

# Companies Act 2013: Independent Director

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**Abstract:-** Due to integration of Indian Economy with World Economy, there is a continuous need of Corporate Governance in India. To meet out the international norms, India is required to appoint independent director. The need of Independent Director is increasing now a days. Companies now appoint Independent Director, as their presence gives a sense of security to shareholders, suppliers, customers, employees etc., Their independent nature focuses on improving corporate governance and strengthens the corporate base of organization.

The paper makes an attempt to highlight the current and proposed provisions with regard to appointment, Remuneration, Duties, Qualification, Roles and Responsibility etc., of independent directors in India. The paper also tries to make you aware about the need to independent directors in Listed as well as Unlisted Companies. Women director participation is also being focused.

**Key Words:** Independent Director, Roles, Remuneration, Women Director Duties.

## I. INTRODUCTION

The 8<sup>th</sup> day in the month of August holds a special place in the history of INDIA o the quest of freedom. on 8<sup>th</sup> August 1942, Mahatma Gandhi launched the Quit India Movement which finally led to raising of Indian Tricolour on 15<sup>th</sup> August, 1947.

a similar historic movement was repeated on the same date in 2013, when Rajya Sabha gave a clarion call to 'Quit the Command and Control Regime' and ushered in self-regulation through its approval of the Companies Bill, 2012. The Bill, which had a chequered stint in the corridors of power and was awaiting passage for an excruciatingly long time, froze into history with the President's assent on 29<sup>th</sup> August, 2013 and its notification on 30<sup>th</sup> August, 2013.

Finally, The Companies Act, 2013 becomes the Constitution for governance of over one million companies in the country.

## II. BACKGROUND

THE Companies Bill, vetted twice by the Parliamentary Panel and was passed by The Lok Sabha on December 18, 2012 and by The Rajya Sabha on August 8, 2013. On receiving the assent of the Hon'ble President of India on August 29, 2013, it was notified on August 30, 2013 as the Companies Act, 2013 (Act 18 of 2013) consisting of 470 Sections and 7 Schedules.

The Companies Act, 2013 (hereafter 'The Act') is a historic legislation and it replaced the existing company law, which is 56 years old. It consolidated and amended the law relating to the companies and focused on improving corporate governance and strengthening regulations for the corporate sector. It is a modern and contemporary

law, enacted after several rounds of deliberations with various stakeholders.

## III. COMPANIES ACT 2013 APPLIES TO WHOLE OF INDIA

The provisions of this act applies to →

- Companies incorporated under this act or any other previous law.
- Insurance companies except where the provisions are not consistent with the provisions of IRDA act, 1999 or insurance act 1938.
- Banking company except where the provisions are not consistent with provisions of Banking regulation act 1949.
- Electricity companies except where the provisions are inconsistent with provisions of Electricity act 2003.
- Any other company incorporated under CG act or Special act except where the provisions are inconsistent with provisions of their respective act.

## IV. COMPANY

Clause (20) - Company- means a company incorporated under this Act or under any previous company law.

The new Act, 2013 also permits for the incorporation of one person companies (OPCs) which the earlier Companies Acts (i.e., all the previous company law and the 1956 Act) did not.

## V. INDEPENDENT DIRECTOR

An **Independent director** (also sometimes known as an **outside director**) is a director (member) of a board of directors who does not have a material or pecuniary relationship with company or related persons, except sitting fees. he is not allowed to own shares in the company.

**For better governance**, concept of independent director was introduced. Independent directors should monitor the performance and should raise red flags whenever suspicion occurs. They are expected to be more aware.

Companies Act 2013 mandates appointment of independent directors by listed companies and other class of companies. It also prescribes other aspects such as maximum tenure of independent directors, separate meeting of independent directors, tenure, their qualifications, liability, appointment, remuneration and other aspect.

Every listed public company shall have at least 1/3<sup>rd</sup> of total number of directors as independent directors and CG may prescribe the minimum number of independent directors in case of any class or classes of public companies. Rule 4 of Companies (Appointment and Qualification of Directors) rules 2014, provides that the following class or classes of companies shall have at least two directors as independent directors →

- a) The Public Companies having paid up share capital of Rs. 10 crore or more; or
- b) The Public Companies having turnover of Rs. 100 crore or more; or
- c) The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crore.

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.

#### *Manner of selection of an Independent Director (Section 150)*

1. Independent directors may be selected from a data bank of eligible and willing persons maintained by the agency (Any body, institute or association as may be authorised by Central Government).
2. Such agency shall put data bank of independent directors on the website of MCA or any other notified website.
3. Company can select from the data so available.
4. Appointment shall be approved by members in GM.
5. Any person who desires to get his name included in the data bank of independent directors shall make an application to the agency in Form DIR-1.
6. Application should include personal, educational, professional, work experience, other details of the applicant.
7. The agency may charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors.
8. If the information so provided changes, then intimate such change to agency within 15 days.
9. Database posted on website shall be accessible and download possible at free charge.

#### **VI. CODE FOR INDEPENDENT DIRECTORS (Section 149)**

The company and independent directors shall abide by the provisions specified in Schedule IV regarding code for independent directors. It is a guide to professional conduct for independent directors.

Fulfilling their responsibilities will promote confidence of the investment community, mainly minority shareholders, regulators & companies.

#### *Code of Conduct includes →*

- Guidelines of professional conduct,
- Role, functions, duties,
- Manner of appointment, re-appointment,
- Resignation or removal,
- Separate meetings,
- Evaluation mechanism.

#### *Guidelines of professional conduct →*

An independent director shall:

1. Follow ethical standards.
2. Act objectively while exercising his duties.
3. Exercise his responsibilities in the interest of company.
4. Devote sufficient time and attention to his professional obligations for balanced decision making.
5. Not taking advantage of his position i.e., abusing his position to the detriment of company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person.

