Investors:

- Whether the Board regularly reviews the grievance redressal mechanism of investors, details of grievances received, disposed of and those remaining unresolved.

vi. Conflict of interest:

- Whether the Board monitors and manages potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions
- Whether a sufficient number of non-executive members of the board of directors capable of exercising independent judgement are assigned to tasks where there is a potential for conflict of interest

vii. Stakeholder value and responsibility:

- Whether the decision-making process of the Board is adequate to assess creation of stakeholder value
- Whether the Board has mechanisms in place to communicate and engage with various stakeholders
- Whether the Board acts on a fully informed basis, in good faith,

Performance Evaluation of Independent Directors

with due diligence and care, with high ethical standards and in the best interest of the entity and the stakeholders.

- Whether the Board treats shareholders and stakeholders fairly where decisions of the board of directors may affect different shareholder/ stakeholder groups differently.
- Whether the Board regularly reviews the Business Responsibility Reporting / related corporate social responsibility initiatives of the entity and contribution to society, environment, etc.

viii. **Corporate culture and values:** Whether the Board sets a corporate culture and the values by which executives throughout a group shall behave

ix. **Review of Board evaluation:** Whether the Board monitors and reviews the Board evaluation framework.

x. **Facilitation of independent directors:** Whether the Board facilitates the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of the board of directors and any criticism by such directors is taken constructively.

d. **Board and management:**

i. **Evaluation of performance of the management and feedback:**

- Whether the Board evaluates and monitors management, especially the CEO regularly and fairly and provides constructive feedback and strategic guidance
- Whether the measures used are broad enough to monitor performance of the management
- Whether the management's performance is benchmarked against industry peers
- Whether remuneration of the management is in line with its performance and with industry peers
- Whether remuneration of the Board and the management is aligned with the longer-term interests of the entity and its shareholders.

TG on the Provisions of Independent Directors with Corporate ...

- Whether the Board selects, compensates, monitors and, when necessary, replaces key managerial personnel based on such evaluation.
- Whether the Board 'steps 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 entity's focus.
- ii. ***Independence of the management from the Board:*** Whether the level of independence of the management from the Board is adequate
- iii. ***Access of the management to the Board and Board access to the management:*** Whether the Board and the management are able to actively access each other and exchange information
- iv. ***Secretarial support:*** Whether adequate secretarial and logistical support is available for conducting Board meetings
- v. ***Fund availability:*** Whether sufficient funds are made available to the Board for conducting its meeting effectively, seeking expert advice E.g. Legal, accounting, etc.
- vi. ***Succession plan:*** Whether an appropriate and adequate succession plan is in place and is being reviewed and overseen regularly by the Board.
- e. **Professional development:**
 - i. Whether adequate induction and professional development programmes are made available to new and old directors
 - ii. Whether continuing directors training is provided to ensure that the members of the board of directors are kept up to date
- B. **Committees of the Board**
 - (a) ***Mandate and composition:*** Whether the mandate, composition and working procedures of committees of the board of directors are clearly defined and disclosed.
 - (b) ***Effectiveness of the Committee:*** Whether the Committee has fulfilled its functions as assigned by the Board and laws as may be applicable
(For different Committees, different functions may be laid out as sub-criteria for evaluation)

Performance Evaluation of Independent Directors

- (c) **Structure of the Committee and meetings:**
 - i. Whether the Committees have been structuring properly and regular meetings are being held
 - ii. In terms of discussions, agenda, etc. of the meetings, similar criteria may be laid down as specified above for the entire Board
- (d) ***Independence of the Committee from the Board:*** Whether adequate independence of the Committee is ensured from the Board
- (e) ***Contribution to decisions of the Board:*** Whether the Committee's recommendations contribute effectively to decisions of the Board.
- C. **Individual Directors and Chairperson (including Chairperson, CEO, Independent Directors, Non-independent directors, etc.)**

