

INDEPENDENT DIRECTORS: ROLES AND RESPONSIBILITIES

Introduction

Independent Directors are an integral part of the corporate governance framework, playing a significant role in promoting transparency, accountability and ethical decision-making. Their presence on the Board is intended to ensure that decisions are taken objectively, free from undue influence of promoters or management, and in the best interests of the company and its stakeholders.

In the evolving regulatory environment, the role of an Independent Director extends beyond mere compliance with statutory requirements. It requires active participation in Board deliberations, critical evaluation of management decisions, effective oversight of risks and a commitment to protecting shareholder interests. Independence must therefore be reflected not only in the appointment process but also in the conduct and decisions of the director throughout their tenure.

The importance of this subject was highlighted during Mehta & Mehta's knowledge-sharing webinar on the *Roles and Responsibilities of Independent Directors*, which examined the statutory framework, appointment requirements, Board and committee responsibilities, liability exposure, governance challenges and practical considerations for Independent Directors.

Statutory Framework and Eligibility

Section 149 of the Companies Act, 2013, read with Schedule IV, lays down the framework governing the appointment, qualifications, duties and conduct of Independent Directors. Section 149(6) prescribes the criteria for independence, including the absence of disqualifying relationships or pecuniary interests that may compromise the director's independent judgment.

Independent Directors are expected to possess appropriate skills, experience and expertise to contribute meaningfully to Board deliberations. Their appointment should be supported by adequate due diligence, including verification of declarations, professional background, regulatory records and compliance with applicable requirements relating to the Independent Directors' Databank and proficiency assessment, wherever applicable.

Independence is not a one-time qualification. Directors must continuously assess whether any relationship, transaction or circumstance could impair their ability to exercise objective judgment and make appropriate disclosures when required.

Roles and Responsibilities of Independent Directors

The principal responsibility of an Independent Director is to bring an objective and informed perspective to the Board's decision-making process. They are expected to constructively challenge management proposals, seek explanations where necessary and ensure that decisions are supported by adequate information and appropriate deliberation.

Their responsibilities include reviewing the company's financial performance, monitoring the effectiveness of internal controls, evaluating management performance and overseeing

significant business risks. They must also remain attentive to compliance with applicable laws, ethical standards and the company's governance policies.

Independent Directors have an important role in safeguarding the interests of minority shareholders and other stakeholders. They should ensure that decisions are not influenced solely by the interests of promoters or controlling shareholders, particularly where conflicts of interest may arise.

The effectiveness of an Independent Director depends on the quality of their participation. Merely attending meetings or approving resolutions without adequate examination may not fulfil the intended purpose of independent oversight. Directors should review Board papers in advance, seek clarifications on complex matters and request additional information wherever the available material is insufficient for an informed decision.

Board Committees and Governance Oversight

Independent Directors play a significant role in the functioning of key Board committees, particularly the Audit Committee, Nomination and Remuneration Committee, Risk Management Committee and Stakeholders' Relationship Committee, as applicable to the company.

Through the Audit Committee, they contribute to oversight of financial reporting, internal financial controls, audit observations and related party transactions. Their role includes examining whether transactions are appropriately disclosed, supported by adequate documentation and undertaken in compliance with applicable legal and governance requirements.

The Nomination and Remuneration Committee provides a forum for objective consideration of Board composition, director appointments, succession planning, performance evaluation and remuneration-related matters. Independent Directors can help ensure that appointments and evaluations are based on competence, integrity and the long-term needs of the organisation.

In relation to risk management, Independent Directors should assess whether the company has adequate mechanisms to identify, evaluate and mitigate material risks. These may include financial, operational, regulatory, technological, reputational and environmental risks. Their oversight should encourage a culture in which significant risks are reported promptly and addressed through appropriate controls.

Oversight of Related Party Transactions and High-Risk Matters

Related party transactions require particular attention because they may create actual or perceived conflicts of interest. Independent Directors should examine the nature, commercial rationale, pricing, terms and potential impact of such transactions on the company and its stakeholders.

Adequate systems should be in place to ensure that proposed transactions are identified and placed before the appropriate authority before being undertaken. Where transactions require

approval under the Companies Act, 2013, SEBI regulations or the company's internal policies, the applicable approval and disclosure requirements must be followed.

The role of Independent Directors is especially important where transactions involve promoters, directors, group entities or other connected parties. They should seek sufficient information to assess whether the transaction is in the company's interest and whether the process is fair and transparent.

