



INDEPENDENT DIRECTORS

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INSURANCE !!

The views expressed are those of the presenter and, therefore, readers are requested to cross check with provisions of law / standard before applying same.

The interaction is to be considered only in the context of experience of presenter

90 minutes..

- ID : Desirable or Essential ?
 - Which companies require ID ?
 - Who is ID ?
 - Due Diligence : 25 point checklist
 - ID Selection, tenor, manner of appointment, familiarization
 - Remuneration to ID ?
- ID @ Committees
 - Separate Meeting of ID
 - Roles & Responsibilities; Code of ethics
 - OTHERS
 - Lead ID
 - Performance Evaluation
 - Challenges faced
 - Safety net

IDs : Desirable or essential ?

ID : Desirable or Essential?

1. Companies are artificial persons
2. Limited liability
3. Plenty of public interest: debt, operational creditors, compliance with L&R
4. Changing shareholder profile:
 - Institutional shareholders, Family offices, Professionals, shareholders across geo
 - Ownership and management, varying levels of separation
5. Companies increasing influence on economy: failures have huge impact on society

Which companies require ID ?

Which companies ? (Cos Act, Rule 4)

1. At least 2 Directors as IDs:

- Public Cos having paid-up Share Capital of Rs 10 Cr or more;
- Public Cos having turnover of Rs 100 Cr or more;
- Public Cos having aggregate outstanding loan, debentures & deposits exceeding Rs 50 Cr

Company which ceases to fulfill any of the above 3 conditions for 3 consecutive years, shall not be required to comply with these provisions until such time it meets any of such conditions.

Unlisted public Cos exempt:

(a) a joint venture; (b) a wholly owned subsidiary (c) a dormant company

- No requirement of ID for Private Limited companies

2. Cos which are required to appoint higher number of IDs due to composition of Audit Committee, such higher number shall be applicable;
3. Any vacancy caused by IDs shall be filled by the Board not later than immediate next Board meeting or 3 months from the date of vacancy, whichever is later.

Board composition with IDs – SEBI (LODR)

Board composition

- Board of top 1000 listed entities shall have at least 1 independent woman director
- Where the chairperson is a NED, at least 1/3rd of Board shall comprise of IDs
- At least half of the Board shall comprise IDs where:
 - ✓ the listed entity does not have a regular non-executive chairperson
 - ✓ the regular non-executive chairperson is a promoter / related to promoter / occupying management positions at board level / one level below the board
 - ✓ listed entity has outstanding SR equity shares

Quorum

- For top 2000 listed entities : Higher of 1/3rd of total strength or 3 directors, including at least one ID

Material unlisted subsidiary

- At least 1 ID on the Board of listed entity shall be a director on the board of unlisted material subsidiary (20% of consolidated turnover/networth).

Due diligence :25 point check list

Due Diligence : 1-10, 11-20, 21-25

1. Promoter background and senior management efficiency, effectiveness and value systems
2. .
3. .
4. .
5. .
6. .
7. .
8. .
9. .
10. Promoter background and senior management efficiency, effectiveness and value systems
11. Understanding of business and ability (including time) to contribute to Company growth
12. .
13. .
14. .
15. .
16. .
17. .
18. .
19. .
20. Understanding of business and ability (including time) to contribute to Company growth
21. Legal / Compliance / Culture
22. Financial health, Bankers & Credit rating
23. Board members
24. Key Shareholders
25. Must read: last 3 annual reports, MoA and AoA, Media coverage, transcript of IR/Analyst calls

Who is an ID ?

Companies Act : Section 149, Rule 4 & 5

SEBI LODR : Regulation 16 (1) (b)

Who is an ID ?

