

# **Handbook on Role of Women Directors**



**Women Members Empowerment Directorate  
And  
Corporate Laws & Corporate Governance Committee  
The Institute of Chartered Accountants of India  
(Set up by an Act of Parliament)  
New Delhi**

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## Foreword

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Our Hon'ble Prime Minister Shri Narendra Modi ji has given a vision of Empowering the Nation with Women led Development. ICAI has always strived for excellence in its various endeavours and truly believes in empowerment of women. We have Women Members Empowerment Directorate at ICAI to meet its objectives of encouraging empowerment of women in the profession of Chartered Accountancy and to ensure their more active involvement in the profession.

Requirement of at least 1 woman director on the board has opened a window of opportunity for women professionals to take active and considerable part in the functioning of an organization. This has also created vistas of opportunity for professionals to acquire experience beyond working in traditional practice or firm. Though a Woman director has to play the role like any other director, she brings with her the compassion, practicality and intuitiveness exclusive to her. Women directors also serve as role models, and therefore improve female employees' performance and boost companies' image.

Empowering our women members and girls' students is something that we seek to advance, and we will ensure to make concerted efforts to achieve the same for sustainable development, prosperity, balanced growth, and security.

I am confident that this Background material will be of great significance and will provide assistance and motivation to our women members to become part of the decision-making process in the corporate world and acquire the position of Independent Director.

I really appreciate the efforts put in by Convenor & Deputy Convenor-Women Members Empowerment Directorate and Chairman & Vice-Chairman of Corporate Laws and Corporate Governance Committee of ICAI for undertaking this task and coming out with this '*Handbook on Role of Women Directors*' providing comprehensive information in such a lucid manner.

I wish the readers a fruitful and enriching experience.

Date: 21<sup>st</sup> January, 2021  
Place: New Delhi

**CA. Atul Kumar Gupta**  
President, ICAI



## Preface

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The changes in the recent past in the regulatory environment on corporate governance have enhanced the role of directors and have made them trustees of good governance.

Over the years, with the further evolution of culture of good corporate governance, the imperative need for women as a director in the Board was felt by all, including the regulators such as Ministry of Corporate Affairs (MCA) and Securities and Exchange Board of India (SEBI) to ensure an effective and balanced composition of the Board and to ensure accountability and credibility to the Board process and to strengthen sound practices.

Considering the importance accorded to appointment of Woman Director in the Board of a Company by Ministry of Corporate Affairs and Securities & Exchange Board of India, the Women Members Empowerment Directorate of ICAI along with the Corporate Laws & Corporate Governance Committee has decided to bring out a 'Handbook on Role of Women Directors'.

This handbook on Role of Women Directors provides insights into various role and responsibilities that are bestowed on the Women Director. It aims to provide a handy guidance to aspiring women directors so that they may perform their duties responsibly in the best interest of the shareholders and stakeholders.

The handbook also covers Important Frequently Asked Questions and excerpts of conversation with women independent directors to equip them with the holistic view in real life scenario. Practical aspects to be taken care by the directors along with Audit committee Checklist and CSR Checklist has also been provided.

Our sincere thanks to CA Atul Kumar Gupta, President ICAI and CA Nihar N.Jambusaria, Vice-President ICAI for their encouragement and support in bringing out the publication.

We wish to place on record my sincere thanks to the Convenor of the Committee CA. KemishaSoni for initiating this publication and group members of Mumbai and Pune who have contributed for bringing out this publication with valuable inputs.

We commend the efforts made by the Secretary to the Committee CA Sarika Singhal and her team comprised of Ms Seema Jangid, CA. Deepa Agarwal and CA. Nikita Aggarwal for providing their technical and administrative support.

We sincerely believe that the members of the profession, directors especially the women directors and other stakeholders will find the publication immensely useful.

**CA. Chandrashekhar Vasant Chitale**  
Chairman,  
Corporate Laws & Corporate  
Governance Committee, ICAI

**CA. Durgesh Kumar Kabra**  
Vice-Chairman,  
Corporate Laws & Corporate  
Governance Committee, ICAI

Date: 29<sup>th</sup> January, 2021

## Preface

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A director has an onerous duty to spearhead the operations of the Organization and lead it towards profitable entity which caters to the interest of each and every stakeholder- be it Govt., Society or its own Shareholders. By leading ethically and with integrity, an effective Director helps the company in improving corporate credibility and Governance standards. To boost Gender equality at the top management positions/C-suit positions, Govt. has made it mandatory to have atleast 1 women director in particular classes of company. Gender equality not only boosts economic productivity but also makes institutions more representative, and makes life more prosperous for future generations. Women Director's is the way forward.

Taking cognizance of the important role they play in an Organization, the Women Members Empowerment Directorate jointly with Corporate Law & Corporate Governance Committee of ICAI deemed it necessary to have this Hand Book which will make members clearly understand the Roles, Responsibilities and necessary skills required in discharging their duties as Directors.

This Hand Book is expected to be an exhaustive reference material which will provide complete overview to the women members, including coverage on pertinent topics like Corporate Governance, Need for provision of at least 1 women director on the Board of select companies, Checklist for Due diligence, Code of Conduct for Directors etc. This Handbook is expected to enhance skills, knowledge and professional competence of women members who are desirous of holding a position as a director.

Our sincere thanks to CA Atul Kumar Gupta, President ICAI and CA. Nihar N. Jambusaria, Vice-President ICAI for their encouragement and support in bringing out the publication.

We wish to place on record our sincere thanks to CA. Chandrashekhar Vasant Chitale, Chairman CL&CGC and CA. Durgesh Kumar Kabra, Vice Chairman CL&CGC who contributed valuable inputs in bringing out this publication. We thank the group members CA. Dr. Sangeeta Pandit, CA. Nina Kapasi, CA. Ruta Chitale, CA. Rewati Paithankar, CA. Prajakta Sangoram, CA. Savitha Joshi and CA. Madhuri Dandekar for their valuable contributions.



Our sincere thanks to CA. Rupa Vora, Ms Sangeeta Singh, Ms Kalpana Unadkat, CA. Jyotin Mehta and CA. Milind Sarwate for sharing their practical experiences and thoughts as Independent Directors. We are sure our Women members will be greatly inspired by their wisdom.

We appreciate the efforts put in by CA. Sarika Singhal, Secretary, Corporate Laws & Corporate Governance Committee and her team for their contribution and support in finalising this Handbook.

We also appreciate the dedicated efforts of CA. Shanu Goel, Secretary WMED and Ms. Sreeja Rajnish for providing the technical and administrative support.

We are of the firm belief that the members of the profession, directors especially the women directors and other stakeholders will find the handbook immensely useful.

**CA. Satish Gupta**  
Deputy Convenor  
Women Members Empowerment  
Directorate

**CA. KemishaSoni**  
Convenor  
Women Members Empowerment  
Directorate

**Date: 29.01.2021**

# Acknowledgement

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The Women Members Empowerment Directorate and Corporate Laws & Corporate Governance Committee of ICAI acknowledges the contribution made by following group members for the purpose of contributing technical inputs in this Hand Book on Role of Women Directors. We place on record our appreciation and gratitude for their contribution in enrichment of knowledge of our members:

**Group Members from Mumbai:**

CA. Dr. Sangeeta Pandit  
CA Nina Kapasi

**Group Members from Pune:**

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# Chapter- I

## Introduction

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### 1. Introduction to the Directors

Effectiveness of a system of corporate governance cannot be legislated by law nor can any system of corporate governance be static. Rather, in a dynamic environment, systems of corporate governance need to continually evolve. There are several corporate governance structures available in the developed world, but there is no one structure, which can be singled out as being better than the others. There is no **“one size fits all”** structure for corporate governance. Importantly, corporate governance extends beyond corporate laws. Its fundamental objective is not mere fulfillment of the requirements of law, but in ensuring commitment of the Board in managing the company in transparent manner for maximizing long-term shareholder value. The recommendations of the various committees, constituted by the Regulatory Authorities of India, from time to time, formed the base for further evolution of the structure of corporate governance in consonance with the rapidly changing economic and industrial environment of the country.

Good Corporate Governance is the manifestation of beliefs, values and actions to ensure maximum value creation to the stakeholders. Value creation is a term broader than wealth creation. The objective of corporate governance is to enhance shareholder value keeping in view the interest of other stakeholders.

Factors like Globalization, Global Competitiveness, Technology, Regulatory Changes and Shareholders Activism etc. have considerably expanded the role and duties of Directors whether its Executive/ Non-executive/ Independent. They are responsible for ensuring better governance by actively involving in various committees set up by a company.

The decision making and governance at the highest level in any company vests with its Board of Directors (The Board). The concept of Board or directors was evolved because of the need for a group of trustworthy and respectable people to look after the interests of the shareholders (sometimes very large in numbers) who are not directly involved in the management of the company.

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The Board is entrusted with the responsibility of identification of long term or overall aims and interests of the companies under their governance, creating value for the shareholders and other stakeholders and implementing means of achieving them. In order to implement strategic decisions for achieving long term goals and aims, the Board has to take informed decisions, calculated risks, delegate authority and monitor the performance of those in charge of various functions. The Board also has to ensure compliance with the legal framework, integrity of financial accounting and reporting systems and credibility in the eyes of the stakeholders through proper and timely disclosures.

Apart from the powers specifically reserved for shareholders, the Board is entitled to exercise all powers and to do all acts and things, as the company is authorised to do, subject to compliance with applicable laws, the provisions of the company's charter documents and the regulations, if any, made by the shareholders in a general meeting.

The Board is primarily answerable to the shareholders for creating, protecting and enhancing their wealth, conserving and utilizing the resources of the company to the optimum level and periodically reporting to them in transparent manner about the affairs of the company.

In this regard, the Companies Act, 2013 requires appointment of at least one woman director for every listed company and unlisted public company having paid up share capital of Rs. 100 crores or more or turnover of Rs. 300 crore or more as on the last date of latest audited financial statements. Such Woman Director can be an executive director or a non-executive director.

Further, based on recommendation of the Kotak Committee on Corporate Governance, SEBI (LODR) Regulations, 2015 has issued an amendment which came into effect since 01.04.19, that the Board of directors of the top 500 listed entities based on market capitalisation shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020.

The details of all compliance related matter and various formats to be filed by the directors can also be obtained from CLCGC's "**Technical Guide on the provisions of Independent Directors from Corporate Governance perspective**" available at <https://resource.cdn.icai.org/62755clcg50746-pid.pdf>

## **Introduction**

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The role and responsibilities of women director are discussed in detail. The most important point is to ensure maximum value addition to the stakeholders in a transparent manner and act as a link between the stakeholders and management for obtaining maximum benefit.



## Chapter-II

# Need for Women Directors on the Board

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## 2. The Need for Women Directors

As we all know that the Independent Directors are one of the most important pillars of the effective Corporate Governance system in companies and are treated as trustees of good governance. Over the years the expectations of stakeholders have enhanced from the independent directors and there are enormous responsibilities bestowed on them and are viewed as a solution to various corporate governance problems especially the Women Independent Directors.

The Board of Directors plays the most crucial role in management and growth of the company. The imperative need for women as a director in the Board was felt by all, including the regulators such as Ministry of Corporate Affairs (MCA) and Securities and Exchange Board of India (SEBI), and accordingly relevant provisions for the same were introduced in the Act and Regulations, extract of the same has been reproduced below:

**Section 149 read with Rule No. 3 of Chapter XI of the Companies Act, 2013**, requires the following class of companies to appoint at least One Women Director:

- i) Every listed company
- ii) Every other public company having:-
  - a) paid up share capital of one hundred crore rupees or more; or
  - b) turnover of three hundred crore rupees or more:

However, a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation.

Furthermore, any intermittent vacancy of a woman director shall be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

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Explanation— For the above purpose, paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

**Regulation 17(1) of the Securities and Exchange Board of India (Listing Obligation Disclosure Requirements), Regulations 2015**, requires that the composition of board of directors 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.

However, 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 shall have at least one independent woman director by April 1, 2020

*Explanation:* 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.

While the law requires mandatory woman director, independent or otherwise, the necessity should be appreciated more in the context of the contribution, which a woman on Board brings to the Company culture and contributes to the company performance. Various studies mentioned below, have proved the same: -

- **2019 McKinsey study** mentions that there is a positive correlation between a more diverse leadership team and financial outperformance. It further states that Companies with greater gender diversity on executive teams were 21% more likely to outperform on profitability and 27% more likely to have superior value creation. 2020 McKinsey report further states that in the COVID-19 crisis, inclusion, and diversity matter more than ever.
- A study by **Peterson Institute for International Economics**, an independent organization, states that Firms with women in executive officer and director positions post higher annual profit margins than those without female leaders. Between 1997 and 2017, firms with at least one female director or executive officer consistently reported larger profit margins. Among profitable companies, a move from 0 to 30% women leaders was observed to have increased net revenue margin by 30 %.

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The above finding clearly supports the statement of **Jing dong Hua, VP World bank** that “Empowering women is not only the Right thing to do. It is also the smart thing to do”. It can add trillions of dollars to global GDP, boost productivity, generate higher returns on investment and promote greater organizational effectiveness.

### 2.1 Need for Independent Woman Director

1. **Prudence** - A woman, by her very nature, has certain inherent qualities, whereby presence of even one woman changes the Board dynamics. She is more inclusive, detail driven, patient and prudent in their reviews. She normally possesses better Communication skills.
2. **Focused** - With different perspectives and style of conduct, she remains more holistic, think more broadly and be more attuned to environmental and social concerns.
3. **Easy to talk to** - Being more inquisitive, she has less difficulty in asking questions. Being less risk averse, her presence leads to better procedures and policies for crosschecks, double-checks, second opinions and consultations which result in perfection.
4. **Better Judgement** - A woman is normally more careful and conscientious in supervision and scrutiny. She is better equipped to handle decisions regarding HR policies, CSR policies, Marketing Strategies for Consumer goods, Advertising and PR and now increasingly on Compliance related issues.
5. **Co-ordination** - Being more inclusive, she can voice issues relating to implications of company strategies on their employees, consumers and other stakeholders, environment and society at large. Women see themselves as more in tune with relationships with various stakeholders while men perceive themselves as more independent focusing more on Company Strategy and Performance.
6. **Empowerment** - A woman director, being highly educated and experienced, is perceived as cultural change agents and role model by other women stakeholders. Her presence encourages women at all levels to challenge their situations and empower them to grow in their chosen field. She can groom future directors from within.

