
Definition and Number of Independent Directors

The inception of the idea of the autonomous or an independent director under the current corporate law administration can be traced back to the proposals of the Kumar Mangalam Birla board of trustees (1999), the Naresh Chandra panel (2002) and the Narayana Murthy council (2003). Further to these expert recommendations, the expression “independent directors” seems intriguing. In India when the Securities and Exchange Board of India a joined provision 49 in the Listing Agreement. Statement 49 gives a comprehensive meaning of independent directors, covering under its ambit non-official executives who don't have any material or monetary association with the organization, its promoters, administration or auxiliaries, which may influence the autonomy of their judgment.

Independent Directors as per the Listing Agreement, can't be substantial or major shareholders of the organization (i.e. owning at least 2% of the voting rights), however they are qualified to get remuneration in accordance with the decision of the Board and after obtaining prior permissions and approval of the shareholders. The Company's Act of 1956 does not mention the expression “independent directors” India's listing standards require the boards of listed companies to include independent directors but neither the Listing Agreement nor the 1956 act precisely define their roles and liabilities.. The Company's Act of 1956 places independent directors on the same platform or an equal footing as of other directors with regards to purposes of decision making and does not specify any privilege, duty or function which they ought to perform or the liabilities they could incur for the actions of the board. This has prompted to a situation of uncertainty regarding the roles and responsibilities of the independent directors. This has brought the Indian law in line with the legal position in jurisdictions such as UK, where the codified duties and roles of an independent director exist alongside their common law duties.

An independent director of a company is a non-executive director who:

Only receives his directors remuneration but apart from that does not have any material pecuniary relationships or transactions with the company or with anyone else in the management

1. Has no relations with to promoters or even the a management at the Board level, or the level below that.
2. Has not been an executive of the company in the last three years;
3. Is not a partner or an executive of the statutory the auditing firm, the internal audit firm that is associated a with the company, and has not been a partner or an executive of any such firm for the last three years. This will also to apply to legal firm(s) and consulting firm(s) that have material association with the entity;
4. Is not a related to the company as some important the supplier, vendor or a customer and also does not hold a substantial share in the company which is 2% or more of the block of voting shares;
5. He has not been a director of the company, independent or otherwise, for not more then three years.

In general, 1/3rd of the total number of a directors as Independent Directors should be an adequate for a company having significant a public interest, irrespective of a whether the Chairman is executive or non-executive, the independent or not. In certain cases Regulators may specify a requirement of Independent Directors a for companies falling within their regulatory domain. Nominee the directors appointed by the any institution or in a pursuance of any agreement or Government appointees representing Government shareholding should not be deemed to be Independent Directors.

The concept of Independent Directors

The J.J Irani Committee, a specialist panel constituted by the Ministry of Corporate Affairs to advise the Government on the new organization law, has in its report talked about in detail the progressions required in the arrangements, in relation to the Board of Directors. As for the Independent Directors, the Committee is of the view that given the obligation an of the Board to adjust different interests, t. This is an especially vital for open organizations or organizations, with a critical open intrigue. While executiveat given the responsibility a of the Board to balance various interests, the presence of a Independent a directors on the Board,s speaking to organizations, particular interests would be a bound to the point of view managed by such interests, Independent Directors be would have the capacity to bring a component of objectivity, to Board prepare in the a general interests of the organization and in this way to the event of minority interests and littler shareholders..

Law ought to, dependence, therefore, is not to be, viewed merely as independence a from promoter a Interests but from the point of view of vulnerable stakeholders, who cannot otherwise get their voice heard, perceive the guideline of Independent theDirectors and spell out their part, capabilities and risk. However necessity of nearness of Independent Directors may change every now and then relying upon the size and sort of organization. There can't be a solitary technique that will suit all organizations. Accordingly number of Independent directors might be recommended through standards for various classes of organizations.

Important provisions in Law related to “Independent Director”

1. A person shall not serve as an Independent a Director in more than seven listed companies.
2. Further, any person who is serving as a whole time director the in any listed company shall serve as an Independent Director for not more than three listed companies.[1]
3. The maximum tenure of Independent Directors shall be in the accordance with the Companies Act, 2013 and clarifications/ circulars issued a by the Ministry of Corporate Affairs, in this regard, from time to time.
4. The company shall issue a formal letter of a appointed to Independent Directors in the manner as mentioned in the Companies Act, 2013.
5. The terms and conditions of appointment shall also be disclosed over the website of the company.
6. The Nomination Committee shall lay down the a evaluation criteria for the performance evaluation of Independent Directors.
7. The company shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in the annual Report.
8. The performance evaluation of Independent Directors is to be done by the entire Board

of Directors.