Companies Act:

1. Sec 2 (47) defines as an ID referred in Sec 149 (6);
2. Sec 149 (6) refers to an ID as
 - Director **other than** MD, WTD or a nominee director;
 - **in the opinion of the Board**, a person of integrity and possesses relevant expertise and experience
3. ID shall fulfil the qualifications / criteria prescribed in Sec 149 (6) along with Rules 4 to 6 of Companies (Appointment and Qualifications of Directors) Rules, 2014

SEBI (LODR):

1. Regulation 16 (1) (b) defines ID as a non-executive director, other than a nominee director of the listed entity;
2. ID shall fulfil the qualifications prescribed in Regulation 16 (1) (b)

ID Criteria – Sec. 149 (6) vs Reg.16 (1) (b)

Qualification Criteria	Companies Act - 149 (6)	SEBI (LODR) - Reg, 16 (1) (b)
An 'Independent Director' in relation to a company, means	A director other than a managing director or a whole-time director or a nominee director	A non-executive director, other than a nominee director of the listed entity
Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience	Applicable	Applicable
who is or was not a promoter of the company or its HCo, SCo or Aco	Applicable	Applicable Inclusion: or member of the promoter group of the listed entity
who is not related to promoters or Directors in the company, its HCo, SCo or Aco	Applicable	Applicable
who has or had no pecuniary relationship, other than remuneration as such director with the company, its HCo, SCo or ACo, or their promoters, or Directors	<ol style="list-style-type: none"> 1. Applicable with ceiling limit prescribed as having transaction not exceeding 10% of his total income or such amount as may be prescribed, 2. Such amount is yet to be prescribed 3. Period reckoned for this criteria: Two immediately preceding FY or during the current FY 	<ol style="list-style-type: none"> 1. Applicable without any ceiling limit prescribed 2. Period reckoned for this criteria: Three immediately preceding FY or during the current FY

ID Criteria – Sec. 149 (6) vs Reg.16 (1) (b)

Qualification Criteria	Companies Act - 149 (6)	SEBI (LODR) - Reg, 16 (1) (b)
<p>none of whose relatives is holding any security of or interest in the company, its HCo, SCo or ACo</p> <p>Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its HCo, SCo or ACo or such higher sum as may be prescribed</p>	<ol style="list-style-type: none"> 1. Applicable 2. Period reckoned for this criteria: During the two immediately preceding financial years or during the current financial year 3. Such higher sum is yet to be prescribed 	<ol style="list-style-type: none"> 1. Applicable 2. Period reckoned for this criteria: During the three immediately preceding financial years or during the current financial year 3. Specified sum: Additionally, Pecuniary relationship or transaction with the listed entity, its HCo, SCo or ACo or their promoters, or directors shall not exceed 2% of its gross turnover or total income or INR 50 Lakhs or such higher amount as may be specified from time to time
<p>is indebted to the company, its HCo, SCo or ACo or their promoters, or Directors, in excess of such amount as may be prescribed</p>	<ol style="list-style-type: none"> 1. Applicable 2. Period reckoned for this criteria: During the two immediately preceding financial years or during the current financial year 3. Rule 5 prescribes an amount of INR 50 lakhs 	<ol style="list-style-type: none"> 1. Applicable 2. Period reckoned for this criteria: During the three immediately preceding financial years or during the current financial year 3. Specified sum: Additionally, Pecuniary relationship or transaction with the listed entity, its HCo, SCo or ACo or their promoters, or directors shall not exceed 2% of its gross turnover or total income or INR 50 lakhs or such higher amount as may be specified from time to time

ID Criteria – Sec. 149 (6) vs Reg.16 (1) (b)

Qualification Criteria	Companies Act - 149 (6)	SEBI (LODR) - Reg, 16 (1) (b)
<p>has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its HCo, SCo or ACo or their promoters, or Directors of such holding company, for such amount as may be prescribed</p>	<ol style="list-style-type: none"> 1. Applicable 2. Period reckoned for this criteria: During the two immediately preceding Fys or during the current FY 3. Rule 5 prescribes an amount of INR 50 lakhs 	<ol style="list-style-type: none"> 1. Applicable 2. Period reckoned for this criteria: During the three immediately preceding FYs or during the current FY 3. Specified sum: Additionally, Pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors shall not exceed 2% of its gross turnover or total income or INR 50 Lakhs or such higher amount as may be specified from time to time
<p>has any other pecuniary transaction or relationship with the company, or its HCo, SCo or ACo amounting to 2% or more of its gross turnover or total income</p>	<p>Applicable</p>	<p>Applicable</p> <p>Specified sum: Additionally, Pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors shall not exceed 2% of its gross turnover or total income or INR 50 lakhs or such higher amount as may be specified from time to time</p>