## 2.2 Skill Set Required for a Women Independent Director

1. **Leadership** - Corporate structure is characterized by separation of ownership and management. Whereas the shareholders remain the owners of the company, management is entrusted to the Board of Directors. As a team member, one is expected to deal with difficult issues that often have little data and are influenced by highly volatile and uncontrollable market forces and other external factors and to drive the entire organisation through these uncertainties. ***A leader takes people where they want to go. A great leader takes people where they don't necessarily want to go but ought to be.*** – Rosalynn Carter, former First Lady.
2. **Industry knowledge** - Every industry has specific characteristics, with regard to its manufacturing process, market, business models and competition. An independent director, as an outsider, though not being in day-to-day business of the company, is expected to have fair knowledge of the industry in which the Company operates.
3. **Good command on Accounting and finance:** Directorship is all about analyzing, directing and guiding, business whose performance is reflected in its Accounts and Financial results. To appraise, to verify the direction and performance of the Company, one has to have good command on Accounting and Finance and should be able to read and gauge various ratios and figures, showing the health or otherwise of Company's performance.
4. **Legal, regulatory and governance knowledge:** It is said that the cost of compliance is high but cost of non-compliance is too heavy. A Chartered Accountant, being an expert in Company Law, Accounts and Finance as well as knowledgeable in allied laws, can contribute significantly in this regard.
5. **Risk management:** In this 21st Century, where the degree of change is frightening and business models and business processes are facing the terrifying risk of becoming non relevant and defunct, Board of directors are expected to go through due diligence of risk and understand how the company is protecting them. Board is expected to oversee the risk management strategies and protocols.

- 6. People Management:** As a director, one is expected to balance interest of various stakeholders, be it employees, minority shareholders, creditors or other institutions. Also, one is leading the top executive team, who in turn is leading no. of employees. In that background, one has to have good people management techniques so as to lead the team and balance varied interest.

### 2.3 Personal Qualities

- 1. Intellectual curiosity:** Directors must have a deep inquisitive nature. The job of governing involves processing an enormous amount of information, often of a very technical or specialist nature. Curiosity to extend beyond your own comfort zone is essential.
- 2. Communication Skill:** The ability to communicate effectively is arguably the most important skill for a successful leader. Communication isn't limited to speaking, but includes listening, writing well, and being able to read and use nonverbal language. These skills help in building relationships with other board members but with other officials too.
- 3. Continuing Education:** Continuing education and learning is so important, even for the most experienced directors. Directors must lead by example in keeping themselves current and relevant in a changing world. They must demonstrate their ability to add value by sharing their knowledge and should also consider how changing and emerging issues may impact the success of the organisations they are governing."
- 4. Active contributor:** Directors always act as part of a collective board. Lone wolves do not thrive in boardrooms. It is essential to be attuned to fellow directors, able to listen, to hear and to seek, to understand what motivates yourself and others.
- 5. Confidence:** At the end of the day, leadership is about having the confidence to make decisions. If a leader is afraid to make and commit to decisions, all the empowerment in the world won't make a difference. It's human nature to want a failure-proof business by ensuring that one has thought of everything, but in an ever-changing environment, that's not possible. What separates the successful leader

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who inspires us into the unknown from those who need a mountain of statistical analysis is confidence.

- 6. Integrity and honesty:** As a Board member, one is privy to many privileged data and information. It is not only unlawful to use this information for personal benefit, but also unethical to divulge such information to third parties or reap some benefit out of it.

## Chapter-III

# Specific Provisions with regard to Directorship Position

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### 3. Specific Provisions with regard to Directorship Position

The most important pillar of an organization or company is its Director, be it executive director or non-executive director since they are responsible for handling the affairs. It is essential that they should be cognizant of the various acts and laws governing them.

The provisions governing directorship are contained in Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the same has been referred below:

#### 3.1 Specific Provisions with regard to Directorship under the Companies Act, 2013

##### 3.1.1. Definitions

The term Director is defined under Section 2(34) of the Companies Act, 2013 as director appointed to the Board of a Company.

Further, Board of Directors or Board, in relation to a company, is defined as the collective body of the directors of the company. (Under Sec 2(10) of Companies Act, 2013)

Nonetheless, Independent Director is defined under section 149(6) read with sec 2(47) of the Companies Act, 2013 (the same has been covered in Chapter-IV FAQs) and it has also been defined under the SEBI (LODR) Regulations, 2015

##### 3.1.2. Major Provisions relating to Directors/Independent Directors

The provisions w.r.t. appointment and qualification of director are prescribed under the Act. A Director/ Independent Director who is so appointed on the Board shall adhere to these provisions while accepting the position of Directorship. The requirements which shall be taken care of are as follows:

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### Specific Provisions with regard to Directorship Position

- **Section 149- Company to have Board of Director**

This section deals with the composition of Board of Directors of the company. It states that a company can have a maximum of fifteen directors, however if the company wants to appoint more than fifteen directors then SR has to be passed in this regard.

Furthermore, it specifies the criteria based on which the company is mandatorily required to appoint Independent Director and Women Director.

It requires that every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in Section 149(6)

- **Section 150- Manner of selection of Independent Directors and Maintenance of databank of Independent Director**

It prescribes that a person who has been appointed as an ID shall by 31st December, 2020 or who intends to get appointed as ID shall before such appointment, apply online to the institute (IICA) (<https://www.independentdirectorsdatabank.in/>) for inclusion of his name in the data bank till he continues to hold the office of an ID and pass the online proficiency self-assessment test within a period of two years from the date of inclusion of his name in the Data Bank..

However, he shall not be required to pass the test, if he fulfills certain criteria as specified in Rule 6 of Companies (Amendment and Qualification of Directors) Rules, 2014.

- **Section 152- Appointment of Directors**

Every Director of the Company is to be appointed by the company in general meeting, unless otherwise mentioned in the Act.

Further every director who is proposed to be appointed as such shall furnish his DIN, declaration that he is not disqualified to become a director under this Act and consent to hold the office as director. Nonetheless, this consent is required to be filed with the registrar within thirty days of appointment.



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- **Section 154 to 158-Allotment and Intimation of DIN (Director Identification Number)**

Every individual intending to be appointed as a director of a company is required to make an application for DIN, by filing e-form DIR-3. In case, an individual has already been allotted a DIN, then s/he shall not make the application again

While furnishing any return, information or particulars, which contains any reference of director, DIN of the director shall be mentioned therein.

- **Section 164- Disqualifications for appointment of Director**

A person intending to become a director shall ensure that he is eligible to be appointed as a director and does not incur any of the disqualifications stated under section 164 of the Act.

A person

- who is of unsound mind and stands so declared by a competent court;
- is an undischarged insolvent; has applied to be adjudicated as an insolvent and his application is pending;
- has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:
- against whom an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
- the person appointed as a director of a company has not been allotted DIN

## Specific Provisions with regard to Directorship Position

shall not be eligible for appointment as director of a company.

- **Section 165- Number of Directorships**

A person shall not hold office as a director, including any alternate directorship, in more than twenty companies at the same time. (For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included)

However, the maximum no. of public companies in which a person can be appointed as a director shall not exceed ten. (For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included)

- **Section 166- Duties of Directors**

The section spells out the basic duties that a director should consider while discharging its responsibilities such as the director should act in accordance with the articles of the company.

- **Section 168- Resignation of Director**

It provides that a director may resign from the office by giving a notice in writing to the company and the resignation shall be taken effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

However, the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

- **Section 169- Removal of Director**

It specifies that a director not being a director appointed by the Tribunal under section 242 may be removed by an ordinary resolution, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

However the independent director re-appointed for second term shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.

**The duties of the Directors and the Independent Directors are widely spread under the whole Companies Act, 2013; however the major**

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**provisions specifically related to Directors are covered under following sections:**

- **Section 134- Financial Statement, Board's report**

This section deals with the duty of the Board of Director w.r.t approval of financial statements and preparation of Board's Report.

Section 134 (5) casts certain responsibility on the Directors and a director responsibility statement in respect of the same has to be incorporated in the Board's Report.

- **Section 173- Meetings of the Board**

It requires that at least 4 meetings should be held each year, such that 120 days shall not elapse between two consecutive meetings<sup>1</sup>, and it states that a director can participate in the Board Meeting through VC or OAVM. However notice of not less than seven days in writing is required to call a board meeting and notice of meeting to all directors shall be given, whether he is in India or outside India by hand delivery or by post or by electronic means

- **Section 174- Quorum**

The Quorum for a meeting of the BOD of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by VC or by OAVM shall also be counted for the purposes of quorum

- **Section 175- Passing of Resolutions by Circulation**

The resolution shall be passed by the Board or by a committee thereof by circulation, only when the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, and has been approved by a majority of the directors or members, who are entitled to vote on the resolution

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<sup>1</sup> MCA General Circular No. 11 /2020 dated 24th March 2020- the mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA-13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September. Accordingly, as a one-time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13

### **Specific Provisions with regard to Directorship Position**

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However where not less than one-third of the total number of directors of the company require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

A resolution shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

#### **The provisions w.r.t powers to be exercised by the Board of Directors are contained in the following section of the Companies Act, 2013**

- **Section 179- Powers of the Board**

This section states that the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do, however it shall not be inconsistent with provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations including regulations made by the company in general meeting

The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:

- ✓ to make calls on shareholders in respect of money unpaid on their shares;
- ✓ to authorise buy-back of securities under section 68;
- ✓ to issue securities, including debentures, whether in or outside India;
- ✓ to borrow monies;
- ✓ to invest the funds of the company;
- ✓ to grant loans or give guarantee or provide security in respect of loans;
- ✓ to approve financial statement and the Board's report;
- ✓ to diversify the business of the company;
- ✓ to approve amalgamation, merger or reconstruction;

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- ✓ to take over a company or acquire a controlling or substantial stake in another company;
- ✓ any other matter which may be prescribed

- **Section 180- Restrictions on Powers of the Board**

This section imposes restrictions on the powers of the Board on certain matters and in respect of those matters the Board can exercise its power only with the consent of the company by a special resolution.

- **Section 181, 182 and 183- Powers of Board w.r.t Various Contribution**

Section 181 spells that Board of Directors of a company may contribute to bona fide charitable and other funds, however it requires that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five percent of its average net profits for the three immediately preceding financial years

Section 182 states that any company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party. The contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.

Section 183 talks about the power of board and other persons to make contribution to national defence fund, it states that the Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

**Certain other provisions also which a Director/Independent Director has to bear in mind while performing his duties are as follows:**

- Section 184- Disclosure of Interest by Director
- Section 185- Loan to Directors etc.

### **Specific Provisions with regard to Directorship Position**

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- Section 186- Loan and Investments by Company
- Section 187- Investments of Company to be held in its own name
- Section 188- Related Party Transactions
- Section 191- Payment to Director for Loss of Office etc., in connection with transfer of undertaking, property or shares
- Section 192- Restriction on Non-Cash Transactions involving Director

### **3.2 Specific Provisions with regard to Directorship under the SEBI (LODR) Regulations, 2015**

- **Regulation 17- Composition of the Board**

The requirements provided by LODR are different from those under the Companies Act. As per the Regulations the composition of the board of directors of the listed entity shall be as follows:

- board of directors 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 nonexecutive directors; 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 shall have at least one independent woman director by April 1, 2020
- where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors.
- where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors

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- The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.
- where the listed company has outstanding SR equity shares, at least half of the board of directors shall comprise of independent directors.

- **Regulation 17(2)- Meetings of the Board**

This sub regulation requires that the Board shall meet at least 4 times a year with a maximum time gap between two meet shall not be more than 120 days.

- **Regulation 17(2A)- Quorum for Board Meeting**

It states that the quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.

- **Regulation 17A- Maximum number of Directorship**

This regulation regulates the maximum number of directorship, including any alternate directorship that can be held by directors of listed entities.

It states that a person shall not be a director in more than eight listed entities with effect from April 1, 2019, and in not more than seven listed entities with effect from April 1, 2020. And a person shall not serve as an independent director in more than seven listed entities.

Further, any person who is serving as a whole-time director/managing director in any listed entity shall serve as an independent director in not more than three listed entities.

It is to be noted that for this purpose, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.

- **Code of Conduct**

Regulation 17(5) states that the Board of Directors shall lay down a code of conduct for all members of the BOD and senior management

### **Specific Provisions with regard to Directorship Position**

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of the listed entity, which shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013

Further regulation 26(3) mandates that all the members of the BOD and senior management personnel shall affirm compliance with the code of conduct on an annual basis.

Nonetheless, this code of conduct shall be disseminated under a separate section on the listed entity's website.

### **3.3 Audit Committee**

The requirement to form an audit committee is prescribed under Section 177 of the Companies Act, 2013 read with rule 4 of companies (Appointment and Qualification of Directors) Rules, 2014. Provisions relating to Audit Committee are also given under SEBI (LODR) Regulations, 2015

It requires that Every Listed Public Company and the Public Companies having paid up share capital of ten crore rupees or more; or the Public Companies having turnover of one hundred crore rupees or more; or the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees shall constitute an Audit Committee.

Further, the similar requirement is also provided under rule 4 of companies (Appointment and Qualification of Directors) Rules, 2014 to appoint an Independent Director.

Therefore, every company which is required to appoint Independent Director is also required to constitute an Audit Committee. Furthermore, it is required under section 177 of the Companies Act, 2013 that Audit Committee shall consist of minimum of three directors with Independent Director forming the majority; therefore the Independent Director who is so appointed on the Board, shall have the knowledge w.r.t functions performed by the Audit Committee. Thus, to assist the Director/Independent Director, a detailed checklist has been provided, which can be referred to in Chapter-VIII

### **3.4 CSR Committee**

Section 135 of the Companies Act, 2013 read with Schedule VII, requires companies to formulate a CSR policy and spend on social and environmental upliftment activities.



