

## Woman Independent Director – A Step towards Inclusive Growth



*In a country like India where a large number of women still live in lot of cultural taboos, stereotypes and social barriers, there is huge potential in the untapped women capital. As per a report of United Nations, “The economic impact of achieving gender equality in India is estimated to be US\$700 billion of added GDP by 2025. The IMF estimates that equal participation of women in the workforce will increase India’s GDP by 27 per cent”. Several changes are happening in social and regulatory framework to bring more and more women workforce into mainstream. One such step is the introduction of compulsory representation of Women in Board of Directors (“BOD”) of companies. For the first time through the Companies Act, 2013 it was made mandatory for all listed companies and other large public limited firms to appoint at least one woman director to their boards. Read on...*

### Women Representation in Board

The concept of woman director was for the first time introduced through Companies Act, 2013 (“Act”). Section 149 of the Act mandated the appointment



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of Woman director in the prescribed companies. It has the mandatory provisions for appointment of a woman on BOD in certain companies. The proviso to Section 149(1) read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 requires appointment of at least one woman director in –

- a) Every listed Company,
- b) Every other Company, having
  - (i) paid up capital of 100 Crore or more, or
  - (ii) turnover of 300 Crore or more.

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Also, Regulation 17 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations ("SEBI (LODR)") mandated appointment of woman director on the Board. It states that the composition of BOD of the listed entity shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty per cent of the board of directors shall comprise of non-executive directors.

## Women Independent Director

To strengthen gender parity further there has been a recent amendment in the SEBI (LODR) Regulations vide Securities and Exchange Board of India (LODR) (Amendment) Regulations 2018. The Amendment done vide notification SEBI/LAD-NRO/GN/2018/10 requires appointment of at least one independent woman director on the board of the top 500 listed entities<sup>1</sup> by 1<sup>st</sup> April 2019 and for the top 1000 listed entities by 1<sup>st</sup> April 2020.

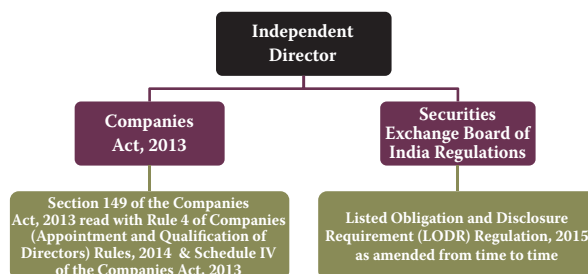
It is good move that is planned to be implemented in phased manner. Presently it has been made applicable to first 500 listed companies than it shall be applicable to first 1000 companies. Slowly it may also be made applicable to all the other listed companies as well.

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Besides other things, it opens a new door of opportunity to women Chartered Accountants, they with their expertise and knowledge being best placed for appointment as independent Director. However, with rewards come the risks. In this article, let us try to understand the rewards and risks of being independent Director.

## Regulatory Framework

Everything related to independent director is coded either in Companies Act, 2013 or under SEBI (LODR) Regulations.



As per Section 149(6) of the Companies Act, 2013 "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) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
- (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (e) who, neither himself nor any of his relatives—
  - i. holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

<sup>1</sup>The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

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- ii. *is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—*
  - A. *a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or*
  - B. *any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;*
- iii. *holds together with his relatives two per cent or more of the total voting power of the company; or*
- iv. *is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or*
- (f) *who possesses such other qualifications as may be prescribed*"

Section 149(4) of the Companies Act, 2013 read with Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 lays down provisions with respect to the Independent Directors appointment, it requires the following listed public company shall have at least one-third of the total number of directors as independent director:

- The Public Companies having paid-up share capital of 10 Crore or more, or
- The Public Companies having turnover of 100 Crore or more, or
- The Public Companies having, in aggregate, outstanding loans, debentures and deposits, exceeding 50 Crore.

Besides that, Securities and Exchange Board of India ("SEBI") on 9<sup>th</sup> May, 2018 vide notification SEBI/LAD-NRO/GN/2018/10 issued Securities and

Exchange Board of India (LODR) (Amendment) Regulations, 2018. The SEBI (LODR) Regulations gave birth to requirement of mandatory **appointment of Independent Woman Director** in a BOD of specified listed companies. A proviso was added that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities<sup>1</sup> shall have at least one independent woman director by April 1, 2020.

Schedule IV of the Companies Act, 2013 specifies the code for independent director. The code includes the Guidelines for professional conduct, Role and functions, Manner of appointment, Re-appointment, Resignation or removal, Separate meetings and Evaluation mechanism.

## Rationale of Independent Director

The increase in importance of "Corporate Governance" started in the year, 1999, when the Securities and Exchange Board of India (SEBI) set up a Committee under the chairmanship of Kumar Mangalam Birla to promote and raise standards of corporate governance in India. The recommendations put forward by the KM Birla Committee led to the addition of "Clause 49-Corporate Governance" in the Listing Agreement in the year 2000 which introduced the concept of Independent Director.