ID Criteria – Sec. 149 (6) vs Reg.16 (1) (b)

Qualification Criteria	Companies Act - 149 (6)	SEBI (LODR) - Reg, 16 (1) (b)
<p>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 HCo, SCo or A Co in any of the 3 FYs immediately preceding the FY in which he is proposed to be appointed</p> <p>Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years</p>	Applicable	<p>Applicable</p> <p>Inclusions:</p> <ol style="list-style-type: none"> 1. or member of the promoter group of the listed entity 2. Proviso excludes only an employee of a relative and not a KMP.
<p>is or has been an employee or proprietor or a partner, in any of the 3 FYs immediately preceding the FY in which he is proposed to be appointed, of—</p> <p>(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its HCo, SCo or ACo; or</p> <p>(B) any legal or a consulting firm that has or had any transaction with the company, its HCo, SCo or ACo amounting to 10% or more of the gross turnover of such firm;</p>	Applicable	Applicable

ID Criteria – Sec 149 (6) vs Reg.16 (1) (b)

Qualification Criteria	Companies Act - 149 (6)	SEBI (LODR) - Reg, 16 (1) (b)
holds together with his relatives 2% or more of the total voting power of the company	Applicable	Applicable
is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives 25% or more of its receipts from the company, any of its promoters, Directors or its HCo, SCo or ACo that holds 2% or more of the total voting power of the company	Applicable	Applicable
is a material supplier, service provider or customer or a lessor or lessee of the listed entity	Not applicable	Applicable
who possesses such other qualifications as may be prescribed	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	1. who is not less than 21 years of age 2. 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:

**Selection, tenor, process,
manner of appointment,
familiarization**

Selection, Tenure, Manner of Appointment

General

1. Selected for their skill-set and expertise in key areas
2. As per the approved Company policy
3. New skillsets like digital technology and innovation to compliment traditional requirements of finance, legal
4. Rigor in the screening process to ensure suitability of ID for Board positions
5. Past failures

CA 2013 (Schedule IV & Sec. 150)

1. Selection process to be independent of Company management
2. To ensure appropriate balance of skills, experience and knowledge
3. Board may select an ID from the databank maintained by IICA
4. Duty of management to exercise due diligence before selecting from data bank

SEBI LODR (Schedule II – Part D)

1. NRC to evaluate the balance of skills, knowledge and experience on the Board
2. On the basis of such evaluation, prepare a description of IDs role and capabilities;
3. To identify suitable ID:
 - Use services of external agencies;
 - Consider candidates from a wide range of backgrounds

Tenure (Sec. 149 of CA 2013)

1. Two Terms of upto 5 Consecutive years (5+5)
2. Shall not hold office for more than 2 consecutive terms
3. Shall be eligible for appointment only after expiry of 3 years of ceasing to be an ID.
4. During such period, shall not be associated with the Company in any other capacity, directly or indirectly

Manner of appointment

1. Selected person to be qualified in terms of the Act
2. NRC to recommend the candidature
3. Board meeting to consider the appointment
4. Shareholders approval
5. Issuance of appointment letter
6. Obtaining disclosures / declarations
7. Filing requisite forms / necessary intimations

RULE 6 : IICA ID DATA BANK

Registered with IICA data bank for a period of 1 year / 5 years / life-time till holding office of ID

Renewal (those registered for 1/5 years)

- IDs enrolled at databank can renew their registration within a period of 30 days from the date of expiry of their registration period
- If not renewed, the name of such individual shall stand removed from the data bank of IICA.