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The provisions of CSR are applicable to every company, whether private or public, whether listed or unlisted or foreign companies having branches or project offices in India, which meet any of the three specified criteria mentioned below in the immediately preceding financial year:

- Having net worth of Rs.500 crore or more, or
- Having turnover of Rs.1000 crore or more, or
- Having a net profit of Rs. 5 crore or more.

The thresholds given under the Companies Act to appoint a woman director in the Board is lower than the thresholds provided under section 135, as a result every company which is mandatorily required to appoint a woman director is required to comply with the CSR requirements.

Consequently, a woman director who is so appointed on the Board should be cognizant of the provisions relating to CSR. A detailed checklist in this respect is prepared which can be referred in Chapter –IX.

### **3.5 Due Diligence for Directorship**

It may be remembered that directorship is neither a status symbol nor a ceremonial award. While there are various duties attached to directorship, there are heavy legal consequences for failing in such duties.

An independent director and a non-executive director, not being promoter or key managerial personnel, 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 the circumstances, it becomes imperative that prior to joining a board, a prospective director carries out their own due diligence process to gather as much information about the board, its processes, commitments and its members as can reasonably be gained. With such knowledge acquired and considered, the decision whether or not to join can be made with some assurance about what the newcomer is letting himself or herself in for.

- Nature of industry, whether Start up, old manufacturing company or a technology company.
- Level of competition in market, competitor companies
- Quality of products and market share etc.

### **Specific Provisions with regard to Directorship Position**

- Notes to Balance Sheet, proper follow up of Internal Finance Controls and consistent filing of annual accounts
- Consistent payment of interest and dividend
- Holding of promoters and pledging of shares by them
- Public shareholding, professional management
- Change in auditor in last few years
- Structure of corporate controls, no. of subsidiaries
- Cash flow and fund flow
- Debt Service Coverage Ratio, Price Earning (P/E) Ratio, Return on Equity (ROE), Return on Capital Employed (ROCE)

## Chapter-IV

# Code of Ethics relevant for Directorship Position

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### **4. Code of Ethics for Director**

Being a Director on the Board is a coveted position, one that comes with great responsibility to work towards taking the Organization on a successful path. The Code of Ethics for members of the Board of Directors is there to assist Directors in fulfilling their corporate duties to the best of their ability. The Board is collectively responsible for promoting the success of the Company by directing and supervising the Company's affairs. With the increasing business complexity, Code of Ethics provides essential support in taking crucial decisions in matter of values and principles.

Ethics and associated values are very crucial for prolonged success of any organization. The Directors being the “decision making” body are expected to act in good faith and exercise the powers and fulfil the duties of their office honestly at all times. In addition to assisting the Directors in complying with their duties to the Company, Code of ethics also acts as a guidance material on areas of ethical risk and to help in fostering a culture of honesty and accountability.

Before considering a directorship position, it is important to have a good understanding and due diligence of the ethics and values of the company. Knowledge and understanding of Ethics and values of the company will enable a director to align the objectives of the company with professional integrity.

The Code of Ethics applicable on members of the profession are in sync with IFAC code of Ethics and are reproduced hereunder-

**4.1 Provisions applicable for Director mentioned under Volume-I of Code of Ethics, 2019 based on the 2018 edition of Code of Ethics issued by International Ethics Standards Board for Accountants (IESBA)**

**4.1.1 Section 522- Recent Service with an Audit Client**

Requirements and Application Material

Service During Period Covered by the Audit Report

**R522.3** he audit team shall not include an individual who, during the period covered by the audit report:

- (a) Had served as a director or officer of the audit client; or
- (b) Was an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

**4.1.2 Service Prior to Period Covered by the Audit Report**

522.4 A1 A self-interest, self-review or familiarity threat might be created if, before the period covered by the audit report, an audit team member:

- (a) Had served as a director or officer of the audit client; or
- (b) Was an employee in a position to exert significant influence over the preparation of the client's accounting records or financial statements on which the firm will express an opinion.

For example, a threat would be created if a decision made or work performed by the individual in the prior period, while employed by the client, is to be evaluated in the current period as part of the current audit engagement.

522.4 A2 Factors that are relevant in evaluating the level of such threats include:

- The position the individual held with the client.
- The length of time since the individual left the client.
- The role of the audit team member.

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522.4 A3 An example of an action that might be a safeguard to address such a self-interest, self-review or familiarity threat is having an appropriate reviewer review the work performed by the audit team member.

### **4.1.3 Section 523 Serving as a Director or Officer of an Audit Client**

Requirements and Application Material

Service as Director or Officer

**R523.3** A partner or employee of the firm or a network firm shall not serve as a director or officer of an audit client of the firm.

Further, as per Section 141(3) (b) of the Companies Act, 2013, an officer or employee of the company or a person who is a partner, or who is in the employment, of an officer or employee of the company, shall not be eligible for appointment as an auditor of a company.

## **4.2 Provisions in Volume-II of Code of Ethics, 2020 relevant for Directorship position are as under:**

14.1.11 A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

**Clause (11):** engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage:

**Provided** that nothing contained herein shall disentitle a chartered accountant from being a director of a Company, (not being a managing director or a whole-time director), unless he or any of his partners is interested in such company as an auditor;

### **Director Simplicitor**

2.14.1.11(iv) As regards the question of permitting a member in practice to be a, Promoter/Promoter- Director, Subscriber to the Memorandum and Articles of Association of any Company, it was decided that:

(a) Director of a Company

(1) The expression "Director Simplicitor" means an ordinary/simple Director who is not a Managing Director or Whole time Director and is required only in the Board

### **Code of Ethics relevant for Directorship Position**

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Meetings of the company and not paid any remuneration except for attending such meetings.

- (2) A member in practice is permitted generally to be a Director Simplicitor in any Company including a board-managed Company and as such he is not required to obtain any specific permission of the Council in this behalf unless he or any of his partners is interested in such Company as an auditor, irrespective of whether he and/or his relatives hold substantial interest in that Company.

(b) Promoter/Promoter-Director

There is no bar for a member to be a Promotor/Signatory to the Memorandum and Articles of Association of any Company. There is also no bar for such a Promoter/Signatory to be a Director Simplicitor of that Company irrespective of whether the objects of the Company include areas which fall within the scope of the profession of Chartered Accountants. Therefore, members are not required to obtain specific permission of the Council in such cases. It must be clarified that under Section 25 of the Chartered Accountants Act, no Company can practice as a Chartered Accountant.

### **FAQs based on provisions of Code of Ethics and decisions of ESB**

**Q. Whether a member in practice can be a Director Simplicitor of a company?**

- A.** Yes, As per Clause (11) of Part-I of first Schedule of the Chartered Accountants Act, 1949, a member in practice is not disentitled from being a director of a Company, (not being a managing director or a whole time director).

In pursuance to the above Council has clarified that a member in practice may be Director Simplicitor. The expression "Director Simplicitor" means an ordinary/simple Director who is not a Managing Director or Whole time Director and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings.

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**Q. Whether a member in practice can become a managing director or a whole-time director of a Company?**

- A.** No, members are not allowed to become a Managing Director or whole-time Director of a company generally. However, a member in practice may become a Managing Director or a whole-time Director of a company after specific and prior permission of the Council.

In pursuance to the Resolution passed by Council at its 242nd meeting held in May 2004, a member engaged in occupation of Managing Director or Whole Time Director shall not be entitled to perform any attest function.

Further as per Guidelines for Practice in Corporate Form of Practice members in practice can hold the office of Managing Director, Whole-time Director or Manager of a body corporate within the meaning of the Companies Act, 1956 provided that the body corporate is engaged exclusively in rendering Management Consultancy and Other Services permitted by the Council in pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 and complies with the conditions(s) as specified by the Council from time to time in this regard. The name of the Management Consultancy Company is required to be approved by the Institute and such Company has to be registered with the Institute.

**Q. Whether member in practice being an Independent director can sign the financial statement of Company?**

- A.** Yes. The independent directors are part of the Board where the accounts are approved, they are being party to approval of financial statement. As such, there is no restriction in their signing the financial statement. However, they cannot be involved in the day-to-day affairs of the company.

**Q. Whether member in practice being a Director Simplicitor, or his relatives can hold substantial interest of the Company?**

- A.** Yes, as per provisions of Clause (11) of Part-I of first Schedule of the Chartered Accountants Act and Council directions under the Clause, appearing under Volume-II of Code of Ethics, 2020, a member in practice being a Director Simplicitor and/ or his relatives can hold substantial interest in a Company.

### **Code of Ethics relevant for Directorship Position**

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- Q. Whether a member in practice can become Director Simplicitor of company, if his partner is interested in such Company as an auditor?**
- A.** No, member in practice cannot become Director Simplicitor of company, if he or any of his partner is interested in such Company as an auditor.
- Q. Whether member in practice can use the designation of director of a company?**
- A.** No, as per commentary under section 7 of the Chartered Accountants Act, 1949 appearing in Volume II of revised code of ethics, 2020, the members of the Institute who are also Directors in Companies, are not permitted to mention these positions as these would be violative of the provisions of Section 7 of the Act.
- Q. Whether a Firm of Chartered Accountants can undertake the assignment of Management Consultancy Services of a company where a partner of the Firm is Director Simplicitor?**
- A.** Yes, it is permissible for a Firm of Chartered Accountants to undertake the assignment of Management Consultancy Services of a company where a partner of the firm is Director Simplicitor.
- Q. Whether a member in practice can be a Director in Cooperative Bank?**
- A.** Yes, a member in practice may be a Director-Simplicitor in a Co-operative Bank, provided he is not in charge of the executive functions/ he or his partners are not interested in the Bank as auditor.
- Q. Whether Companies in which Chartered Accountants have been appointed as directors on their Board can publish description about the Chartered Accountant's expertise, specialization and knowledge in any particular field or add appellations or adjectives to their names in the prospectus or public announcements issued by these Companies?**
- A.** No, As per Clause (11) of Part-I of first Schedule of the Chartered Accountants Act, 1949 and commentary appearing in Volume-II of Code of Ethics, 2020 provides that the Council's attention has been drawn to the fact that more and more Companies are appointing



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Chartered Accountants as Directors on their Boards. The prospectus or public announcements issued by these Companies often publish descriptions about the Chartered Accountant's expertise, specialisation and knowledge in any particular field or add appellations or adjectives to their names. Attention of the members in this context is invited to the provisions of Clause (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act.

In order that the inclusion of the name of a member of the Institute in the prospectus or public announcements or other public communications issued by the Companies in which the member is a director does not contravene the above noted provisions, it is necessary that the members should take necessary steps to ensure that such prospectus or public announcements or public communications do not advertise his professional attainments and also that such prospectus or public announcements or public communications do not directly or indirectly amount to solicitation of clients for professional work by the member. While it may be difficult to lay down a rigid rule in this respect, the members must use their good judgement, depending upon the facts and circumstances of each case to ensure that the above noted provisions are complied with both in letter and spirit.

It is advisable for a member that as soon as he is appointed as a director on the Board of a Company, he should specifically invite the attention of the management of the Company to the aforesaid provisions and should request that before any such prospectus or public announcements or public communication mentioning the name of the member concerned, is issued, the material pertaining to the member concerned should, as far as practicable be got approved by him.

## Chapter-V

# Frequently Asked Questions (FAQs)

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### 5. Frequently Asked Questions (FAQs) relating to Directorship Position

**Q1. Who is a director?**

A1. "Director" means a director appointed to the Board of a company

**Q2. Who can be appointed as Directors?**

A2. As per Sec 152 of Companies Act 2013, no body corporate, association or firm shall be appointed director of a company, and only an individual shall be so appointed

**Q3. What is the composition of Board of Directors that needs to be maintained by the Companies?**

A3. The composition of Board of Directors depends upon the type of company.

The Companies Act, 2013 prescribes that a company is required to have atleast two individuals as directors in case of private company and three directors in case of public company upto a maximum of 15 directors. However, more than 15 directors can be appointed by passing a SR. Further, certain classes of companies are prescribed which are required to have at least one-woman director and Independent Director as the case may be, in the Board of the Company.

SEBI (LODR) Regulations, 2015 provides that the Board of Directors of the listed company shall have an optimum combination of Executive and Non- Executive Directors with at least one Women Director and not less than 50% of the Board of Directors comprising of non-executive directors.

**Q4. Is it obligatory on the part of a director to intimate to the company on receipt of Director Identification Number (DIN) from the Central Government?**

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A4. Yes, every director shall within one month of the receipt of DIN from the Central Government intimate that number to the company or all the companies wherein he is a director wherein he is a director as per Form DIR-3B

**Q5. Whether it is mandatory to have Women Director on the Board of Company?**

A5. Yes, it is mandatory to have at least one woman director on the Board of the company if the company belongs to any of the following class -

- (i) listed company;
- (ii) every other public company having -
  - a) paid-up share capital of one hundred crore rupees or more; or
  - b) turnover of three hundred crore rupees or more:

A Woman Director can be an executive director or a non-executive director. Further SEBI (LODR) Regulations, 2015 mandates the appointment of atleast one woman director on the board of a listed company.

**Q6. Which class(es) of companies are required to mandatorily appoint Independent Director?**

A6. The following classes of companies are mandatorily required to appoint Independent Director:

- i) Listed Public Companies
- ii) Public Companies having paid up share capital of ten crore rupees or more; or
- iii) Public Companies having turnover of one hundred crore rupees or more; or
- iv) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

**Q7. What is the legal requirement for an independent woman director?**

A7. The legal requirement for an Independent Woman Director is specified in Regulation 17 of the SEBI(LODR) Regulations, 2015, it specifies

## Frequently Asked Questions (FAQs)

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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 shall have at least one independent woman director by April 1, 2020.

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.

**Q8. Whether an Independent Director different from a Director within the meaning of Companies Act?**

A8. No. An independent director is a director within the meaning of Companies Act and is governed by the rules and regulations prescribed in the Companies Act. However, by virtue of the guidelines issued by the Securities and Exchange Board of India (Listed Obligation Disclosure Regulations), 2015 for listed companies, an independent director is required to ensure compliance of various requirements of Corporate Governance as per the definition laid in Regulation 16 (1) (b) of SEBI (LODR), 2015.