#### *Role and functions →*

The independent directors shall:

1. Help the board in taking independent judgements on issues of Risk Management, Strategy, Key appointment etc.,
2. Help in evaluation of performance of board and management;
3. Scrutinise the performance of management in meeting agreed goals and objectives and monitor their performance;
4. Safeguard the interests of all stakeholders, particularly the minority shareholders
5. Balance the conflicting interest of the stakeholders.

#### *Duties →*

The independent directors shall:

1. Conduct induction programmes and regularly update & refresh their skills, knowledge etc.
2. Attend the GM.
3. Check whether the matters of concern are communicated to the board and which are not resolved insist to record them in minutes of BM.
4. Attend all meetings of BOD's & Board Committees in which he is a member.
5. Participate actively in committees of Board in which he is a chairperson or members.

#### *Manner of appointment →*

1. While appointing ID's, Board shall ensure that there is appropriate balance of skills, experience and knowledge, so that the board can discharge its functions & duties effectively.

2. Their appointment must be approved by shareholders in GM.
3. The appointment must be formalized through a letter of appointment, which shall set the terms of appointment, expectation of board from the appointed director, committee's in which such appointed director shall serve, duties he shall perform, liabilities which he shall incur, remuneration he shall receive, list of actions that a director should not do etc.,
4. Terms & conditions of appointment of ID's shall be posted on Company's website and it shall be kept open for inspection at registered office of company during business hours.

*Re-appointment →*

It shall be on the basis of report of performance evaluation in case of ID.

*Resignation or removal →*

1. The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.
2. An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than 180 days from the date of such resignation or removal, as the case may be.
3. Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

*Separate meetings →*

1. The independent directors shall hold at least 1 meeting in a year, without the attendance of non-independent directors and members of management;
2. All the independent directors shall strive to be present at such meeting;
3. The meeting shall:
  - Review the performance of non-independent directors and the Board as a whole;
  - Review the performance of Chairperson, 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 Board, so that Board can reasonably perform their duties.

*Evaluation mechanism →*

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

*Tenure of Independent Director →*

1. He shall hold office for a term up to **5 consecutive years** on the Board of a company.
2. He shall be eligible for reappointment on passing of SR by the company and disclosure of such appointment in the Board's report.
3. No ID shall hold office for more than **2 consecutive terms**, but such ID shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director.
4. An ID shall not, during the said period of **3 years**, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

**NOTE: That, any tenure of an independent director on the date of commencement of this Act shall not be counted as a term.**

**VII. LIABILITY OF INDEPENDENT DIRECTOR**

- A) An independent director;
- B) Non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts or omission which had occurred with his knowledge and with his consent.

**VIII. RETIREMENT BY ROTATION**

This provision is not applicable on Independent directors.

**IX. REMUNERATION OF INDEPENDENT DIRECTOR**

An independent director shall not be entitled to any stock option and may receive remuneration by way of fee, reimbursement of expenses for participation in the Board and other meetings and profit related commissions may be approved by the members.

Table 1. A Few Data Statistics about Indian Board Database is as follows

Number of NSE Listed Companies	1,510
Number of Unlisted Financial Sector Companies Covered	217
Number of Directorship Positions Held	15,404
Number of Individual Directors appointed	10,847
Number of INDIVIDUAL Directorship positions held	8,604
Number of Independent Individual Directors appointed	4,918
Number of Women Directorship positions held	1,949

Number of Women Directors appointed	1,401
Number of INDIVIDUAL Women Directorship positions held	1,104
Number of Independent Individual Women Directors appointed	717
Number of Listed Companies without Women director	65

This database clearly shows that need of Independent directors is high, but still the post are so unfilled. They are heavy in demand in Banking, Finance and Financial Sector. The average Pay paid to them is also very high. A summary data is as follows →

## DIRECTOR'S CUT

### TOP PAYING IN BSE100 INDEX

	Avg yearly pay** per ID last fiscal (₹ lakh)	No of ind. directors
Ranbaxy Labs *	102.26	4
Infosys	84.75	9
TCS	82.66	6
Dr Reddy's	74.98	8
RIL	51.83	7
Cairn	38.3	4
HCL Tech	35.33	9
L&T	35.1	6
Bharti Airtel	32.1	9
Siemens	26.2	6
Tata Motors	25.23	6
JSW Steel	24.28	7
Ambuja	20.64	5

\* for year 2012 \*\* Excludes company shares held and Esops granted  
Source: Capitaline, Company annual reports

## XI. CONCLUSION

The new concept of having ID is a welcome step for corporate governance in India. The Act, 2013 has conferred greater empowerment upon ID's to ensure that the management & affairs of a company is being run fairly and smoothly. But, at the same time, greater accountability has also been placed upon them. The Act, 2013 focuses to have more independent director's in the management of a company so as to strengthen the corporate governance base.

Participation of women director is very low and it should be increased by companies.

But one should always consider it in mind, that only appointment of independent director will not make the company a success until and unless nominee, executive, non executive directors etc., are appointed appropriately. It is only when the entire board functions effectively which results to good corporate governance and benefit minority as well as majority shareholder in its long term which maintains a good corporate image in the market.

## REFERENCES

- [1] <http://indianboards.com/pages/index.aspx>-- Live Data
- [2] <http://www.lawteacher.net/free-law-essays/business-law/abstract-appointment-and-qualification-law-essays.php#ixzz3qhdvVnWi>
- [3] <https://www.icsi.edu/Docs/Webmodules/Publications/1.%20Company%20Law-Executive.pdf>
- [4] Fama, E. F., & Jensen, M. C. (1983) Separation of ownership and control. Journal of Law and Economics, 26(2), 301-325