Declaration

- ID to give a declaration at the beginning of FY confirming compliance with rules relating to IICA data bank

LATEST AMENDMENTS

SEBI LODR (Reg. 25(2A): Amended on 14th Nov, 2022 – providing flexibility in IDs appointment:

Where a special resolution for appointment of ID fails to get requisite majority of votes, it may still be passed if:

- the votes cast in favour of the resolution exceed the votes cast against the resolution &
- the votes cast by public shareholders in favour of the resolution exceed the votes cast against the resolution

MCA (Rule 6): Amended Rules on 10th June, 2022 – Data Bank for IDs:

- any individual whose name has been removed from the databank under Rule 6(4), may apply for restoration of his name on payment of fees of INR 1000
- IICA shall allow such restoration subject to fulfilment of stipulated conditions.

Corporate Familiarisation Program (Reg 25 (7) & 46 of SEBI LODR)

Listed entity shall familiarize IDs through various programmes about:

1. the company,
2. nature of the industry in which the listed entity operates,
3. business model,
4. roles, rights and responsibilities of IDs,
5. and any other relevant information.

Listed entity shall disseminate the following information on its website (Weblink to be provided in annual report):

1. details of familiarization programmes imparted to IDs
2. number of programmes attended by IDs (during the year and on a cumulative basis till date)
3. number of hours spent by ID in such programmes (during the year and on cumulative basis till date), and
4. other relevant details:
 - IDs are made aware of their roles & responsibilities during appointment through a formal letter of appointment
 - Introductory kit consisting highlights of various statutory provisions, complete set of statutory and internal policies of the Company

Corporate Familiarisation Program

1. IDs to have induction program as well as interactions with KMPs / senior management
2. Training to ensure implementation of Corporate Governance principles in letter and in spirit
3. Providing training and support to IDs to discharge duties effectively - training on corporate governance best practices, access to legal and financial advice and opportunities to network with other IDs
4. Formal onboard program containing issue of director's manual
5. Educating about company's business model, competitive landscape
6. Unique legal and regulatory compliance issues faced as part of the onboarding program
7. Effectiveness of onboarding program depends upon customization made to the individual needs of a director considering their expertise and role expectation
8. A tour of the organization's facilities & key regulatory updates impacting the business to be presented in every board meeting
9. Training to understand the overarching impact of both domestic and international regulations on company's operations
10. Broad overview of Board's oversight processes, company's critical financial, operational and other risks

MAXIMUM DIRECTORSHIPS

Companies Act:

- Does not specify any restriction on maximum directorships of IDs

SEBI LODR (Reg 17A):

- A person may serve as an ID in maximum 7 listed entities
- If a person is appointed as Whole-time Director/Managing Director in any listed entity, he can be an ID in maximum 3 listed entities