**Q9. Who can become an Independent director in a listed company as per SEBI (LODR), 2015?**

A9. A non-executive director other than a nominee director of the company, can become an 'independent director':

- (i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience.
- (ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company;
- (iii) who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;
- (iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (v) none of whose relatives has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or

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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 from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year;

- (vi) who is not less than 21 years of age
- (vii) who, neither himself, nor whose relative(s) —
  - A. holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity 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;
  - B. 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 firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or
    - any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
  - C. holds together with his relatives two per cent or more of the total voting power of the listed entity; or
  - D. 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 or corpus from the listed entity, 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 listed entity;
  - E. is a material supplier, service provider or customer or a lessor or lessee of the listed entity

## Frequently Asked Questions (FAQs)

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**Q10. Can a CA in full time employment, accept an appointment as Woman Independent Director in another Company?**

A10. Yes, an Independent Director is a Non-executive Director; therefore a CA in a fulltime employment can accept the position of Independent Directorship in another Company provided there is no conflict of interest.

**Q11. Can a Practising CA accept an appointment as Woman Independent Director in a Company?**

A11. Yes, an Independent Director is a Non-executive Director; therefore a Practising CA can accept the position of Independent Directorship in another Company provided there is no conflict of interest.

**Q12. Whether there is a Code under the Companies Act, 2013 for independent directors?**

A12. Yes, Companies Act 2013 provides a code for independent director which is contained under Schedule IV of the Act. An independent director shall abide by the provisions specified in such schedule. S/he shall abide by the following rules mentioned in the Code for various responsibilities such as:

- (i) Guidelines of professional conduct
- (ii) Role and functions
- (iii) Duties
- (iv) Manner of appointment
- (v) Re-appointment
- (vi) Resignation or removal
- (vii) Separate meetings
- (viii) Evaluation mechanism

**Q13. What are the specific contributions a woman independent director is expected to make?**

A13. The specific contributions an independent director is expected to make are:

- Balancing of conflicting interests of stakeholders

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- Undertaking succession planning
- Filling of gaps in skills and experience of senior management
- Acting as coach, mentor and sounding board for their full-time colleagues
- Provision of independent judgment and wider perspectives
- Facilitating the withstanding and countering of pressures from owners

### **Q14. Whether the liability of other directors gets reduced due to appointment of Independent Directors?**

A14. No. the liability of respective directors will remain the same as per applicable provisions of the Companies Act, 2013 and that of other statutes.

Further, the Companies Act, 2013 restricts and limits the liability of Independent Directors 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 connivance or where he had not acted diligently.

### **Q15. Are women independent directors liable to retire by rotation?**

A15. No, retirement of directors by rotation shall not be applicable to appointment of independent directors. Therefore a women director will serve the entire tenure of 5 consecutive years without any retirement by rotation.

### **Q16. What is the limit on number of companies in which a person can be an Independent director?**

A16. As per SEBI (LODR), a person must be an independent director in not more than 7 listed companies at a time. However, a person serving as a Whole-time Director/Managing Director in any listed company can serve as an Independent Director in maximum 3 listed companies.

As per the Companies Act, 2013, a person cannot be a director of more than 10 public companies.

### **Q17. What is the minimum and maximum age limit for appointment as an Independent Director?**

## Frequently Asked Questions (FAQs)

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A17. As per SEBI (LODR), 2015, minimum age for an independent director shall be 21 completed years and the maximum age shall be of completed 75 years. A person can be appointed as an Independent Director post 75 years by a company on passing a special resolution.

However, the Companies Act, 2013 does not provide for any age limit for appointment of Independent Director.

**Q18. With the present challenging economic and global scenario, what do you consider the most important role of an Independent Director?**

A18. In the present time, when financial markets and mutual funds are reeling under unforeseen economic pressure, Independent Directors will have to ensure that public stake in the Company is protected, while the Company takes measures to ensure seamless continuity.

In a revised framework of the post-COVID market scenario, Independent Directors will need to revitalise their roles to protect their company from the envisaged economic distress and ensure corporate credibility. An additional duty for these governance guardians of the board is to ensure that their companies put in place adequate guidelines and policies to safeguard the company's stakeholders.

**Q19. What is the role of an Independent Director in the overall corporate governance structure of the organization?**

A19. Independent Directors contribute to the board by constructively challenging the development of policy decisions and company strategies. They also scrutinize the performance of the management and hold them accountable for their actions. Independent Directors help in bringing independent judgement and act as a bridge between management and shareholders by encouraging the principles of Corporate Governance through providing transparency, accountability and disclosures in the working of the Company and assist the Company in implementing the best corporate governance practices. An Independent Director shall, acting within his/her authority, assist in protecting the legitimate interests of the company, shareholders and its employees. He/She shall 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.



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**Q20. What is the essential skill set an individual should have, to become a successful Independent Director?**

A20. There are six key skills and characteristics that every Independent Director should have, leadership, critical thinking, business acumen, integrity, interpersonal skills, and sound judgement.

**Q21. If a woman has an experience of more than 10 years as Independent director; does she need to pass the examination?**

A21. It will depend on the type of Company(ies) where she had served as Independent Director.

If she has served as a director or KMP in any one of the following companies, for a period of 3 years or more, then she is not required to pass the self-proficiency examination:

- a. Listed public company; or
- b. unlisted public company having a paid-up share capital of rupees ten crore or more; or
- c. body corporate listed on any recognized stock exchange or in a country which is a member State of Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organisation for Securities Commissions; or
- d. bodies corporate incorporated outside India having a paid up share capital of US \$2 million or more; or
- e. Statutory Corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or

## Chapter-VI

# Practical aspects to be taken care to become Independent Director

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## 6. Practical aspects to be taken care to become Independent Director.

### 6.1 To Do List Before joining the Board as Independent Director

For being a good and effective independent director, it is very important that one prepares oneself fully for the responsibilities and conduct a due diligence of the entity. Following are some of the key activities listed to help such assessment and preparation –

- Review the financial statements for last three years along with Directors' report, notes to accounts and auditors report – This helps to understand the business profitability, market scenario, management approach, management initiatives and view on the business operations, discrepancies in the operations, un-common spikes in the trends of revenue and profitability.
- Debt exposure - Payment of interest and payment of dividend – This would give indication of cash-flow and fund flow management and return on investment to the stakeholders.
- List of Key Management Personnel and its duration of service with the entity and general attrition of management staff – This gives the indication of professional management, and employee satisfaction reflecting effective employee policies.
- Structure of corporate controls, subsidiaries and cross management – This gives interdependency of management and transparency of business transactions and related party transactions.
- Review of Promoters' holdings and pledging of shares – This gives indication of business stability and cash-flow management.
- Basic financial ratios - Gives financial health of the business.

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- Nature of industry, Competition, market share, capacity utilization – This helps to determine the sustainability and market position and potential of the business.
- Search report from ROC – This would help to give information about statutory compliances and security and debt exposure.

### **6.2 Being ready and studied before every Board Meeting: How to examine various businesses before Board Meeting**

For being a good and effective independent director, along with 'being a master of a trade', it is very important to be 'jack of all' too. In this section an effort has been made to identify the points which can be used to actually perform the duties as an independent director, and also the fact that not every women director is necessarily a Chartered Accountant or will have financial expertise.

#### **What is the type of companies which are required to appoint Women Director on the Board of Company?**

As per Rule No. 3 of Chapter XI of the Companies Act, 2013, the following class of companies shall appoint atleast One Women Director:

- i) Every listed company
- ii) Every other public company having:-
  - a) paid up share capital of one hundred crore rupees or more; or
  - b) turnover of three hundred crore rupees or more

It can be seen by the definition that these companies are not small in size and are expected to have established themselves and are in a position to implement good systems and business practices. Therefore, assuming that the skillsets required for collecting / analyzing and presenting the data in required format, having relevant experienced staff for each functions and application of good business prudence is available in the management.

Let's see, therefore, how to prepare oneself for the board meeting in terms of understanding business model, identifying the key factors for being effective while performing as an independent director on the board. We can broadly divide the focus points as – Compliance related and business related.

### **6.3 Business related key points**

It is important to understand the business model and the sector in which the company is operating.–Technology driven or market driven. Understand the key areas critical for the business in these areas.

If technology driven – the areas to be kept in focus are -Sustainability, technical advancement, application of the products in new areas. risk assessment of technology obsolescence.

If market driven – the areas to be kept in focus are – market share, geographical growth and coverage, new segment coverage, shelf life of the product, replacement options. QCD - Quality Cost Delivery are the key factors for market driven businesses. These factors are very very important to understand the business cycle and sustainability.

For Example - In automotive sector earlier the vehicle life used to be at least 10-15 years. Hence all the technology improvement costs, tooling costs and design costs recouped were spread over the estimated life period of the vehicle and market. Now the same is reduced to 5 years or less as the designs are getting replaced quickly by competition and new entrants. Hence the useful life period of these investments is reduced drastically and they become obsolete in much shorter time. In such case establishing in-house R& D and testing set up V/S outsourcing decision becomes important. This impacts decisions like capital expenditure, segment focus, geographical coverage and marketing strategies, technology upgradation and strategic tie-ups, accounting policies, product costing, human resource management and policies, profitability and so forth.

For year on year / quarterly performance reviews - Long term and short-term strategies have to be in sync. This is normally reflected in Vision Mission statement followed by 5year strategy plan, which needs to be in place based on inputs from market. This is normally reviewed every year for updation. The growth in the segment in which company is operating, competition, technological upgradations, new entrants, other factors affecting the growth, organic and in-organic growth opportunities are some of the factors based on which the long-term strategic plan is reviewed.

The yearly budgets should be focused on meeting these goals year on year. Budget process needs to be followed very effectively. It's a very good method of defining, implementing monitoring and assessing the business

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goals and management performance and the same can be driven to the lowest level of the management team across the various functions in the form of KRAs – Key result areas for each one. Check if a Zero based budget or historical data base is used for preparing budget – Any special item needs back up working and justification.

Cost Quality Delivery – These are also to be used as key factors for monitoring management performances. Every effort towards improvement of these has to be measurable and therefore, controllable.

New growth plans or expansion plans have to be first validated and backed by technical study and market research. Implementation plans need to be worked out with identified risk areas and monitoring systems with specific responsibilities need to be in place.

### 6.4 Compliance related key points

**Statutory compliances:** Compliances under various acts, statutes are extremely important for any business as well as for the directors as in some cases it impacts their eligibility of remaining and functioning as directors. These therefore, need to be reviewed and monitored very closely.

It is advisable to ensure that a list of all applicable acts and statutes be prepared. The compliance / due date is mentioned for the entire year – monthly, quarterly, six monthly or yearly. Actual compliance date is put against the same. The statement would be signed by the CFO/ CS/ CEO and becomes a part of every board meeting agenda. This would help focused execution, monitoring and accountability / responsibility for the same.

The Director's Report, which is a part of annual accounts and needs to be submitted every year to the stakeholders and authorities is also a very important document which covers many areas which define directors' responsibilities and their duties as monitoring body for management. It is important that these areas / clauses are reviewed, and accountabilities / responsibilities are defined as part of annual budget preparation exercise and policy review exercise.

**Business process and policy compliances:** These compliances are typically the operative guidelines for each company, defined as 'Internal Policies', in consultation with board members and reflect the good business and governance practices. These typically include financial policies and authorizations, human resource development policies, business development

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policies, IT policies, etc. The review of these policies and adherence normally needs to be part of internal audit processes. The internal audit findings and recommendations are important to strengthening the organization and indirectly help to improve governance and identify areas of misuse of the lacunas in the operative systems for the company. These policies and compliances need to be robust, clearly defined and monitored and reviewed frequently so that irrespective of the size of the company and its spread, the controls would remain in place and the management team gets the framework within which they can operate effectively.

Participation and membership in various forums, obtaining various certifications like IATF / ISO 9000 or any quality and productivity parameters, active participation in various industry specific forums, use of various management tools like balance score card, TPS / TPM/ QS, use of lean manufacturing practices, use of quality tools like Six Sigma, QMS are some of the indirect methods to ensure that the best business practices are followed. These tools and business practices ensure specific functional excellence and improve processes which effectively improve business performance. Including these initiatives in the board review helps to imbibe good governance practices in the organization.

Each company and business are different in terms of size, structure, resources and complexity and therefore needs to be monitored differently. Therefore, based on the pointers above, it is recommended that an advance study of the meeting agenda with notes, prior meeting with the management team, taking inputs from other directors, focusing important review points, ensuring on correct recording of various for and counter views raised in the minutes of the meeting are some of the actions which will help the women directors to perform more effectively as part of the board.

The role and responsibilities of women independent director are discussed in detail in this document elsewhere. The most important point is to ensure maximum value addition to the stakeholders in a transparent manner and act as a link between the stakeholders and management for obtaining maximum benefit. The discussion above is a general framework and pointers which would help achieve this effectively.

## Chapter-VII

# Thoughts of some Independent Directors

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## 7. Thoughts of some Independent Director

Below are excerpts of **conversations with few Independent Directors**, who have shared their views candidly. Aspiring Independent Directors will truly understand the process, woes, contribution, role, responsibilities and risks of Independent Directors.

Interviewees responses will help aspiring Independent Directors to truly understand applicability of the law, the process, woes, contribution, role, responsibilities and risks of Independent Directors. These are a holistic or 360-degree view of Independent Directors who have been on various Boards across sectors for long and have seen the role of Independent Directors evolving

In addition to the dialogue with the Independent Directors mentioned below, the proposed Independent Director is supposed to have a pre-requisite knowledge of Chapter XI and Chapter XII, covering sections 149 to 195 of the Companies Act, 2013 which regulate the provisions relating to Appointment & Qualification of Directors, Meetings of Board and its Powers. In addition to the aforesaid provisions, knowledge of Schedule IV to the Act, relating to the Code of Conduct for Independent Directors and SEBI (LODR) Regulations, 2015 which governs provisions relating to Independent Directors is also required.

### 7.1 Conversation with Independent Director in Capital Market, Banking and Manufacturing Industry

**Q: Why is there so much talk about Diversity?**

**A:** Diversity and Inclusion are not just good to have, they are a must have and it is proved time and again that Diversity makes economic sense! We limit the discussion today just to gender diversity, as the need for gender diversity is so apparent!