General

- a) ***Qualifications:*** Details of professional qualifications of the member
- b) ***Experience:*** Details of prior experience of the member, especially the experience relevant to the entity
- c) **Knowledge and Competency:**
 - i. How the person fares across different competencies as identified for the effective functioning of the entity and the Board (*The entity may list various competencies and mark all directors against every such competency*)
 - ii. Whether the person has sufficient understanding and knowledge of the entity and the sector in which it operates
- d) ***Fulfillment of functions:*** Whether the person understands and fulfills the functions to him/her as assigned by the Board and the law (E.g. Law imposes certain obligations on independent directors)
- e) ***Ability to function as a team:*** Whether the person is able to function as an effective team- member
- f) ***Initiative:*** Whether the person actively takes initiative with respect to various areas
- g) ***Availability and attendance:*** Whether the person is available for meetings of the Board and attends the meeting regularly and timely, without delay.

TG on the Provisions of Independent Directors with Corporate ...

- h) **Commitment:** Whether the person is adequately committed to the Board and the entity
- i) **Contribution:** Whether the person contributed effectively to the entity and in the Board meetings
- j) **Integrity:** Whether the person demonstrates the highest level of integrity (including conflict of interest disclosures, maintenance of confidentiality, etc.)

Additional criteria for Independent director:

- a) **Independence:** Whether a person is independent from the entity and the other directors and there is no conflict of interest
- b) **Independent views and judgement:** Whether the person exercise his/ her own judgement and voices opinion freely

Additional criteria for Chairperson:

- a) **Effectiveness of leadership and ability to steer the meetings:** Whether the Chairperson displays efficient leadership, is open-minded, decisive, courteous, displays professionalism, able to coordinate the discussion, etc. and is overall able to steer the meeting effectively
- b) **Impartiality:** Whether the Chairperson is impartial in conducting discussions, seeking views and dealing with dissent, etc.
- c) **Commitment:** Whether the Chairperson is sufficiently committed to the Board and its meetings.
- d) **Ability to keep shareholders' interests in mind:** Whether the Chairperson is able to keep shareholders' interest in mind during discussions and decisions.

Different criteria may be assigned different weights depending on the organisation's requirements, circumstances, outcome of previous assessments, stage of Board's maturity, etc. Instead of the questionnaire in a simple yes/no format, it is desirable that it provides scope for grading, additional comments, suggestions, etc.

3. Method of evaluation:

As a global best practice, the method of evaluation is generally in 2 ways:

- a. Internal assessment
- b. Assessment by external experts

Performance Evaluation of Independent Directors

Internal assessment:

Internal assessment of the Board is crucial. Who should evaluate whom is provided in the Companies Act and SEBI LODR as specified above.

The internal assessment may be done by the following methods:

- a. A detailed Questionnaire to be circulated to individual directors, Committees, Boards, etc.
- b. Oral assessments provided by the person on interviews

If deemed fit, the questionnaire may enable written answers to be submitted on a confidential basis. If due to various reasons, members are not willing to provide written inputs, the Chairperson or any other person may take initiative and obtain views of such members on a confidential basis.

Assessment by external experts:

Use of external experts imparts independence to the evaluation process and therefore is used by many entities globally. However, care must be taken to ensure that the external assessor is not a related party or conflicted due to the closeness of the Board to ensure impartiality.

Such external assessment may be done based on questionnaires/interviews or a combination of the two and done on a regular basis. Such external assessment complements the internal assessment and adds an objective aspect to the evaluation process.

Effective use of Information Technology through use of board evaluation software, applications, etc. can also play a facilitating role.

D. Feedback

Providing feedback to the individual directors, the Board and the Committees is crucial for the success of Board Evaluation. On collation of all the responses, the feedback may be provided in one or more of the following ways:

- a) Orally given by Chairman/ external assessor or any other suitable person to
 - i. Each Member separately
 - ii. To the entire Board
 - iii. To the Committees
- b) A written assessment to every member, Board and Committee

The active role of the Chairperson is desirable in providing feedback to the members. If members are not comfortable to open individual assessments, provision for confidentiality may be made where possible. For effectiveness of the evaluation, it is essential that the feedback be given honestly and without bias.