Alternate Director

ID cannot have an Alternate Director in his absence

Remuneration to ID

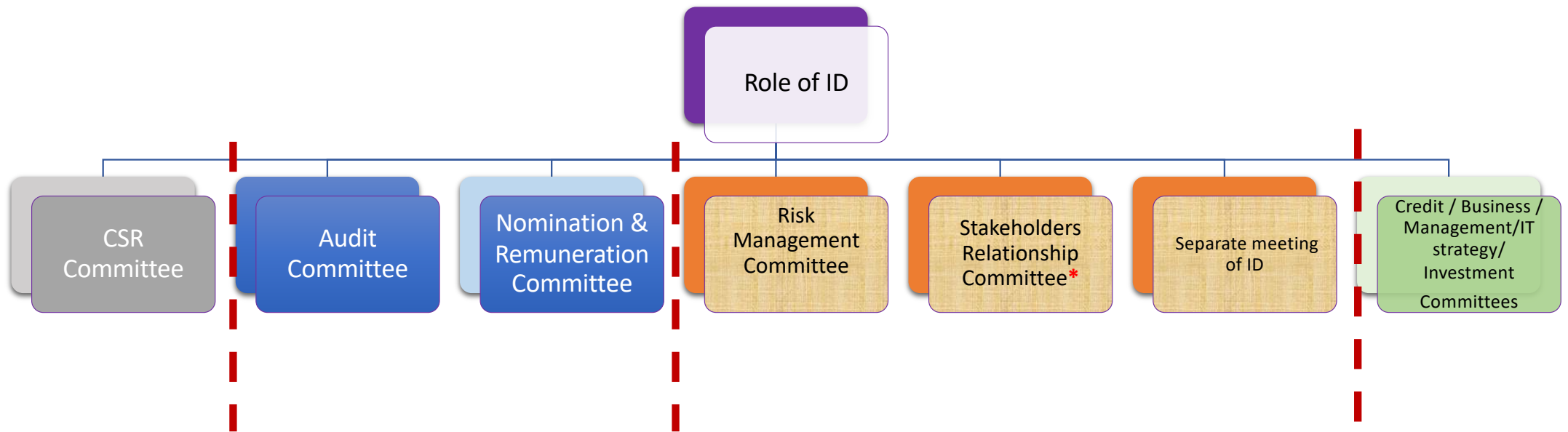
REMUNERATION FOR IDS

- 1. Sitting Fee** : shall not exceed INR 1 lakh per meeting of Board / committee
- 2. Sweat Equity Shares** : can be issued in accordance with the provisions of the Act
- 3. ESOP** : not entitled
- 4. Profit related commission** : as approved by members
- 5. Remuneration** : companies can pay even in situation of no profits or inadequate profits, subject to prescribed limits

SEBI LODR: Board shall recommend compensation to IDs which requires members approval.

ID @ committees

Committee Meetings



* also, companies with > 1000 shareholders, debenture holders, deposit holders or other security holders

Committees – Companies Act

Audit Committee (Sec. 177)

- Shall comprise 3 or more Directors
- Majority members shall be IDs (not applicable for Sec. 8 company)

Nomination and Remuneration Committee (Sec. 178)

- Shall comprise 3 or more NED
- Not less than one-half of members of the committee shall be IDs

CSR Committee (Sec. 135)

- Shall comprise 3 or more Directors
- At least 1 Director shall be an ID (where a company is not required to appoint an ID, it shall have two / more directors)

Committees – SEBI (LODR)

Audit Committee

- Shall comprise at least 3 Directors
- 2/3rd of members of the committee shall be IDs
- Cos having SR equity shares, AC shall comprise only IDs
- Members of AC shall be financially literate and atleast one member shall have accounting or related financial management expertise
- **Chairperson shall be an ID** & present at AGM
- Quorum – Higher of 2 members or 1/3 of members, with at least 2 IDs
- RPT & subsequent material modifications shall require prior approval of AC. Only those members who are IDs shall approve RPT
- Review compliance of PIT regulations
- Meet at least 4 times a year (120 days gap)

Nomination and Remuneration Committee

- Shall comprise at least 3 Directors
- All directors shall be non-executive
- 2/3rd of members of the committee shall be IDs
- **Chairperson shall be an ID** & present at AGM
- Quorum – either 2 members or 1/3rd of members of the committee, with **at least 1 ID** in attendance
- Shall meet at least once a year

Committees – SEBI (LODR)

Stakeholders Relationship Committee

- At least 3 Directors with **at least 1** being an ID shall be members of the Committee
- Chairman shall be a NED
- Cos having SR equity shares, at least 2/3rd shall be IDs
- Chairperson of the Committee shall be present at AGM
- Shall meet at least once a year

Risk Management Committee

- Applicable to top 1000 listed entities and high value debt listed entity (Rs. 500cr or above debt)
- Minimum 3 members including at least 1 ID
- Chairman shall be member of Board & senior executives of the company may be members of the committee
- Cos having SR equity shares, at least 2/3rd shall be IDs
- Quorum – Higher of 2 members or 1/3 of members
- Shall meet at least twice in a year (180 days gap)

Separate meeting of IDs

Regulation 25 LODR / Schedule IV:

- to be held **at least once** in every financial year;
- without the attendance of non-independent Directors and members of management;
- all IDs of the company shall strive to be present at such meeting.