## Thoughts of some Independent Directors

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With risks changing so rapidly, a balanced board that considers different perspectives and has representatives from 50% of the work force that make about 80% of the consumption decisions; is definitely more equipped to make better decisions to build a sustainable enterprise that lasts!

**Q: The economic case for Women on Boards is proven by research. In spite of this, why did we need regulation to get at least one woman on corporate boards?**

**A:** Corporate Boards have been old boys' clubs! Board seats were for life! The Companies Act 2013 has changed that. Boards are forced to look out for woman directors. So, are these women directors, relatives of Board members/promoters who play a subdued role on the Board? Just compliance by letter and not by spirit? Are these women with the right skillsets and an independent mindset that could have their voice heard at the table and help in sound decision making?

Women Independent Directors is the way forward and it can't be just a One on Board Club! For balanced decision making at least 1/3<sup>rd</sup> of the Board should be women! Be the first woman on the Board, but be an advocate for change!

**Q. If having women on Board makes economic sense and even the law mandates it, still why are there so few women on Boards?**

**A:** We find some women are on multiple Boards and others still waiting to get in! It could be lack networking or not enough rigour in the Board process of inducting new board members? Is the Nomination and Remuneration committee doing its bit in mapping skill sets of the board members, identifying complementing skill sets and searching for the right candidate with as much fervour as you would for a C-Suite recruitment?

**Q: Could it be that the risk reward is so skewed that women are not ready to take up board positions?**

**A:** Schedule IV to the Companies Act 2013, for the first time codifies the duties and responsibilities of Independent Directors and is onerous! It is only after a lot of representations, that in March 2020, the Ministry of Corporate Affairs issued a standard operating procedure for prosecution of Independent Directors (IDs) and Non-Executive



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Directors (NEDs) in respect of non-compliance with the provisions of the Companies Act, 2013 and prescribed that all care must be taken to ensure that civil or criminal proceedings are not unnecessarily initiated against the IDs or the NEDs unless sufficient evidence exists to the contrary. This is a step in the right direction!

An Independent Director must have an “Independent” mindset, he/she must have no conflict of interest or pecuniary relationship with the company other than the directors sitting fees and commission. The Code of Conduct for Independent Directors is very onerous and one must read the Code, understand and implement it.

**Q: As responsibility is onerous, should woman CAs shy away from Board positions?**

**A:** Definitely not! As Chartered Accountants we have the skillsets that are required to contribute as a board member so let's join corporate boards but with our eyes open!,

**Q: It is said Fools rush, where angels fear to tread, why should women CAs scramble to become IDs and expose themselves to great risk?**

**A:** Before joining a Board do a thorough due diligence on:

- The Purpose, Vision and Mission of the company.
- Understand the business of the company and the value drivers.
- The current composition of the Board and the reason for the vacancy.
- The Management team - meet with the Chief Financial Officer, Q: Chief Risk Officer, Internal Auditor – the conscience keepers of the company.
- Check if the company is Private Equity (PE) backed, generally the governance level is defined in PE backed companies.
- Check who the auditors are, the audit reports for any qualifications, any legal cases pending, related party transactions etc.
- Check out news reports.
- Get a sense of the culture of the organisation.

## Thoughts of some Independent Directors

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- Check the Directors & Officers' insurance policy of the company.
- Check the letter of appointment of other ID's etc.

**Q: How can one be Board ready?**

**A:** Get your DIN. Register yourself with the Independent Director's Data Bank. Assess if you need to go through the online proficiency test for appointment as an ID. Join networking groups of Board Directors that discuss board issues.

Introspect if you have the passion for corporate governance and have an independent mind set, can contribute time and be prepared for board meetings, and most important can influence change to ensure the company moves up on the corporate governance ladder. Remember, the Risk Reward is skewed! Ensure you join the right boards! The Reputation Risk is high.

Don't shy away from board directorships; just take informed decisions!

Board directorships give you a chance to network with a diverse set of people, get their perspectives on risks and their perception about the future.

Directorships enhance your leadership skills as it is all about collaborative decision making in the best interest of all the stakeholders.

You need to be a good listener and influence change without being a roadblock!

So, Be Board Ready, take up board directorships and contribute to good corporate governance!

### **7.2 Conversation with Independent Director in Pharmaceutical, Chemical Manufacturing Industry**

**Q: Regulations make it mandatory to have Independent Directors on Board, do they really serve any purpose?**

**A:** Mahatma Gandhi said "everyone who wills can hear the inner voice. It is within everyone." Possibly, if this was practiced there would be no need for Independent Directors at all. But like a lot of things said by Mahatma Gandhi we ignore this too!

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The role of Independent Directors (IDs) has come into sharp focus over the past few years and not always for the right reasons. Their need has been relooked and debated. Scams and corporation's negligence or complete failure has brought about detailed discussions on the role, responsibilities, liabilities and accountability of IDs. The Satyam crisis was probably the starting point of the media focus on the role of Independent Directors and with Saradha, DHFL and so many in regular succession the focus has only sharpened.

**Q: What according to you, is the role of Independent Directors?**

**A:** Much has been said and written about the role, often in complicated and legally and laden words! But at its simplest it is basically ensuring that the Company does the right thing, using the right methodology and at the right time!

Independent Directors are facilitators to ensure compliance, governance and equitable fair practices whilst ensuring that shareholder value is delivered. It is important for Independent Directors to be facilitators to a company's growth vision and ambition allowing the Management and executive Directors to gallop to growth while they keep a strict vigil on the things they are supposed to do!

**Q: What are the skill sets needed for an Independent Director?**

**A:** I always challenge myself as to how I can be a better or exceptional Independent Director. There are some accepted norms and they hold even in these turbulent times. Someone who has the depth and breadth of knowledge, good communication skills, ability to connect with a diverse section of people, a good listener, and mostly someone who is a student for life – learning new skills, new technologies new businesses. Most of all the person must have the courage to stand by the right things and implement the intent of the law. This effectiveness is required from all Independent Directors irrespective of their gender.

**Q: Do you think we specifically need Women on Board of Directors, are they relevant, was the mandatory participation law required and is it effective?**

**A:** Organizations with inclusive and diverse boards, management teams and employees outperform those without. (Source Forbes, Erik Larson September 2017, 2-year study based on teams in 600 companies).

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## Thoughts of some Independent Directors

Almost all managements agree that diversity and inclusion is critical to the culture and success of the organization. Clearly, an old boys' network of like-minded men will not serve the purpose of modern organizations. Therefore, a law was needed to help change mindsets and drive a best practice. The need of the law has also proved by a host of global research supporting the importance of having diversity in the Boardroom. Women add very different dimensions to a Boardroom discussion – moving the needle from “what needs to be done” to include “how it should be done” – a focus on the path to the goal rather than a “just reach the goal” approach. It is interesting that along with an increase in women in Boardrooms topics such as Corporate Social Responsibility (CSR), Environment Social & Governance (ESG), Geopolitics and Risk Management have come centre-stage. Stakeholders are no longer looking at companies only for their profits – although that is critical – but also at what is the prevalent culture that got to the profit line.

**Q: What is your future perspective of role of Women Independent Directors?**

**A:** Millennials will comprise 75% of the workforce by 2025 (Source Forbes Voice How Millennials are shaping the office of the future, 2017). They want to work for diverse and inclusive organizations that better understand and address the needs of a diverse customer base. Legislation and investor pressure have ensured that Managements and Boardrooms are increasingly alert to diversity and inclusion in the workforce. Innovative ideas are not inspired by someone echoing our own voice, the landscape requires new ways of thinking therefore diversity is important. Women on Board bring the much-needed diversity and definitely women participation in Boards will increase.

### **7.3 Conversation with Independent Director in Industrial Gases, Banking, Rural Finance and Manufacturing Industry**

**Q: Can you share your journey as an Independent Director**

**A:** With a span of 20 years being a non-executive director, there has been a sea-change in governance culture globally as also in India over this period. Importantly, corporate incidents have influenced the

government, regulators and investors to an extent that a rather disproportionate portion of the governance agenda has been loaded onto the independent directors. Whilst this is understandable, because independence is what can act as an antidote to governance mishaps, I feel that the obligations thrust by statutes and regulators are onerous enough to make many professionals wary of accepting board position as an independent director.

However, things are not that bad either. My experience in the boardroom as also from information gathered from informal, often casual, conversations with peers prompts me to advocate to young promising professionals to take the plunge and accept board positions but with some caution and required due diligence.

**Q: What is your message to those aspiring to be Independent Directors?**

**A:** I will refrain from quoting and dwelling on legal and regulatory matters but will share some candid thoughts with those aspiring to hold board positions. I refer to this collection of thoughts and advice as soft issues relating to board positions.

One must contemplate on following issues before considering Board positions.

1. What are the basic qualifications for being eligible for a board position?
2. What is the type of due diligence I need to do before accepting a board position?
3. Once I accept, what are the immediate steps I should take?
4. How should be my behaviour in the boardroom and outside?
5. What are the implicit rules I need to follow?
6. Who are my friends and who do I stand for?
7. How do I handle ethical/ governance dilemmas in board proceedings?

Quite a list and as I mentioned in my opening remarks, I will refrain quoting law because in the age of internet, Google is always ahead than most of us....

## Thoughts of some Independent Directors

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**Q: Besides the statutory provisions, what are the desirable Qualifications of Directors?**

**A:** A professional with relevant experience and some achievements and reasonable networking is sought after. The Old Boys Club is a thing of past in most of the companies, though network recommendations do work. Finally, what you can bring to the table is what clinches the deal.

Management and Boards look for mature, experienced professionals who can bring in fresh perspectives and contemporary thinking in the boardroom. Financial literacy is a given – after all, performance measurement and monitoring is all numbers! Technology awareness and risks associated with technology are now a must as most companies are in the process of ushering in digitization and deployment of Artificial Intelligence. Knowledge of business environment and/ or functional experience like Finance, Regulatory expertise or People Management – one of these must be underscored in your profile. Finally, no negatives on ethics, conduct or regulatory lapses are a key requirement. I always urge young professionals to be responsible in their posts on Social Media.

**Q: How does one do a Due Diligence exercise before accepting any Board position?**

**A:** Most of the information will be in public domain if the company is public or listed. But I always recommend review of websites, posts on social media and a thorough read of the company's annual reports for past three years as a 'must do' part of your due diligence. If the company is a regulated entity, search the regulator website for regulatory breaches, if any, and also look up the Fitness criteria that most of the regulators prescribe for appointment of directors. Use your informal network to get more information, but take it with a pinch of salt to account for intended or unintentional bias that may come in. Check out the profiles of Key Management Personnel and existing Board members on LinkedIn. Most likely, you may have an informal introductory meeting with CEO or Chairman or Lead Independent Director – this gives you an opportunity to ask questions and also pick up the culture of the company and the boardroom. Please also check out on the Directors and Officers Insurance Policy available to protect

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the directors in case of legal proceedings arising out of the board proceedings. Also find out the reason why the vacancy has arisen.

**Q: What can one expect after being appointed to the Board and what are the steps one needs to take?**

**A:** Most companies have an induction process that takes care of compliance formalities as also familiarization with the Company/s business and organization. One cannot emphasize more about being thorough on matters like Code of Conduct and Code for prevention of Insider Trading as also the requirements on disclosures of interest/ shareholdings/ other board positions etc., most of which are also required to be resubmitted annually. The induction process is to understand more about the company and its people and less about showing off what you know. Please do not hesitate to ask all possible questions without fear of embarrassment – it is better not to be embarrassed in the board room. Please carry an appropriate device – tablet or physical diary to make your notes and remember key people who are repositories of information. And initiate your personal filing for the new company right away – electronic or physical depending on your preference – so that you always have information and chronology handy for each directorship that you hold.

**Q: Can you give some tips on boardroom protocol.**

**A:** Make sure that you have received all necessary information and agenda papers and spend adequate time preparing for the meeting. Carry your papers or the tablet in case of soft copy agenda that has been adopted by many companies. Make your notes and keep them handy to help you discuss and contribute at the meeting.

Two very important qualities that can hold any one in good stead are listening and punctuality. Arrive at the boardroom at least 15 minutes before scheduled start of the meeting. The half an hour before the meeting often witnesses informal pre-deliberations happening over a cup of tea and, at times, you can pick up important signals for the formal meeting. Dress formally unless the dress code has been shared as informal.

Usually, the agenda starts with compliance matters and moves on to key items within half an hour. Be attentive from the start. If you have done your pre-work well you will be able to contribute to the

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deliberations, especially for matters relating to your field of expertise. Make your notes during the meeting too and put down questions that you may like to take off-line. Most importantly, raise relevant questions and where necessary, get yourself heard. In extreme cases where your view is divergent and you believe it is important, politely request your divergent view to be taken on record. Being firm without aggression is the key – it underscores your maturity in dealing with difficult issues.

Be always attentive, avoid distraction and keep your cell phone on airplane mode. Do not leave the meeting before it concludes formally and hence plan for your travel or commute accordingly.

Usually, meetings of sub-committees of the Board precede or follow the main board meeting and may lead to delays – budget for the same adequately. Further, depending on your expertise, you will be inducted in one or more sub-committees. At sub-committees, your presence and contribution must be more visible.

Informal discussions and polite socializing continue outside the boardroom over tea or lunch. Be relaxed but be observant and rely on your listening skills to pick up useful information.

At times, board members may get invited to investor presentations or town hall meetings to give them a flavour of different stakeholder profiles. It is advisable to be more of a listener and observer on such occasions and let the Management manage the show unless you are called in for a brief address.

Usually, many companies have adopted the format of annual off-site business strategy meeting. This is one of the most important events as business strategy is revisited at such meetings and more detailed deliberations take place. One level down below the CEO/ Business heads often get invited to these meetings giving the board members an opportunity to assess depth of talent and insights for succession planning. The offsite meeting also presents an opportunity for social and informal interaction amongst board colleagues and with the management team.