The webinar discussion also highlighted instances of non-compliance with private placement requirements under Section 42 of the Companies Act, 2013. Issues such as improper receipt of application money, public advertisements and subsequent transfers of securities may raise significant compliance concerns. Such examples reinforce the importance of examining the substance of a transaction rather than relying solely on management assurances.

Strategic Oversight Versus Day-to-Day Operations

Independent Directors are expected to contribute primarily at the strategic, policy and oversight levels rather than manage routine business operations. Decisions concerning procurement, production, marketing, sales and other operational functions generally fall within the responsibilities of management, subject to the company's governance framework and delegated authorities.

However, this distinction does not mean that Independent Directors should disregard operational matters entirely. Where operational issues indicate material financial exposure, regulatory non-compliance, weaknesses in internal controls or significant risks to the company, they should seek appropriate explanations and ensure that the matter receives adequate Board attention.

Their contribution lies in evaluating whether management has established suitable policies, controls and reporting mechanisms, and whether the company's operations remain aligned with its approved strategy and risk appetite.

Independence, Boardroom Conduct and Recording of Dissent

Effective corporate governance requires an environment in which every director can express views freely and participate meaningfully in Board discussions. Independent Directors should be prepared to question proposals, challenge assumptions and seek further deliberation where the circumstances warrant it.

Where a director disagrees with a proposal or has concerns about the adequacy of information placed before the Board, the concern should be communicated clearly and the applicable process for recording the director's views should be followed. Accurate minutes are important because they provide a formal record of the deliberations, decisions and dissent expressed during meetings.

The preparation and maintenance of minutes should be consistent with the Companies Act, 2013 and applicable Secretarial Standards, particularly Secretarial Standard-1 on Meetings of the Board of Directors. A director should not assume that merely attending a meeting or raising

an informal objection will adequately document their position. Appropriate follow-up and accurate recording are essential.

Independent Directors should also resist undue influence from dominant Board members or management. Their duty is to exercise independent judgment while maintaining constructive engagement and acting in the company's best interests.

Liability and the Importance of Due Diligence

A key concern for Independent Directors is the extent of their liability for acts or omissions of the company. Section 149(12) of the Companies Act, 2013 provides a specific framework for the liability of Independent Directors and certain non-executive directors who are not promoters or key managerial personnel.

Broadly, the provision limits liability to matters in which the relevant statutory conditions are met, including acts or omissions occurring with the director's knowledge attributable through Board processes, with consent or connivance, or where the director has not acted diligently. Its application depends on the facts, the applicable legal provision and the evidence available in each case.

Independent Directors are therefore not automatically liable merely because they hold office on the Board. At the same time, they should not treat statutory protections as a substitute for active oversight. Failure to examine material information, disregard of warning signs or inadequate attention to compliance issues may expose a director to legal and regulatory scrutiny, depending on the circumstances.

Prudent practices include reviewing Board papers carefully, seeking professional advice on complex matters, asking questions where information is incomplete, ensuring that material concerns are documented and monitoring the implementation of significant Board decisions. Directors should also understand the scope and limitations of the company's Directors and Officers (D&O) insurance policy, including the terms applicable to claims arising after resignation or cessation of office.

Tenure, Resignation and Continuing Obligations

The appointment and tenure of Independent Directors are governed by the applicable provisions of the Companies Act, 2013 and, where relevant, SEBI regulations. Section 149(10) and Section 149(11) address the term and reappointment framework, including the prescribed cooling-off requirements.

Independent Directors should remain mindful of their eligibility, independence and disclosure obligations throughout their tenure. Any change in circumstances that may affect independence should be assessed and disclosed in accordance with applicable law.

Resignation or cessation of office does not eliminate accountability for matters arising during the period of appointment. Directors should ensure that resignation-related formalities and disclosures are completed as required by the applicable legal and regulatory framework. The

relevant provisions, timelines and disclosure requirements should be checked for the company's specific circumstances.

Conclusion

Independent Directors are essential to building a culture of responsible decision-making, transparency and accountability. Their effectiveness depends on genuine independence, adequate preparation, active participation and the willingness to question decisions where necessary.

While the statutory framework establishes their duties and provides a defined approach to liability, meaningful governance requires more than formal compliance. Independent Directors must exercise informed judgment, scrutinise significant transactions, oversee risks, protect stakeholder interests and ensure that their views are appropriately documented.

Ultimately, the value of an Independent Director lies not merely in their presence on the Board, but in their ability to strengthen governance, promote ethical conduct and contribute to the sustainable growth of the organisation.

To stay informed or access the webinar recording, visit the YouTube channel:

□ **"Decoding Corporate Laws with Mehta & Mehta"**