9. The Independent directors of the company should conduct at least one meeting in a year.
10. All fees/ compensation if any paid to non-executive directors, including Independent Directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate.
11. Reg. 16(5) of SEBI (Mutual Funds) Regulations, 1996 provides that two-thirds of the board of directors, of a trustee company shall be independent persons and shall not be associated with the sponsors or be associated with them in any manner whatsoever.[2] Under Reg 21(1)(d) at least 50% of the Board of Directors of an asset management company must be Independent Directors i.e. directors, who are not associates of the sponsor or any of its subsidiaries.[3]

Appointment of Independent Director[4]

- Section 149(4) and (5) of the 2013 Act are also new provisions relating to appointment of Independent Directors.
- In a listed company at least one third of the total number of directors shall be Independent Directors.[5]
- The Central Government may prescribe minimum number of Independent Directors to be appointed by other classes of public companies. Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, requires public companies which are not listed to have at least two

Independent Directors if such companies have

1. a paid up share capital of rupees ten crores or more or
 2. turnover of rupees one hundred crores or more or
 3. outstanding loans or debentures or deposits which in aggregate exceed rupees fifty crores or more
- If an Independent Director resigns before completion of his tenure and the date of resignation if the company does not meet the parameters prescribed in s. 149(4) of the 2013 Act then the company will be required to appoint another Independent Director in his place and stead (by filling the vacancy as a casual vacancy).
 - As per Schedule IV-Code for Independent Directors, an Independent Director may be appointed only at a meeting of the shareholders and any vacancy caused due to resignation or removal shall be filled up within 180 days.
 - The schedule however does not specifically stipulate appointment by the shareholders to fill up of a vacancy caused due to the conditions specified in s. 167 of the 2013 Act getting attracted. Based on a combined reading of ss. 161, 152 of the 2013 Act, Schedule IV of the 2013 Act and Rule 4 of the Companies Rules, 2014 there appears to be no bar in the Board for filling up such a vacancy.
 - As per section 150(2) read with s. 152(2) of the 2013 Act, appointment of Independent Directors shall be approved by the shareholders in a general meeting.
 - As per s. 2(71) of the 2013, the term public company includes a private company which

is a subsidiary of a public company and therefore such private companies will also be required to appoint Independent Directors if they fall under the class of companies prescribed by s. 149(4)

Need of independent directors on the board

There are a few particular advantages that an independent top managerial staff can convey to an organization, the most importantly is that the interior regulations that are can be controlled, and the fraud or mismanagement which is being done by the organization can be conveyed to the shareholders of the organization and to the general population at large. It has some different advantages additionally, which includes:

- Counterbalanced the administration blemishes in an organization.
- Guarantee the act of legitimate and moral conduct at the organization, and in the meantime fortifying bookkeeping and accounting controls.
- Make the name of the organization more popular through his contacts and skill in order to strengthen and reinforce the share capital of the organization.
- Be a part of long haul choices which should be taken, for the welfare of the organization.
- Help an organization survive, develop, and flourish over time through enhanced progression and designing a succession plan arranging through enrollment and membership in the nomination panel.

Independent directors and corporate administration:

The requirement for the independent directors can be made out from the fact that they are relied upon to be independent from the administration and go about as the trustees of shareholders. This infers they are committed to be completely mindful of the direct which is going ahead in the associations and furthermore to stand firm as and when vital on pertinent issues.

The significance of the part of an Independent Director is of great significances. The rules, part and capacities and obligations and so on are comprehensively set out in a code portrayed in Schedule IV of the Companies Act, 2013.

The code sets out certain critical capacities like protecting the enthusiasm of all partners, especially the minority holders, blending the clashing enthusiasm of the partners, breaking down the execution of administration, intervening in circumstances like the contention amongst administration and the shareholder's advantage, and so on.

The independent directors are additionally anticipated that would go to the general meetings of the organization and to keep themselves mindful of the matters which are going ahead in the organization.

Responsibilities towards shareholders and Stakeholders:

Independent Directors have different parts to satisfy in their official capacity. Following are the most critical ones:

- They must fulfill their obligations and must attempt to acquire transparency in the

working mechanism and environment of the organization. Since shareholders, particularly the minority shareholders, are generally not authorized to investigate those undertakings of the organization, and in this manner they look up to the autonomous executives as in the Independent directors in order to give such transparency.