E. Action Plan

Based on the analysis of the responses, the Board may prepare an action plan on:

- a. Areas of improvement including training, skill-building, etc. as may be required for Board members
- b. List of actions required detailing:
 - i. Nature of actions
 - ii. Timeline
 - iii. Person responsible for the implementation
 - iv. Resources required, etc.
- c. Review of the actions within a specific time period

The action plan may be prepared by the Board in a comprehensive manner. Suggestions under the external assessment, individual member feedback, etc. may be taken into account while drafting the action plan.

F. Disclosure requirements

SEBI LODR and Companies Act requires disclosure of manner of formal annual evaluation of the Board, its committees and individual directors and of performance evaluation criteria for independent directors to the shareholders on an annual basis.

In addition, for more transparency, many entities worldwide voluntarily provide additional disclosures including the results of the Board evaluation, action taken on the basis of the evaluation, current status, etc. to various stakeholders.

G. Frequency of Board Evaluation

As per SEBI LODR and Companies Act, the Board Evaluation is required to be done once a year. The entity, if desires can conduct evaluations more frequently. Since Board evaluation is a continuous process, it is felt that feedback provided to the members during meetings and otherwise, whether

Performance Evaluation of Independent Directors

oral or written, is more effective for continuous improvement and ideally complements the annual evaluation process.

Many entities globally also complement the internal assessment with external assessment at regular intervals to impart objectivity to the process.

H. Responsibility

The responsibility of Board evaluation lies on different persons depending on the subject of evaluation as per the Companies Act and SEBI LODR.

However, it is found that on a global basis, generally, the primary role of steering the whole process of Board evaluation and of ensuring its effectiveness in improving the Board efficiency lies on the Chairperson. Therefore, to achieve the maximum benefit of the process, the role and function of Chairperson in Board Evaluation needs to be laid out clearly in advance.

I. Review

Board evaluation is not a static process and requires periodical review for improvement. The responsibility of such review of the evaluation process lies with the Board of Directors in accordance with SEBI LODR.

Such review may involve the following:

- a) Whether objectives and criteria for evaluation are adequate or needs to be changed/ updated
- b) Whether the process/method of evaluation is appropriate for individual members,
- c) Committees and the Board
- d) Whether the actions based on the Board evaluation is being followed up on a timely basis
- e) Whether the Board evaluation has enhanced effectiveness of the Board
- f) Whether the review of the process is being done on a regular basis
- g) Whether feedback of the members to improve the process is being taken into account
- h) Such review may be done based on feedback from management, Board members, Chairperson, external assessors, various stakeholders, etc.

Chapter XII

Penal Provisions relating to Independent Directors

12 Offences under various Acts

Offences under various Acts have been enumerated below:

12.1 Offences under the Companies Act

It is also important to keep in mind that good corporate governance is not just the outcome of appropriate selection and effective functioning of Independent Directors. Every director, whether independent/non-independent, executive/non-executive has a distinct role in the functioning of the company. It is only when the entire board functions effectively which results to good corporate governance.

However, a distinction has to be drawn in situations where there is collective liability of the Board or that of individual directors. Where an offence is so obvious and fundamental that the very participation in the decision-making process is enough to establish culpability, collective responsibility may be thought of. In all other cases, focus has to be on individual liability of directors.

Section 2(60) of the Companies Act defines 'Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise.