**Q: How important is it to treat information with confidentiality?**



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**A:** Confidentiality of information is extremely important. I have overheard discussions in public places like airports or restaurants where there is a risk of breach of confidentiality. Equally important is the process for handling agenda and board papers after the meeting, especially where these are in physical form. The best option is to return these to the company and retain only what you consider necessary for future reference – e.g., Business Plan or policy documents etc. Thankfully, digitization has been extremely convenient with secured access to information available all time so long as you remain a board member.

**Q: Do you as an Independent Director adopt any implicit rules?**

**A:** I generally adhere to three rules – abide by code of conduct, always ensure confidentiality, and err on the side of caution when it comes to the disclosure requirements like potential conflict of interest as also annual declarations. I have witnessed embarrassing situations when a board member reflects a casual approach in submitting such declarations. Further, in regulated entities, impact of errors in disclosures can be even more serious.

A board member is for strategic inputs and oversight – so avoid the temptation to getting into operational matters unless your intervention is specifically requested either by the Chairman or CEO.

**Q: What should my attitude be towards non-Board members?**

**A:** Your friends are not only your colleagues on the Board but also the statutory auditors, the internal auditors, the CFO, heads of business, head of human resources and the head of enterprise risk management, not to forget the company secretary and the compliance head. Yes, you must have free flow of information across these channels if you have to succeed as a director and also sleep peacefully at night! The internal auditor remains the most subtle and underutilized channel. Through the audit committee, you need to leverage internal audit effectively to support the board agenda. The other oft-understated role is of the Chief People Officer – you need to leverage the functioning of Nomination and Remuneration Committee to get information on human resources and talent management, which is key to robust succession planning.

As an independent director, you represent all the stakeholders including society and minority shareholders. You have the

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responsibility of fair play with all stakeholders, with the right governance framework in place. The governance framework encompasses the board and committee structure and board processes – flow of information, deliberations, decision making and recording as also dissemination of information to external world – all of this in compliance with applicable law and regulations.

**Q: What are your thoughts on Boardroom dilemma as regards ethical choices?**

**A:** These situations do not arise that often, but when it happens, I strongly recommend that you think and articulate with clarity. Step back, take a break of five minutes and thereafter, if you are convinced you need to stand firm, go ahead and express your view dispassionately. If the issue is serious, be ready to step down from the board rather than acquiesce to what you believe is not right. Of course, such situations are usually preceded with long deliberations – you see it coming, and, in all probability, the Chairman will see reason and step in to avert the crisis.

**Q: You have been director in various companies for more than 20 years, any message to the women as aspiring to be Independent Directors?**

**A:** Law enforcing agencies and regulators are going to be more demanding and precise so remaining aware of the regulatory and legal framework is important. The statutory auditors in their quarterly presentations to Audit Committee always highlight such information so sharing this with the full board is useful. Of course, the Management will also proactively keep the board updated.

Technology deployment, work from home and digitization are all a reality and with these come the risks. You necessarily need to acknowledge and deal with this by ensuring that right resources are available within the organization and external expertise is tapped in time to avoid risks associated with these activities.

Succession planning and Crisis management are at the fore, more so, after 2020. The Board will have to play a constructive role of facilitator in ensuring that the company is ready and the business continuity plans and contingency plans are indeed working and continuously reviewed.

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Agility and change management have always been key requirements but never has the need been felt as emphatically as we see now. Moreover, after the pandemic, focus on people resources is important with regard to employee health, stress management, providing infrastructure support and reinforcing employability – all of these may need to be reviewed by the Board.

My favourite view is on Enterprise Risk Management which I like to refer to as Strategic Risk Management. Please do not feel assured that this is an annual exercise because risks come unexpectedly and do not wait for annual assessments. Further, inherently business enterprise will take calculated risks and reap rewards so a strong risk culture does not mean risk-averse culture!

**Q: Do you believe that Boards mandatorily must have at least one women Director?**

**A:** Diversity and inclusion – not only for gender but also for age and culture is becoming critical and board will have to embrace the change. Encourage young talent with the organization and when filling up board positions, induct gender and age diversity in the board room.

**Q: What is the challenge to the Board of a start-up?**

**A:** Investors' agenda – we are in the age where start-ups grow into monoliths nurtured with a new breed of risk-taking investors who also rightfully feel entitled to hefty returns – balancing sustainable growth with this agenda is a challenge that boards are grappling with.

**Q: What is the often referred to -ESG agenda?**

**A:** Responsibility on sustainable growth that protects environment, which thrives on bedrock of governance and is inclusive to share benefits with the society. Boards will have to be extremely sensitive towards this responsibility by blending this objective when deliberating on the strategy for growth.

**Q: What are your reflections on decisions taken by the Board?**

**A:** The actions and decisions of board members will have to stand the test of scrutiny by touchstone of ethics and fair play.

My objective and intent in sharing these reflections is not to deter young aspiring professionals to take up board positions but to get

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them Future Ready for handling the responsibilities that go with that position.

### **7.4 Conversation with Independent Director of Finance Company, IT Consultancy Company, Pharmaceutical Company and Chemical Manufacturing Company**

**Q: Statutory pronouncements- Circulars, notifications, amendments - are constantly being issued, particularly SEBI LODR & RBI circulars. How do you, as an Independent director, ensure compliance?**

**A:** There are several ways in which an independent director can remain abreast of statutory developments.

The first is by tracking all legal and statutory pronouncements personally. This is not an easy task for an independent director especially if the director is not attached to any large organization that provides this information readily. However, to a large extent one can achieve the same effect by subscribing to search websites and publications that provide updates. Being on mailing lists is easy but one needs to be judicious as to what one will read and what one will avoid. The flow of statutory pronouncements is fast and wide and therefore one must decide one's reading priorities carefully.

Director must develop some keys to the prioritization of what to track and what not. This key can be derived from the list of priorities and business ambience of the company. E.g., if you are on a Pharmaceuticals company board, you need to track the statutory developments in the pharma industry. Such a priority-based approach usually leads to a short list of "trackable".

Another source of the statutory pronouncement update is industry publications. Research analysis reports are also good sources. These could be equity analyst or industry analyst reports. These give a good industry view, and invariably include the current and likely developments affecting that industry. Being in touch with some analysts from time to time is also a good idea.

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Most of this material is freely available on the Internet. One can develop one's customised database and subscribe or register at the relevant websites. It may be worth sometimes to even pay for some material.

Networking with other independent directors is also useful as it builds different perspectives.

The independent director can insist that the agenda of each board meeting includes an item relating to statutory updates. Good company secretaries provide this information on their own to their board and certainly would provide it when sought by a director.

Statutory pronouncements do not usually arise overnight. Usually, there is a draft published and debate takes place in the intelligentsia on the draft. If the pronouncement is expected to be a major one, seminars or webinars are held to discuss the implications of the impending legislation. An example is the law relating to data privacy that is slated to be effective soon.

As a responsible independent director, it makes a lot of sense for the director to be proactive and to keep looking for the impending legislation rather than the one that has already been announced.

**Q. Despite good people on board, companies have taken decisions against principles of ethics and good governance. Against that backdrop, how can IDs be effective and play their role well.**

**A:** This paradox of good people effectively participating in bad decisions is not new or unique to modern day corporations. Our ancient scripture "Mahabharat" also contains instances where despite the presence of many elderly and wise people, decisions and actions against all principles of ethics were indeed taken. The danger of evil overcoming good at the board table is an eternal real peril and must be guarded against.

The guarding process begins much earlier than the likely manifestation of the evil.

An independent director must be on guard all through and not only at board meeting. It is important for the independent director to track the company from several angles all through the year, in the context of

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board governance. Such tracking may appear a daunting task but in fact it is not.

This is because most of the information about the industry or about the specific business of the company is available in some form or the other in public domain, on the Internet. If you install a Google alert around the name of the company or of the individuals in leadership positions or around the specific issues prevalent in the company, you will be elegantly kept posted by Google, effortlessly all through the year.

It is also important for independent directors to be alert at meetings and figure out if the optics are misleading and the reality is something else. Most independent directors are experienced enough, with at least 20 years of experience. They are usually able to tell a correct statement from a wrong one, based just on a prima facie scrutiny.

Human behaviour, especially deviant one, falls into certain common patterns which are industry-agnostic. Thus, if someone is lying to you, he or she would give enough cues- through body language or by the absence of logic. These cues would be the same across industries and may not need much investigative work. At the least you can have enough prior notice through a doubt about what could be going on.

Apart from such being on the guard, there is one more important perspective to deal with likely mis-governance. That perspective is of value creation. An independent director is most effective when he or she focuses on the creation of value for the company and on ensuring that there is sufficient de-risking of the company's strategy and operations.

If these focused objectives of the independent director are well understood, he or she can develop enough courage of conviction "to ask the right questions and know the wrong answers".

Based on my own experience, I do believe that companies (including the evil ones) take a "constructive questioning" director far more seriously than a silent spectator who accepts information at face value. Of course, the process of asking questions must be handled diplomatically and gracefully.

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Constancy of the perspective is also crucial. Contrary to popular desire, the role of the independent director is a 24 by 7 by 52 role. It is NOT a role to be played only 4 times a year at board meetings. The Company's business keeps running all through the year and therefore bad governance or wrongdoing can also take place all through the year. Usually, approvals from the board are not required at the operational level. If therefore there is any muck at that level, matters will be apparent to the board only after substantial damage has been caused. It is therefore advisable that the independent director stays in touch with the company, its business and its leaders even in between two board meetings.

This is not as difficult as it seems. A simple process could be set up to have a monthly call with the CFO or the CEO or both. There can also be a call that involves all directors including the non-independent directors. One can also seek a customised information pack every month. The only care to be taken when one gets involved in such monthly MIS or calls is that the non-executive nature of the independent director's role must be always preserved. The Company's executive directors should be left to do their job and the independent director should not meddle into the day-to-day affairs.

Coming to dissent "at" meetings, I do appreciate that it could become difficult for an independent director to make too many sharp points at a meeting. Many times, the promoters at the helm maybe senior figures and it may be difficult to counter them at the meeting. In such cases, separate email communication comes in very handy. Well written emails can serve as an excellent intervention by an independent director. Also, in case things go wrong, and the independent director is called upon to prove his or her diligence, the email trail helps.

In general, I feel that independent directors should ask questions through a recorded means like an email and not just orally at the meeting.

Reasoning with the likely wrong doers is also important. In most cases of wrongdoing or misgovernance by a company's promoters, the promoters lose the most. This follows the simple mathematical logic that if a company loses value, the promoters by virtue of their dominant shareholding lose much more than other shareholders. This

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common sensical logic is however uncommon. It can be deployed by independent directors, to convince the promoter shareholders or the people in management that the road to value destruction would be most tedious for the promoters or managers themselves.

My experience is that commercial business logic pointing out impending value destruction works more powerfully than any arguments based sheerly on a stance of upholding ethics.

After all governance has an important objective of sustained value creation. Governance is not an end. Therefore, if the requirements of good governance are positioned as requirements of good business value creation, they are received better and acted upon.

**Q: Responsibilities of IDs are indeed onerous. What are your thoughts on the risk's IDs are exposed to? Insurance is normally there, but it cannot cover loss of reputation.**

**A:** My first thought in this space is that people who take up independent directorship need to be clear of what they are doing. They do have a choice as regards whether to take up the role or not. There would be perhaps no case of anyone who took up an independent directorship because someone forced him or her. We must keep this in mind all the time that one has taken this role voluntarily and on the flip side, one also should remember that one has complete freedom to give up that role any time. Once an independent director owns up the responsibility of having taken up the role, the issues about the risk can be handled in a mature manner, without any whining about there being so many risks and responsibilities in that role.

Yes, indeed, the independent director role carries humongous responsibilities, including some unfair ones. However, one can handle these responsibilities much better if one takes up the role as a serious business role and not as a statutory placeholder role, or as a "time-pass" role after retirement from a professional career.

To my mind, an independent directorship is a career in business and not something which can be done peacefully after retirement. This is because, over the past decade, the expectations from independent directors, both, statutory expectations and business expectations of companies, have gone up significantly.



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Therefore, the first countermeasure, against the danger of responsibilities overwhelming the independent director, is that sufficient time, attention and share of mind must be given to meeting the expectations of the independent director role.

The second measure is the practical realisation that the role is a business role. Therefore, understanding the business of the company is very critical. Independent directors are leaders of the company and therefore custodians of its business. Their independence positions them as logical and constructive controllers over the promoter directors and managers. At the same time, independent directors are not leaders of the opposition or constant critics. They must maintain grace and constructive approach.

My experience is that if an independent director understands the business of the company and the process by which Corporate value is created, he or she can contribute immensely to that value creation. Such contribution of that independent director is invariably valued by the promoters and the rest of the board. Once the director understands the business context, his or her efforts in discharging responsibilities are received much better by the board.

I believe that the solution to the issue of having many responsibilities does not lie in the independent director running away from those responsibility areas in the business. It lies in engaging more with the business so that it is easier to discharge those responsibilities.

An example is the audit committee chairmanship. (I have been holding Audit Committee Chairmanship in one or more companies since 2005). I have found that by engaging more and more with the CFO, the statutory auditor and the internal auditor as also understanding the process of financial reporting, risk management, and statutory compliance, I am able to discharge my responsibilities well, and add significant value to the business through these processes. As a result, my role as the audit committee chairman is both appreciated and taken seriously. This helps me strengthen the process by which I ensure diligence in my work as a director.

In the answer to the previous question, I have highlighted some of the techniques for tracking proactively the possibility of misgovernance in the company. That process helps also in managing responsibilities. My

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experience is that if one takes an annual view of the role as an independent director, one can set up milestones and checkpoints for ensuring that one plays one's role well. This also brings predictability in one's interactions with the company and its leadership. They also welcome it because they are then prepared. When they know that a non-executive independent director will need something from them, they can prepare it better than when the director suddenly starts asking questions.

Setting up a good work ethic and a good operational rhythm is thus one way of ensuring that you handle your responsibilities well and are thereby ready for mitigation of risks if any come your way.

**Q: When CAs are invited to be on Board they are assumed to have the right skill sets to be on audit committee. Which laws & sections, one must be mindful of, before becoming Audit Committee member?**

**A:** I believe that the knowledge and the skills typically possessed by a chartered accountant are good enough for an individual to become a member of the audit committee of a public company.

