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ROLES, RESPONSIBILITIES OF INDEPENDENT DIRECTORS

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INTRODUCTION

- Pursuant to the provisions of Section 149 (4) read with Companies (Appointment and Qualifications of Directors) Rules, 2014, as amended from time to time, every listed company shall have at least 1/3 of the total number of directors as independent directors.
- Further pursuant to the aforesaid provisions of the Act and Rules, every unlisted public company having (i) paid up share capital of Rs. 10 crores or more; or (ii) turnover of Rs. 100 crores or more; or (iii) outstanding loans, debentures and deposits exceeding 50 crores or more, existing as on the last date of the latest audited financial statements, shall have at least 2 directors as Independent directors.
- Moreover, pursuant to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, where the chairperson of the board of directors of a listed entity is a non-executive director, at least 1/3 of board shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, then atleast 1/2 of the board shall comprise of independent directors. Also, there are other combination of independent directors are provided in the said regulations on case to case basis.
- The independent director brings independent view on the board of the Company and hence, he is shouldered with various roles and responsibilities under the Law.

ROLES AND RESPONSIBILITIES OF INDEPENDENT DIRECTORS

- Apart from the general roles and responsibilities of a director prescribed under section 166 of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015, here are the specific roles and responsibilities of Independent director:
 - ✓ Maintain transparency and impartiality in working of a company;
 - ✓ Promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.
 - ✓ 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;
 - ✓ Bring Good Corporate Governance;
 - ✓ Bring accountability and credibility in functioning of the Board and the Company;
 - ✓ Provide their expert views for the betterment of investors, creditors and other stakeholders of the Company;
 - ✓ Scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
 - ✓ Exercise adequate safeguard to stop the instances of frauds in the Company.

- ✓ Provide their expert views for the betterment of investors, creditors and other stakeholders of the Company;
- ✓ Scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- ✓ Exercise adequate safeguard to stop the instances of frauds in the Company.
- ✓ 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.
- ✓ 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;
- ✓ 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.
- ✓ 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 to 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 and 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;

Apart from the above, the Board of a company or the governing authorities of a company may affix separate additional duties and responsibilities upon an Independent director for which he may be held liable and responsible. E.g. The Ministry of Heavy Industries and Public Enterprises came up with draft Model Role and Responsibilities for Non-Official Directors on the Board of CPSEs on 28th December, 2012 later modified on 20th June, 2013. The model enlists duties of non-official directors. These duties are in consonance with the duties cast under the Companies Act, 2013, however with some additions as specified thereunder.



LIABILITIES OF INDEPENDENT DIRECTORS

Pursuant to the provisions of Section 149(12) of the Companies Act, 2013, an independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. In this regard, Ministry of Corporate Affairs, vide its circular no. 5 of 2020 dated 03.03.2020, have clarified that prosecution against independent directors for any default shall be filed only if the default is directly attributable to that independent director

THANK YOU