Purpose of the meeting:

1. review the performance of non-independent Directors and the Board as a whole;
2. review the performance of the Chairperson of the company, taking into account the views of executive Directors and non-executive Directors;
3. 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.

OECD Principles of Corporate Governance: Envisages the post of lead-independent director to chair the meetings of outside directors

Role & Responsibilities of IDs in Board Committees

- **Audit Committee:**

1. Recommendation to Board for appointment, retention, termination, remuneration and terms of appointment of Auditors;
2. Review and provide inputs on company's internal controls and the integrity of financial statements;
3. One-to-one meeting with auditors to raise critical concerns which are vital for the financial health of the company;
4. Scrutiny of related party transactions;
5. Ensure that the proceeds of the issue are received by the Company and utilised as per the objects of the issue.

- **Stakeholders Relationship Committee:**

To specifically investigate various aspects of interest of stakeholders, debenture holders and other security holders

Role & Responsibilities of IDs in Board Committees

- **Nomination and Remuneration Committee:**

- a) To formulate criteria for determining remuneration of directors, KMP and senior management
- b) To recommend nomination of ED, KMP and senior management to the Board;

- **Risk Management Committee:**

- a) To monitor and review the risk management plan;
- b) To formulate a detailed risk management policy and periodically review;
- c) To appoint, remove and approve terms of remuneration of CRO

- **CSR Committee:**

- a) To recommend the CSR Policy to the Board & monitor the Policy from time to time;
- b) To recommend the CSR activities and programs as per Schedule VII of the Act;

Role & Responsibilities of IDs in Board Committees

Additional role as Chairman

- Prior approval of agenda including planning length of meeting ; ensure meeting date/ time has been coordinated with all Directors and agenda is circulated in full well ahead of meeting
 - ATR is super important and review with Management prior to meeting
 - Prepare well for meeting ; be on top of agenda as much as MGT
 - High level of concentration throughout
 - Ensure quality discussion
 - Encourage participation : do not discourage diverse views
 - Ensure Directors are not getting distracted
 - Observe both who are speaking and the others listening
 - Moderate discussion to stay objective and focused on agenda item
 - Work for consensus; where there is sharp division of views, work to chose the best in interest of company and mitigate concerns expressed by others; if essential, divide discussion between 2 time slots or through a committee/group or across different meetings; taking decision is crucial; procrastination is weakness.
 - Ensure that Board/Committee does not step into Management shoes and confines to only giving support to Management where essential ; trust and communicate trust on management ; when in doubt act in consultation with all Directors
 - Time Management
 - Each agenda sum up the final decision/ action
 - Make all Directors feel equal, recognize chairman is Chair of meeting only, else is like any other Director
 - Ownership of minutes accuracy after meeting
 - Committee Chairman to present summary at Board meeting
- Chairman of AC / NRC / SRC **shall be present at General Meeting** to answer shareholders queries

Role & responsibilities

Schedule IV of Companies Act

Role & Function of IDs (Schedule IV)

1. Bring an **independent judgment** on Board's deliberations
2. Bring an objective view in **evaluation** of the performance of board and management
3. Scrutinize the performance of management in meeting agreed goals and objectives
4. Satisfy themselves on the integrity of financial information
5. Satisfy that risk management systems and financial controls are robust and defensible
6. Safeguard the interests of all stakeholders, particularly the minority shareholders
7. Balance the **conflicting interest** of the stakeholders
8. Determine appropriate levels of remuneration of EDs, KMP and senior management and have a prime role in appointing and where necessary recommend removal of EDs, KMP and senior management
9. Moderate and arbitrate in the interest of the company, in situations of conflict between management and shareholder's interest
10. Provide fresh perspective & technical business expertise

Duties of IDs (Schedule IV)