It would require a separate forum, time and space to list out all the laws and sections to be kept in mind before taking up an audit committee membership. I say this because this forum is one for sharing insights and not just knowledge or information. These laws and sections would be readily available even on the Internet and therefore I am not burdening readers with that as a part of this answer.

The knowledge and skills base requirements arise principally from corporate laws. If the company is listed there is the additional requirement to comply with the regulations issued by SEBI from time to time. Acquiring knowledge in this space is not difficult. For a chartered accountant it would require a little bit of brushing up of knowledge to be on top of the requirements. In many cases, especially of Chartered Accountants working in the industry, they would be already aware of most of the duties of the audit committee simply because they have played roles either as CFO or senior members of the finance team.

The audit committee role can be stratified under a few broad buckets. I have found that it makes more sense to view the role in terms of those

buckets, rather than through the lens of a checklist of sections of some laws.

The first bucket relates to financial reporting. This includes accounting and reporting to shareholders every quarter in case of a listed company. This bucket includes interaction with the statutory auditors because they are an integral player in the finalization of the accounts for reporting. Therefore, a broad knowledge and overview of how accounts are closed, and financial reports generated is critical. It is also important to understand the statutory auditor's role and responsibilities, so that you can ensure high quality.

The second bucket is of risk management and related actions. In some companies, there may be a separate risk committee, but in any case, the output of that committee, in the form of a Risk Register, would come to the audit committee only. This is because the Audit Committee's statutory role is to ensure that risks are being managed properly. Internal audit is a major risk mitigation tool. The audit committee members need to be aware of the strategy, structure and processes in the internal audit area. They can then get the best out of the internal auditors and ensure that internal audit emerges as an effective and sustained risk mitigation tool for the company.

The third bucket relates to compliance and vigil mechanisms. This area is a specific and can be understood and operationally managed through checklists. We need to keep in mind that operational excellence in this area does not guarantee full compliance effectiveness. This area could also contain tricky grey issues that escape the operational compliance framework. Such issues may not be easily resolvable. For reaching to such issues, that may not be formally reported, one has to wear two hats- one of a compliance auditor and the other of a businessperson. This helps in understanding whether the grey area is likely to be fatal to the company or not.

This approach also helps to understand whether the grey area will ever turn white and acceptable. If you conclude that it will always stay grey, you may want to decide whether you will continue as an audit committee member or not.

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For an average chartered accountant, these three buckets are easily manageable if he or she follows a meticulous and methodical organized approach.

**Q: The effectiveness of Board & quality of decisions to a great extent depends on the Chairperson conducting the meeting. As chairperson of say and Audit Committee, how would you conduct it?**

**A:** I strongly believe that high quality decisions by a board depend only partly on what goes on at the periodic meetings. I feel that Board “happens” all through the year. Roots of good decisions taken and implemented by the board are spread all over the year rather than only at a particular meeting. Therefore, it is important for the audit committee chairperson to make sure that the pre-work and post-work for the decisions are handled competently, correctly and completely.

Let me describe to you the typical way I handle audit committee meetings as the Chairperson.

The audit committee meeting preparation begins 3-4 weeks before the actual meeting. This is when I set up meetings for preparation for the audit committee. These meetings are with the following.

The first meeting is with the CFO to understand the issues that have come up or are coming up during the quarter- business issues, or statutory audit issues or internal audit issues. At this meeting I also check in an open-ended manner if there are any other issues that are bothering the CFO. This gives me an early notice of the impending problems if any.

The second meeting is with the internal auditors, to review the reports for the audits completed during the quarter and the plan for the next quarter. Periodically, the entire year’s internal audit plan is also discussed along with other related issues such as evaluation of the internal auditor’s performance, and any other open-ended issues that the internal auditor may have.

The third meeting is with the Statutory Auditors to figure out the issues that will come up as regards financial reporting for the quarter. Typically, the statutory auditors discuss the top 3 or 5 issues with me and the CFO in a tripartite meeting.

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These preparatory meetings help a lot. They give enough assurance to me as the chairman to be on top of the agenda for the audit committee meeting, having prepared and got involved personally into all critical issues. The other part of the preparation lies in calendarizing the audit committee agenda correctly and comprehensively across the year. Several duties and responsibilities have been assigned to the audit committee by the company law and SEBI regulations. I get these listed and allocated over 4 to 6 meetings of the audit committee through the year. This ensures that every aspect of the audit committee responsibility is covered at some meeting or the other. Then, if you aggregate the agenda for all the meetings in a year, all the responsibilities of the audit committee are adequately covered by a discussion at audit committee meetings. This comprehensiveness check ensures that we have a competent process to discharge the responsibilities of the audit committee. This also ensures due diligence.

At the Audit Committee meeting, having thus prepared very thoroughly, the task is easy. Yet as the chairperson, there is that important task of involving other members of the audit committee and ensuring that the views expressed by all are taken on board and properly dealt with.

The final part is the tracking of agreed action points through periodic checks and follow ups.

**Q: Women today are on board, could be, due to their qualification but more so as the law requires it. Do you think that women on Board can bring a better or different perspective to issues & help in better decision making?**

**A:** Women members on a board of directors certainly add enormous value through the following:

First is the value of sheer diversity. Women bring a different perspective on to the board. Typical boards are male dominated. Women bring to such boards a better understanding of human behaviour, better empathy and in general better understanding of grey areas involving human dynamics. My experience is that a male dominated board tends to become excessively closure-oriented and the focus can shift from better decisions to early and quick decisions

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without adequate deliberation and involvement of all parties. Women can influence such boards to be more deliberative and generative.

Secondly, women bring a sharper sense of ethics and fairness. They can play a great role in overseeing vigil mechanisms that are now mandated by law.

Thirdly, women bring tremendous value simply because they constitute 50% of humanity. They would usually constitute 50% of the immediate or eventual consumers of the company's products or services. The actual number would vary from industry to industry, but I come from the perspective of the FMCG industry, where I worked for long. In that industry, buying decisions are made very largely by women and their presence on the board helps the business significantly, as they also represent the consumers of that company.

Lastly, and on a lighter note, there is a very practical "decorum-related" benefit that a board derives from having women members. The tone and tenor of the conversation around the board table certainly improves and becomes more civil and constructive when there is a woman in the room!

### **7.5 Conversation with Independent Director of Retail Industry, Housing Finance Company, IT Consultancy Company, Pharmaceutical Company and Chemical Manufacturing Company**

**Q: Some people are eying directorships as a source of revenue. Would that dilute independence?**

**A:** In an ideal scenario, independence should not be affected by the revenue. Unfortunately, that is not the reality. My view is that if your pay check or source of revenue is mainly sitting fees or commission based on profits, then there is a real risk that independence is compromised and directors need to make a conscious effort to ensure that their independence is beyond doubt.

**Q: What exactly are related party transactions (RPTs)? Are not Companies free to transact with their sister concerns, relatives of management? Why should Independent Directors (IDs) be so careful of RPTs?**

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**A:** In my view, related party transactions are not bad per se. Section 188 of the Companies Act, 2013 requires prior approval of the audit committee, board and, in certain circumstances, the shareholders for certain RPTs and these need to be disclosed in the Board report with a justification.

The IDs should ensure that the RPT are fair and are conducted on an arms-length basis which is supported by expert opinions. The IDs should be careful while approving with RPTs as there are consequences against directors for such non-compliance.

**Q: Impact of a wrong decision is felt much later? How can ID be responsible for decisions not taken in his or her tenure though he /she may be aware of it?**

**A:** The test is not whether the decision was right or not but whether the directors acted in the best interest of the stakeholders given what they knew at the time. IDs will only be liable if they knew and were negligent or reckless. If IDs took care while making a decision and exercised diligence, they shouldn't be held liable for adverse outcomes. It is a risk of doing business that some decisions will go against a company but that doesn't automatically result in IDs being liable. IDs should record their disapproval in the minutes of the meeting so that if there are decisions which result in loss to the company, they will not be held responsible.

**Q: If a woman ID is tolerated & perceived as a person appointed to just comply with the law, what should a woman ID do?**

**A:** This is likely to happen to many women in a patriarchal society, but I see it as a challenge to women to demonstrate their value and in time, their contribution to the company will be such that it is recognised.

**Q: Companies Act 2013 created ripples, it changed the age-old act of 1956. What are the provisions you feel good for corporate governance?**

**A:** The Companies Act 2013 brought a plethora of changes for the corporate lawyers. The most important provision (my favourite and rightly so) is - the introduction of a requirement for women directors. Other key changes were in respect of greater transparency, recognition of independent directors, more power to minority

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shareholders and the acknowledgement of the existence of stakeholders and the purpose of the company to be wider than mere profit.

**Q: Should some provisions be amended so that talented people do not shy away from accepting directorships?**

**A:** I think we have enough laws in India. What we need to do is create a corporate governance environment so that companies are incentivised to seek out talented and skilful people who are in turn, motivated to take up directorship roles. Perhaps, the Nomination and Remuneration Committee should play a bigger role and be more selective to see if the Director can add value. Laws prescribe qualifications and skillsets of directors; it is the Board and shareholders responsibility to create an environment to get the right talent on board.

**Q: How can one be an effective ID?**

**A:** Think and behave “independently” in the best interests of all stakeholders. This will no doubt bring effectiveness.



## Chapter- VIII

# Audit Committee and its Checklist

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## 8. Audit Committee

The requirement to form an audit committee is prescribed under Section 177 of the Companies Act, 2013 read with rule 4 of companies (Appointment and Qualification of Directors) Rules, 2014. Provisions relating to Audit Committee are also given under SEBI (LODR) Regulations, 2015.

It requires that Every Listed Public Company and the Public Companies having paid up share capital of ten crore rupees or more; or the Public Companies having turnover of one hundred crore rupees or more; or the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees shall constitute an Audit Committee. Further, the similar requirement is also provided under rule 4 of companies (Appointment and Qualification of Directors) Rules, 2014 to appoint an Independent Director.

Therefore, every company which is required to appoint Independent Director is also required to constitute an Audit Committee. Furthermore, it is required under section 177 of the Companies Act, 2013 that Audit Committee shall consist of minimum of three directors with Independent Director forming the majority; therefore the Independent Director who is so appointed on the Board, shall have the knowledge w.r.t functions performed by the Audit Committee. Thus, to assist the Director/Independent Director, a checklist has been provided below:

### 8.1 Audit Committee Checklist

#### A. Impediments to Audit Committee Effectiveness

S.no	Particulars	Yes/ No	Comment
1.	Does the member view the Committee only as a legal or regulatory requirement to be fulfilled?		
2.	Does member have adequate understanding of accounting, control, audit, reporting and complex business issues?		

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3.	Does the Committee have too much trust in the company's management and lack of inquisitiveness and healthy skepticism?		
4.	Is the Committee able to assert itself in the face of dominant management?		
5.	Is there any lack of effective leadership which leads to consequent lack of coordination with auditors and management?		

#### B. Self-Assessment of Audit Committee's Performance

S.no	Particulars	Yes/ No	Comment
1.	Does the Committee possess the desirable skill set?		
2.	Does the dealings of the Committee in each area of its responsibility during the year are appropriate?		
3.	Whether any analysis of the Committee involvement, performance or gaps is done?		
4.	Is the relationship of the Committee with external auditors, top management and internal auditors are cordial?		
5.	Have the Committee achieved any success in the improvements or changes initiated in any area under its responsibility?		

#### C. Basics

S.no	Particulars	Yes/ No	Comment
1.	The composition of Audit committee includes Independent Director in majority?		
2.	Are the members of Committee, financially literate?		

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3.	Does majority of members possess, accounting or related financial management expertise?		
4.	How many meetings of the Audit committee are determined to be conducted during the year?		
5.	Has the quorum for the meeting been adhered to?		
6.	<p>What should be the time allocation on business conducted during each of audit committee meetings?</p> <ul style="list-style-type: none"> <li>- Governance</li> <li>- Risk and Control</li> <li>- Financial matters</li> <li>- External Audit matters</li> <li>- Internal Audit matters</li> <li>- Annual Report</li> <li>- Others</li> </ul>		

#### D. Information

S.no	Particulars	Yes/ No	Comment
1.	Whether declaration from each member of Committee has been obtained ensuring information received from the management is sufficient, reliable and timely?		
2.	Whether the audit committee has confirmed that the information received from external auditors is sufficient, reliable and as per the scope determined by the committee?		
3.	Has audit committee of the listed entity reviewed the financial statements?		
4.	Has audit committee of the listed entity reviewed the investments, made by the unlisted subsidiary?		

## Audit Committee and its Checklist

### E. Risk and Controls

S.no	Particulars	Yes/No	Comment
1.	Whether the committee members have disclosed the method and procedure as to how they have satisfied themselves about the status of internal controls and the relevant risks?		
2.	How the remedial actions have been brought about in respect of lack/strengthening of internal control procedures, wherever found necessary? Is there any procedure for disclosure of such information about the remedies carried out and understood by the audit committee?		
3.	Is there an annual confirmation of the aforesaid procedures in respect of understanding of internal controls and remedial action initiated, if any?		

### F. Financial Matters

S.no	Particulars	Yes/No	Comment
1.	Whether the audit committee is satisfied about the reasonability of disclosure/valuation in respect of following? <ul style="list-style-type: none"> <li>- Assets and Liabilities</li> <li>- Fair value assessment</li> <li>- Write offs and Write backs</li> <li>- Off balance sheet items</li> <li>- Utilisation of Loans and Advances</li> </ul>		
2.	Whether the audit committee has satisfied itself about the reasonability, commercial impact, sensibility of the major contracts/ transactions carried out by the company? Has the audit		

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	committee critically reviewed and disclosed its views on such items?		
3.	Whether there are any observations of the audit committee on any items of financials/ commercial transactions that impact the state of affairs of the company? Whether these observations disclosed?		
4.	Is the audit committee satisfied that they have carefully, critically and diligently considered the key estimates and financials of the concern? Whether the same has been disclosed in the minutes?		