- whole-time director;
- key managerial personnel;
- Where there is no key managerial personnel, directors specifically appointed.
- any person charged with the specific responsibility or any Key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorizes, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

Penal Provisions relating to Independent Directors

- any person as per whose advice, directions or instructions the BOD acts;
- every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- in respect of the issue or transfer of any shares of a company, the Share transfer agents, registrars and merchant bankers to the issue or transfer;

According to sec 149(12) of the Companies Act, 2013, an independent director or non-executive director (not being promoter or KMP) shall be liable only for those acts of omission or commission of the company which had occurred with his knowledge derived

- (a) during board process
- (b) with his consent or connivance in the commission of offence; or
- (c) where he has not acted diligently or prudently.

However, the Director who resigns shall still be liable for the liabilities during his tenure in the company as Director.

According to Section 450, if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention

12.2 Offences under the Foreign Exchange Management Act, 1999

The FEMA Act, 1999 does not specifically define the term “Officer in default”

TG on the Provisions of Independent Directors with Corporate ...

and “Independent director”. However, it defines various provisions and obligations by Companies and its directors.

Section 42 for the Companies

Under the section, where a person commits any contravention of the provisions of the Act or rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Further, any such person shall not be liable to punishment, if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.

However, if contravention of any of the provisions of the Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Section 12(2) for the director

Under the section, when an inspection is to be made by any officer of the Reserve Bank of India (RBI) specially authorised in writing by the Reserve Bank

- a) To verify the correctness of any statement, information or particulars furnished to the Reserve Bank;
- b) To obtain any information or particulars, which such authorised person has failed to furnish on being called upon to do so;
- c) To secure compliance with the provisions of the Act or of any rules, regulations, directions or orders made thereunder,

then, it shall be the duty of the director of the company to produce such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such company within such time and in such manner as the inspection officer of RBI may direct.

12.3 Offences under the Income Tax Act, 1961

As per clause 20 of section 2 of the Income Tax Act 1961 "director", "manager" and "managing agent", in relation to a company, have the meanings respectively assigned to them in the Companies Act, 2013.

The terms "Officer in default" and "Independent director" has not been specifically defined under the Act.

Section 278B

Under the section, where an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Further, such person shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

However, where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Alternatively, if offence under the Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, such company shall be punished with fine and every person stated above shall be liable to be proceeded against and punished in accordance with the provisions of the Act.

Section 179

Where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-

recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

12.4 Offences under the Goods & Service Tax Act, 2017

Section 137

Under the section, where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Alternatively, where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 89

The section defines the liability of Directors of Private Limited Company, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

12.5 Offences under the SEBI Act

According to Regulation 25(5) of SEBI (LODR), an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations.

12.6 Offences under other Laws

LODR requires that the board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliance.

An illustrative list of other laws which are generally applicable to a company is given below:

12.6.1 Economic Laws

- Foreign Exchange Management Act, 1999
- Prevention of Money Laundering Act, 2002
- Industries (Development & Regulation) Act, 1951
- Foreign Trade (Development & Regulation) Act, 1992
- Competition Act, 2002
- Securities Contract (Regulation) Act, 1956
- Negotiable Instruments Act
- Essential Commodities Act, 1975
- Consumer Protection Act, 1986
- Environment Protection Act, 1986
- Air (Pollution & Control) Act, 1981
- Water (Pollution & Control) Act, 1974
- Trade Marks Act, 1999
- The Copyrights Act, 1957
- The Patents Act, 1970
- The Information Technology Act,

12.6.2 Fiscal Laws

- Income Tax Act, 1961
- Black Money Act
- GST Act

- Customs Act
- R&D Cess Act

12.6.3 Industrial and Labor Laws

- Factories Act, 1947
- Industrial Disputes Act, 1947
- Workmen Compensation Act, 1923
- Contract Labour (Regulation and Abolition) Act, 1970
- Payment of Wages Act, 1936
- Payment of Minimum Wages Act, 1948
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Employees' Provident Fund Act, 1952
- Employees' State Insurance Act, 1948

In defence, in prosecution of offences, the director has to prove that he was not in charge or control of the day to day affairs of the company, the offence(s) was committed without his consent/ knowledge/ connivance and he was not negligent in ensuring that the laws are complied with and he has exercised all due diligence to prevent the commission of the offence, acted honestly and reasonable in the given circumstances.