1. Regularly update and refresh skills, knowledge and familiarity with the company
2. **Seek** appropriate clarification or amplification of information where necessary
3. Strive to attend all meetings of Board / Committees & **participate constructively**, attend general meetings
4. Ensure that their concerns about running the company / proposed action are addressed by Board
5. Keep themselves well informed about the company and the external environment in which it operates
6. **Not to unfairly obstruct functioning** of an otherwise proper Board or committee of the Board
7. **Pay sufficient attention and ensure that adequate deliberations** are held before approving RPT
8. Report concerns about unethical behavior, actual or suspected fraud or violation of company's code of conduct or ethics policy
9. Not to disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless required by law
10. Assist in protecting legitimate interests of company, shareholders and employees

Guidelines for Professional Conduct & Ethics

- (1) uphold ethical standards of integrity and probity;
- (2) act **objectively and constructively** while exercising duties;
- (3) exercise responsibilities in a bona fide manner in the interest of the company;
- (4) **devote sufficient time and attention** to his professional obligations for informed and balanced decision making;
- (5) 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;
- (6) not abuse position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an ID lose his independence, the ID must immediately inform the Board accordingly;
- (9) assist the company in implementing best corporate governance practices.

OTHERS

Lead ID, Performance evaluation, Challenges, Safety net

Lead Independent Director (LID)

Who?

- An intermediary between Chair, Board and the stakeholders
- To support the Board chair – as an alternative communication channel for the board members
- To lead the performance evaluation of the Board Chair and to ensure that a regular external board evaluation happens
- To lead the search for a new chair – to nominate for succession of the Board chair

Pre-requisites:

- To be independent at the time of appointment and throughout their position.
- Have strong interpersonal skills since LID takes lead in evaluating Chair's performance and to serve as an intermediary to other directors
- Be more knowledgeable about the company, its performance, its markets and stakeholders
- Have complimentary set of skills and experience to the Board Chair's own to back the Board Chair and know when to assume responsibility
- Able to commit the necessary time and energy to the role

Performance Evaluation of Directors, Board & Committee

Schedule IV Part V of the Act:

The reappointment of IDs would be based on their performance evaluation report.

Schedule IV Part VIII of the Act:

- The performance evaluation of IDs shall be done by entire Board of Directors, excluding the director being evaluated.
- The continuance or extension of ID would be determined by performance evaluation report.

Generally, Board appraisal includes the following:

1. Evaluation of the Board as a whole (internally or externally)
2. Evaluation of individual directors (self-evaluation / peer to peer evaluation / external)
3. Evaluation of the Committees (internal – by the Board, external – by external expert)
4. Evaluation of the Chairperson (all directors / external)

Challenges faced by IDs

- Undisclosed ties by IDs with promoters or management – past / ongoing associations, will impact IDs judgment and decision-making.
- IDs might find it challenging to raise tough questions or challenge management when necessary, fearing strained relationships or perceived conflicts.
- IDs often serve on multiple boards raising concerns about their ability to devote enough time and attention to each company.
- IDs are compensated for the services and the same could influence their decisions ; might deter them from taking strong stands on critical matters that might displease the management or promoters.
- IDs who lack domain expertise or relevant industry experience may hinder their ability to comprehend complex business decisions fully.
- IDs may inadvertently receive sensitive or confidential information that could compromise their independence.

Safety Net to safeguard interest

- Before becoming a director, to check out the policy on the insurance of directors and find out the detail of insurance policies that they have issued for other IDs
- Directors and Officers (D&O) Insurance, designed to protect board members from legal issues that occur during their tenure
- Director shall determine D&O limits and exclusions
- Reg.25(10) of SEBI LODR mandates top 1000 listed entities by market capitalization to undertake D&O insurance for all IDs of such quantum and risks as determined by board
- High-value debt listed entity shall undertake D&O for all its IDs as determined by board (SEBI LODR)
- Director candidates should consider guidance from independent counsel on:
 1. adequacy of the company's D&O insurance program
 2. how such coverage intersects with the company's contractual obligations to indemnify directors set forth in the charter and bylaws



M P Vijay Kumar

**THANK
YOU!**



M P Vijay Kumar

STAY SAFE. STAY HEALTHY. STAY ACCOUNTABLE