The report by KM Birla Committee on Corporate Governance defines independent directors as:

*"Independent Directors are directors who apart from receiving director's remuneration do not have any other material pecuniary relationship or transaction with the company, its promoters, its management, or its subsidiary, which in the judgment of the Board may affect their independence of judgement."*

There are various stakeholders in corporate form of entity viz. shareholders, creditors, banks and financial institutions, employees, community and environment. The working of the corporate system depends on how well the interests of these stakeholders are served. The interest of all the stake are best taken care of by someone who is independent of the Board of directors. Someone who can act as the watchdog to the matter of the company concerning all the stakeholders. And hence the concept of Independent directors.

<sup>2</sup> The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

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Independent Directors help in proper functioning of corporate, due to the fact they do not have a material interest with company and they will really represent interest of all investors and small shareholders. In last 10-15 years, with so many corporate scams/mis-management such as IL&FS, Satyam, Enron, Parmalat, Xerox, World Com and many others the role of independent directors has gained more significance.

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## Role and Responsibility

Independent Directors act as a guide to the Company. Their roles broadly include improving corporate credibility and governance standards functioning as a watchdog, and playing a vital role in risk management. They are essentially part of all the mandatory committees of Board. In fact, few committees of the Board like Audit Committee are compulsory required to be headed by Independent Director. Independent Directors play a pivotal role in maintaining a transparent working environment in the corporate regime. Independent Directors constitute such category of Directors who are expected to have impartial and objective judgement for the proper functioning of the company. Independent Director are not required to take part in the company's day-to-day affairs or decision making, however, they should ask the right questions at the right time regarding the board's decisions. Raising the appropriate red flags at the right time would help them in avoiding the occurrence of unwanted situations and their consequences to a great extent.

Being independent director, one of the duties is that one should undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the Company. It may be noted that it is the responsibility of the company to provide suitable training to Independent Directors to familiarise them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc. Independent Directors

are considered as mentors of management and as supervisor who will ensure that management action creates value. With the post of independent director comes great responsibility.

## Period

The appointment of independent director is normally for a period of five consecutive years, which shall be eligible for re-appointment. This kind of stability enables them to work fearlessly & efficiently.

## Remuneration

Usually the independent directors are paid only sitting fees for participation in the Board and other meetings, range of which may depend on the type of company, goodwill and relevance of independent director. The Profit related commission can also be paid to them. However, independent directors cannot participate in stock options and remuneration other than sitting fees.

## Performance Evaluation

The performance of independent directors is subject to evaluation and also, independent directors have to evaluate the performance of Chairperson, non-independent directors & the Board as a whole.

## Limitation of Liability

The position of independent director is the position of responsibility and should be accepted only if the person is confident of the company and management. Hassle of getting into legal labyrinth arising out of mismanagement or otherwise of the company is not worth the fees received as independent director and also the reputational loss that may come with it. As such the law takes care that the liability of Independent Directors is limited. Sub-section (5) of Section 149 of Companies Act, 2013 provides that an independent director, can be held liable **only** in respect of such acts of omission or commission by a company:

- (a) which had occurred with his knowledge attributable through Board processes, and
- (b) with his consent or connivance; or
- (c) where he had not acted diligently.

Here, the knowledge should arise through Board processes i.e. from any proceedings of the Board or through participation in Board meetings or meetings of any committee of the Board and any information which the director is authorised to receive as director of the Board as per the decision of the Board. Knowledge coming from external



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sources has not been referred here. 'Acted diligently' means that the director should have taken steps to avoid the act of contravention, as much as possible.

## Do's and Don'ts

Sr. No.	Do's	Don'ts
1	Adhered to ethical standards of integrity and probity.	Allowing extraneous considerations that will vitiate her 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.
2	Assist the company in implementing the best corporate governance practices.	Abuse her 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.
3	Act objectively and constructively while exercising duty.	Not updated as per the governing laws affecting the Companies.
4	Assist the company in implementing the best corporate governance practices.	Non evaluation of Board Performance on regular interval basis.
5	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.  Protect stakeholders' interest, especially the minority shareholders.	Ignorance and lethargic approach in attending meetings of the Company.
6	Moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.	Not seeking appropriate clarifications or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts.
7	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.	Unfairly obstruct the functioning of an otherwise proper Board or committee of the Board.

## Conclusion

*It is now being generally believed that "Women make good managers"; they are less prone to fraud, more meticulous and humane. The requirement of mandatory appointment of woman independent director on Board can be considered as Win/Win for corporates as well as women besides being very good corporate governance initiative by SEBI.*

Woman independent director being the statutory requirement now, there is good opportunity available for women Chartered Accountants. Take appropriate precautions and explore. It is good way to get usefully engaged serving stakeholder at various levels. However, being independent director is a two-way sword. It is very essential that before accepting the role of independent

director one should do proper assessment of the company as well as the management. One should know the rights, duties and responsibilities and liabilities of being the independent director. The

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aim has to be to serve the stakeholders at large. Being Chartered Accountants there is no plea of ignorance available and one should always keep the goodwill and dignity of our esteemed profession while discharging any duties of any position. ■