12.7 Insurance Cover for Independent Directors

The independent director may insist on the company to take suitable insurance cover for professional indemnity to protect him from possible risks of financial liability due to any violation of laws.

Regulation 25 of LODR provides that with effect from October 1, 2018, the top 500 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors. These covers compensate against any legal liability that has risen for the concerned independent directors owing to any actions or acts committed by them. The concerned company where they have been functioning is also compensated

Penal Provisions relating to Independent Directors

for this. Some covers cover heirs, estates and legal representatives and spousal liabilities. Legal defence costs are also covered and are payable in advance of the final judgment. Independent directors of other companies can also ask for such insurance covers.

Chapter XIII

Databank of Independent Directors and its Registration

13 Databank of Independent Director

Provision relating to Databank of Independent Directors and its Registration is as follows:

Section 150 of the Companies Act, 2013 provides that an independent director may be selected from a data bank containing names, addresses and qualification of persons who are eligible and willing to act as independent directors to be maintained by any body, institute or association as may be notified by the Central government having expertise in creation and maintaining of such data and put on their website for the use by the company making the appointment of such directors.

Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 defines the data which is required to be created and maintained, changes in particulars and fee to be charged for including the name in databank of independent directors.

Through Notification dated 22 Oct, 2019, the Central government has made the Companies (Creation and Maintenance of Databank of Independent directors) Rules, 2019 authorising, the Indian Institute of Corporate Affairs(IICA) to create and maintain a databank of persons willing and eligible to be appointed as independent directors.

IICA is also authorised to conduct an online proficiency self-assessment test covering companies' law, securities law, basic accountancy, and such other areas relevant to the functioning of an individual acting as an independent director, in terms of amended Rule 6 of Companies (Appointment and Qualification of Directors) Rules, 2014.

A person can empanel himself/herself on the independent Directors' Databank by registering him/her on MCA portal @www.mca.gov.in and by paying a prescribed fee of Rs. 5,000/- and going through an online proficiency self-assessment test.¹⁵

¹⁵ MCA Circular dated 23rd June 2020 and Notification dated 18th Dec, 2020 can be referred in this regard (Link for the same: http://www.mca.gov.in/Ministry/pdf/Rule2_25062020.pdf and http://www.mca.gov.in/Ministry/pdf/FifthAmdtRules_18122020.pdf)

Chapter XII

Special Measures taken due to Pandemic COVID-19

14 Special Measures

Special Measures under Companies Act, 2013 (CA-2013) and Limited Liability Partnership Act, 2008 in view of COVID-19 outbreak

In order to support and enable Companies and Limited Liability Partnerships (LLPs) in India to focus on taking necessary measures to address the COVID-19 threat, including the economic disruptions caused by it, the following measures have been implemented by the Ministry of Corporate Affairs to reduce their compliance burden and other risks:

- i. The Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2021-22¹⁶ instead of being applicable from the financial year 2020-21 notified earlier. This will significantly ease the burden on companies & their auditors for the financial year 2020-21. A separate notification has been issued for this purpose.
- ii. Requirement under section 73(2)(c) of CA-13 to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be complied with till 31st December, 2020.
- iii. Requirement under rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th April 2020, may be complied with till 31st December, 2020.
- iv. Newly incorporated companies are required to file a declaration for Commencement of Business within '180 days of incorporation under section 10A of the CA-13. An additional period of 180 more days is allowed for this compliance.

¹⁶ Amended vide Companies (Auditor's Report) Second Amendment Order, 2020 dated 17.12.2020

- v. Section 100 (1) of the Companies Act, 2013 (the Act), the Board may, whenever it deems fit, call an extraordinary general meeting (EGM) of the company. EGM of any company other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

The Ministry of Corporate Affairs (the MCA) has issued two General Circulars No.14/2020 dated 8th April 2020 and 17/2020 dated 13th April 2020. The MCA has stated that due to the pandemic caused by COVID-19 prevailing which requires social distancing, Companies are requested to take all decisions of urgent nature requiring the approval of members, other than items of ordinary business or business where any person has a right to be heard, through the mechanism of postal ballot e-voting in accordance with the provisions of the Act and rules made thereunder, without holding a general meeting, which requires physical presence of members at a common venue.