- When the administration or Board is taking any choices which would unfavorably influence the privileges of the shareholders or creditors or workers, then the independent directors must have a noteworthy part in such choices, and they should act in the welfare of the stakeholders.
- Further, they are required to audit the related party exchanges and furthermore to guarantee the efficiency of “Whistle Blowers”

Role in Committee Membership

The Companies Act, 2013, provides for mandatory appointment of independent directors in following committees so as to meet the corporate governance requirements:

- Nomination committee
- Remuneration committee
- Committee related to investor relations,
- Audit committee.

Being an individual from the Board, their part and obligations are particularly like whatever other director of the Board. The trustee obligations of care, industriousness and acting in accordance with some basic honesty apply similarly to independent directors as to different directors.

Responsibilities towards the Board

It is the obligation of the independent director to guarantee that each of those issues that are essential for the organization are appropriately tended to by the board of Directors. The goals and obligations of the independent directors are same as that of the official directors. However, as compared to the executive directors the time that is needed to be devoted by the independent director and the degree of skill and care required for the company, both are less.

Analysis:

Whether are there any shortcomings with respect to the Independent director.

- Many a times, certain independent directors are added to the board because for prestige and lustre, therefore, these Independent Directors are themselves are so busy, successful individuals who already hold a no. of other similar position. There is very less time that they can bring into the company because of having so many commitments. This problem is enhanced when the companies are related to technical fields, where high technical assistance is needed about which the independent directors have very little knowledge of. In situations like these, the Independent directors are left helpless with no choice then to rely on the judgement of management.[6]
- Different companies require different board structure to obtain maximum benefit. Same formation of the board might not benefit as expected. Many company fail to understand this and forms the normal stereotype structure of the board. For example, newly

established companies will require more no. of independent directors to control management's tendency to reinvest the company's cash flow even when there are few if any reinvestment opportunities.

- Independent directors can be very beneficial for the company, but only if they are a part of committee which suits their expertise. This will make the independent directors perform their monitoring function. However, mostly established companies already have such committee structures set and they are very reluctant to make any changes in the same.[7]
- The next shortcoming is linked to above, namely not a proper placement of the knowledge and expertise skills relative to the company and its various businesses places a significant advantage in the hands of management. further, management has at in its control the entire administrative machinery of the company because of which independent directors have depend on the management. Quite literally, Independent directors have limited choice in general but to take decisions on the basis of the information given by management is not the proper use of the power of the Independent directors.[8]

After critically analysing all the provisions, advantages and shortcomings of the Independent Directors, the concept of Independent director is a boon or bane to the companies.

After leveling all the advantages and disadvantages the author have come to the final analysis, and herein lies the paradox, with the leadership and management functions mostly lies with the management, in the absence of an overhaul of the system, independent directors will only be able to discharge their duties and functions effectively if management itself is committed to the role of such directors. This is specifically a case where companies do not have board with a lot of Independent directors. Even where the names of the Independent directors is added to add more value to the company, effect of Board composition could be spurious because such performance could be a function of the quality of management itself.

If high quality managers are more likely to place outsiders on Boards than poor quality managers who do not want to be monitored, a finding that shareholders are better served by outsider-dominated Boards is simply an illustration of the better management of these companies. To this it should be added that high quality managers appreciate the valuable role of independent directors and will take steps to allow them to play their role effectively. Internal managers can use their knowledge of the organization to nominate outside Board members with relevant complementary knowledge: for example, outsiders with expertise in capital markets, corporate law, or relevant technology who provide an important support function to the top managers in dealing with specialized decision problems.

The importance of this cannot be overstated. There is a tendency to think that simply having independent directors improves corporate governance. The reality is sometimes the opposite. Unless there are independent directors who are truly independent, and have the strength of character and ability to perform an effective monitoring function, the presence of independent directors acts as a smokescreen and a snare for the unwary investor who may pay a higher price for equity on the basis of a supposedly better corporate governance structure. Good corporate governance is not about having a certain number of independent directors, of the number of Board meetings in a year, or even about whether there are Board committees that have a majority of independent directors. These tell us only about structures and while relevant, does not provide the more important information about how the independent directors or the

Board really operate.

Liability Of An Independent Director

Under the Company's Act, 2013, the liabilities of Independent Directors has been reduced and limited to: "only in respect of acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes, and with his consent or where he had not acted diligently".[9]

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