Under unavoidable circumstances, holding an EGM by any company, the following prescribed procedure should be adopted for conducting EGM till 30th June 2021¹⁷

- A. For Companies where e-voting is required/Companies opted for such facility:**
 - i. **VC/OAVM:** The EGM's may be held through video conferencing (VC) or other audio-visual means (OAVM) and transcript of the same shall be kept in safe custody. In case of, Public Company, the same shall be uploaded on the website as soon as possible.
 - ii. **Zones:** Different time zones shall be kept in mind.
 - iii. **Deliberations:** There should be two-way conferencing with facility to pose questions and participation by at least 1000 members (in case e-voting is allowed) on first come first served basis. Besides this, the promoters, chairman of audit committee nomination and remuneration committee, stakeholders' relationship committee institutional investors, directors, auditors should be allowed to join.
 - iv. **Joining Time:** The Facility for joining meeting shall remain open for at least 15 minutes before and after the timing of the meeting.

¹⁷ MCA General Circular No 39/2020 dated 31st Dec, 2020

Special Measures taken due to Pandemic COVID-19

- v. **E-Voting:** Before the actual date of meeting, facility of remote e-voting shall be provided.
 - vi. **Present:** Attendance of members through VC or OVCM shall be counted.
 - vii. **Voting:** Only those members who are present and have not casted their vote on resolutions through remote e-voting or those who are not barred shall be allowed to vote.
 - viii. **Chairman:** To be appointed person named in the articles. In other cases, if less than 50 members present, Chairman shall be appointed as per the provisions of the Act, otherwise, Chairman shall be appointed by a poll.
 - ix. **Voting Facility:** Chairman shall ensure that the facility of e-voting is available for purpose of conducting poll at the meeting. In case of less than 50 members by way of e-voting/ show of hands/ poll and in other cases by way of e-voting
 - x. **Proxy:** Facility for appointment of proxies shall not be available.
 - xi. **Independent Director:** Atleast one Independent Director (if any) and the auditor or his authorized representative shall attend the meeting.
 - xii. **Institutional Shareholders:** Where institutional investors are members of a company, they should be encouraged to attend and vote.
 - xiii. **Assistance:** Notice shall provide clear instructions on how to participate in the meeting and also a helpline number be provided.
 - xiv. **Resolutions:** All resolutions passed shall be filed within 60 days of the meeting with requisite details.
 - xv. Meetings if prior scheduled, the framework as per this Circular may be adopted.
- B. For Companies where e-voting is not required:**
- i. Sr. No. (iii) as per 'A' above should be followed for 500 members.
 - ii. In case a poll is required, vote can be cast by sending email on the designated email id sent in notice.

TG on the Provisions of Independent Directors with Corporate ...

- iii. Confidentiality of password and due safeguards with regard to authenticity of email address shall be maintained.
- iv. Where less than 50 members are present, voting by show of hands can be conducted if not demanded by poll.
- v. Facility of remote e-voting shall not be required.
- vi. If counting of votes require time, meeting may be adjourned.
- vii. All other conditions remain the same as mentioned in 'A'.

Details are available at

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.33_28092020.pdf

Further, relaxations has been provided in respect of conducting Board Meeting through Video Conference /Other Audio-Visual Means for approving financial statements, Board's report, Prospectus and other restricted agenda items as referred in sub rule 1 of Companies (Meetings of Board and its Powers), Rules 2014 till 30th June, 2021

Details are available at

https://www.mca.gov.in/Ministry/pdf/FourthAmdtRules_30122020.pdf