#### G. External and Internal Auditors

S.no	Particulars	Yes/No	Comment
1.	Whether the audit committee has a set standard procedure (policy) for selection and review of external as well as internal auditors? Whether the same has been followed and minuted?		
2.	Has the choice and selection of auditors been documented?		
3.	Whether the audit committee has a set of guidelines in respect of non-audit services?		
4.	Has the committee disclosed the methodology of determining the audit scope to the internal and external auditors?		
5.	Whether the accounting software and system audit observations specifically considered by the committee to understand its financial impact?		

### Audit Committee and its Checklist

6.	Whether the committee has disclosed the procedure for discussion and resolution of major observations of the auditors? Whether there is a declaration that the procedure for resolving of audit observations has been diligently followed?		
7.	Whether the committee has disclosed its satisfaction about the compliances by the management in respect of the audit observations?		
8	Whether the committee has critically reviewed the impact of auditor's conclusion on the state of affairs, systems and procedures carried out in the organization?		

#### H. Others

S.no	Particulars	Yes/ No	Comment
1.	Whether the audit committee is satisfied about the regulatory and internal control mechanism followed by the management of the company?		
2.	Whether the committee has critically reviewed the remuneration / compensation packages to those who oversee the management of organization like top executives, finance controllers, senior finance personnel etc?		
3.	Whether the audit committee is generally satisfied about the risk mitigation in respect of following? - Financials including the situation of the assets (physical security and financial value) and status of liabilities. - Reliability of computer system in which		

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	the finance and accounts department operate. - Control environment within the organization in respect of manual and automated controls		
4.	Whether the report of audit committee provides useful information to the board about the activities conducted by the audit committee?		

## Chapter- IX

# CSR Committee and its Checklist

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### 9. CSR Committee

Since time immemorial, Indian society has remained an inclusive society. It was well accepted that businesses are not only about maximisation of individual's gain but should always work towards maximisation of benefits to the society. Concept of *Dharmada* in the business was always well accepted. Even Gandhiji has advocated the principle of trusteeship for business houses.

This concept of Corporate Social Responsibility (CSR) is statutorily recognised by the Companies Act, 2013 by introducing Section 135 and Schedule VII w.e.f. 1.4.2014, requiring companies to formulate a CSR policy and spend on social and environmental upliftment activities. India is the first country to introduce mandatory spending on CSR.

The provisions of CSR are applicable to every company, whether private or public, whether listed or unlisted or foreign companies having branches or project offices in India, which meet any of the three specified criteria mentioned below in the immediately preceding financial year.

- Having net worth of Rs.500 crore or more, or
- Having turnover of Rs.1000 crore or more, or
- Having a net profit of Rs. 5 crore or more.

Further, as per notification dated 22<sup>nd</sup> January, 2021, MCA has amended Companies (CSR Policy) Amendment Rules, 2014 wherein

**Rule 2** for definitions provides an exception for CSR activities, i.e. if any which is company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that

- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act.



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- (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report.

the same will be considered under CSR activities.

**Rule 4** of the Companies (CSR Policy) Amendment Rules, 2014 for CSR Activities have been replaced with CSR Implementation which suggests that eligible intermediaries through which the company shall undertake the CSR Project or Programme will require to register itself with the Central Government by filing the Form CSR-1 electronically with effect from April 01, 2021.

On filing of CSR -1, one 'Unique CSR Registration Number' shall be generated by the system automatically. From 1st April 2021, it is mandatory for every implementing agency to register itself with the ROC by filing the e-form CSR-1. If any implementing agency fails to file CSR-1, they shall not be eligible to continue as the Implementing agency.

**Rule 5** for CSR Committees shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy which shall include the following

- (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act.
- (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
- (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes.
- (d) monitoring and reporting mechanism for the projects or programmes; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company.

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

Every company to which CSR criteria is applicable shall constitute a Corporate Social Responsibility Board (i.e., CSR Committee). If the amount for CSR spending is not in excess of Rs.50 Lacs, the formation of CSR

## **CSR Committee and its Checklist**

committee is not mandatory and the functions of such committee in such cases will be discharged by Board of Directors

**Rule 7** for CSR Expenditure suggests that the board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure i.e. 2% of the average net profit of the previous three financial years on CSR activity of the company for the financial year.

**Rule 8** for CSR reporting suggests that the Companies with average CSR obligation of 10 Crore or more in the 3 immediately preceding financial years shall undertake impact assessment through an independent agency for projects of 1 crore or more which have been completed not less than 1 year before undertaking the impact study.

Further, the impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I (for FY 2020-21) or Annexure II (w.e.f. FY 2021-22), as applicable.

**Rule 9** for Website Disclosure suggests that the Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

### **9.1 CSR Committee Checklist**

#### **A. General**

<b>S.No</b>	<b>Particulars</b>	<b>Yes/ No</b>	<b>Comment</b>
1.	Whether the committee for controlling and monitoring of CSR activities has been constituted as per the provisions of Companies Act, 2013?		
2.	Whether the committee has formulated CSR Policy for recommendation to the board of Directors, as per activities specified in Schedule VII?		
3.	Whether the CSR policy has been displayed on the website of the Company?		

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4.	Whether the CSR Committee has critically reviewed the calculation of amount of expenditure to be incurred on CSR activities before recommendation of the same and whether the same has been disclosed?		
5.	Whether the committee has set procedures for monitoring the CSR policy from time to time?		
6.	Whether the observations of monitoring report discussed in the CSR committee?		
7.	Whether the CSR committee is satisfied that the monitoring mechanism for ensuring implementation of the projects / programs / activities proposed to be undertaken by the company is reliable, sufficient and transparent?		

### B. Management & Strategy Level

#### I. Leadership Commitment and Involvement

S.No	Particulars	Yes/No	Comment
1.	Senior leaders support CSR at all levels of leadership and explicit roles are assigned. In this relation, does the Company have a process of appointing a Director in charge of CSR and assigning a specific role to the CEO and all senior leaders?		
2.	Do the Senior leaders periodically evolve and declare the common direction on CSR?		
3.	Can CSR goals be achieved and accounted through the regular Performance Management System governing the leadership in the Company?		
4.	Since there are processes to include CSR goals and activities in the Balanced		

### CSR Committee and its Checklist

	Scorecards of all levels of leadership, can the performance be inked to Management Systems down the line?		
5.	Is there a process of appointing and assigning roles on CSR to a Corporate Head-Social Responsibility integrating Environmental Management, Safety, Ecological and Biodiversity issues, Social Development and Volunteering?		
6.	Does CSR demand an intensive and integrated role from all major functional heads of the Company?		
7.	Does organizational commitment includes the involvement of functional heads and processes to factor CSR considerations in all operational decision-making processes and activities?		
8.	Does data gathering and information system incorporate the collection of data that is CSR sensitive?		
9.	In all meetings and conventions that endorse management decisions on operational areas, there is an emphasis on CSR implications and senior leaders, heads of functions so are they intently involved in carrying out their social responsibility?		

#### II. Management Structure and Deployment

S.No	Particulars	Yes/No	Comment
1.	Have the Company has evolved appropriate organizational structures and positioned senior level / functional representatives to drive CSR effectively?		
2.	Has the Company formed a Cross-Functional Team on CSR integrating		

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	Human Resource, Business Excellence, Ethics, Communications, Operations with Environmental Management and Community Development all into one focus with a convention for functioning?		
3.	Does the Cross Functional Team is effectively operational and adequately meets the organizational requirements to drive CSR?		
4.	Is there a process / convention to ensure that the members of the Cross-Functional Team have put down detailed work plans / programs for the year with adequate measurement and indicators for all areas of work in all locations and divisions?		
5.	Do the CEO / Senior Leaders proactively support the Cross Functional Team in terms of deploying budgets and resources as agreed in the annual plans?		
6.	Is there a reasonable priority accorded to CSR activities and a process exists to ensure that the Team is not constrained by empowerment, budgetary or resources allocation considering that the activity is sensitive to the Brand Assurance?		

### III. Strategy Development & Action Plan

S.No	Particulars	Yes/ No	Comment
1.	Does the Company's Strategic planning and implementation process include a systematic approach to factor CSR considerations aligned to the Company's overall approach to CSR?		
2.	Are there any annual plans / timetable and strategic objectives not only for the		

**CSR Committee and its Checklist**

	Environmental and Social work but also for providing support to CSR by way of HR and communication support and other aspects linked to the Strategy?		
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**IV. Review Mechanism and Reporting**

S.No	Particulars	Yes/ No	Comment
1.	Are periodic meetings to review the progress of various CSR initiatives are being held systematically with appropriate actions being decided and followed up by the CEO and senior leaders?		
2.	Are there any formal and informal processes and conventions for dealing with CSR issues and include regular meetings?		
3.	Since CSR is a part of Corporate Governance, is the same reviewed by the Board?		
4.	Does the Company have a process to review CSR at least 3 times in a year along with the Cross-Functional Team with CEO / Director and set a direction on CSR that is adequately communicated?		

**V. Communications and Awareness**

S.No	Particulars	Yes/ No	Comment
1.	Does the organization have a system of communications to inform employees on CSR and receive feedback through mechanisms in place?		
2.	Are there specific channels of communication dedicated to CSR and reaches all messages, activities, events and practices apart from policies on CSR to		

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	all employees throughout the organization?		
3.	Does the Company consider it proper to document case studies, best practices and significant achievements for dissemination to employees and all stakeholders?		
4.	Are the processes and frameworks in place to document important CSR work and disseminate it through different medium?		

### C. Employee Response Level

#### I. Selection, Career Development of key Employees and Performance Management

S.No	Particulars	Yes/ No	Comment
1.	Does the employees who are driving CSR able to connect well with others and motivate employees?		
2.	Are the employees fairly knowledgeable about working with people and in groups beyond mere professional capabilities?		
3.	Has the HR functioned sensitively to this aspect and has developed processes to internally identify this talent?		
4.	Are the processes to engage professionals and operatives with people having CSR as a part of their role, appropriate weightage is given to this part of their role to accomplish the annual business plan?		
5.	Does this process extend to training, development and career path planning for key CSR employees?		

## CSR Committee and its Checklist

### II. Training for Leadership Development, Enrolment of other employees, Personal Learning and Development and enhancing Role in CSR

S.No	Particulars	Yes/ No	Comment
1.	Are the facilitators good connectors in bringing people and possibilities together?		
2.	Do they acquire leadership qualities to spread CSR widely across the organization and foster, enroll, mentor volunteers?		
3.	Does the process of training include special provisions to factor the development of leadership skills particularly encouraging facilitators to create more facilitators?		

### III. Volunteer Scheme and evolving degrees of Volunteering

S.No	Particulars	Yes/ No	Comment
1.	Does the Company enables its employees to volunteer through a system procedure and senior / functional heads support employees to participate in programs?		
2.	Are employees getting encouraged to learn from this work which is achieved through a systematic scheme on Volunteering?		
3.	Is there an official scheme on Volunteering in the Company to identify, engage, recognize any willing employee who wish to contribute? It is based on the Competency matrix and Volunteering Profile worked out for each Company and is driven through the HR function and Community network to register Volunteers, their talents, the project, volunteering days spent.		



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### D. CSR Implementation Level

#### I. Managing Change & Assessment of Social Impact

S.No	Particulars	Yes/ No	Comment
1.	Has the Company identified the major socio-economic changes in the key communities caused by its presence/ operations/ major expansion programs?		
2.	Does the Company have a formal process of deploying its own officers or hired agency to conduct social impact surveys before installing the facility and thereafter periodically for Issues like consumption patterns, land use, rehabilitation, biodiversity and other issues?		
3.	Has the Company identified possible impact on the life style of its key communities and as a responsible Company it takes corrective actions and provides alternatives mutually agreed between its management and the impacted people, if there are conflicts of interest?		
4.	Did the assessment went to another level of impact such as those on infrastructure (roads, traffic, power, water and so on); common facilities (hospitals, schools, housing stock); and market price-line of essentials and standards/ practices of living that could be impacted?		
5.	Does the process of the Company take into account all other impacts specific to their situations?		
6.	Whether specific impact assessment related to the situation is separately addressed?		

## CSR Committee and its Checklist

### II. Felt needs of the key community related to core competencies.

S.No	Particulars	Yes/No	Comment
1.	Has the Company has identified and established its 'key communities'?		
2.	Is there a process and a rationale to define and declare key communities and this is distinct from and beyond the idea of limiting it to neighbourhoods?		
3.	Whether the Company has developed approaches, processes and methods to systematically survey and assess needs of the key communities as articulated by people in that community and is fairly representative?		
4.	Whether the process broadly outlines a sequence of events, periodicity and procedure of assessing felt needs?		
5.	Whether the Company has systematically done a onetime workout and annually reviewed the specific capacity, capability, facility, technology, competency that it could reasonably afford towards meeting these needs, as against random approaches to do this work?		

### III. Social Concerns addressed through Programs.

S.No	Particulars	Yes/ No	Comment
1.	Whether the Company is encouraged to build programs around Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water?		

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2.	Whether the company is encouraged to build programs around Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects?		
3.	Whether the company is encouraged to work towards Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, daycare center and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward?		
4.	Whether the company is encouraged to develop strategies for ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water[including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga?		
5.	Whether the company is encouraged to develop strategies for protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts?		
6.	Whether the company carries out programs or encourages measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police		

**CSR Committee and its Checklist**

	Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows?		
7.	Whether the company carries out programs or supports training to promote rural sports, nationally recognised sports, paraolympic sports and Olympic sports?		
8.	Whether the company is encouraged to develop strategies for contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women?		
9.	Whether the company encourages- (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and (b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and		

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	Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).		
10.	Whether the Company undertakes or encourages Rural development projects?		
11.	Whether the Company undertakes or encourages Slum Area Development?		
12.	Whether the Company undertakes or encourages Disaster management, including relief, rehabilitation and reconstruction activities?		

### IV. Self-Reliance and Sustenance

S.No	Particulars	Yes/No	Comment
1.	Whether the Company / project officers identify the specific areas or state of dependencies in terms of skills, knowledge, confidence, experience, marketing talents or generating and using income where dependencies are articulated as opportunities for improvement in terms of action and correction?		
2.	Does the Program Officer identify parameters on self-reliance in a specific situation and may include the capacity		

### CSR Committee and its Checklist

	gaps, training, awareness, and ability to assume responsibility, certain values that go to build a community that is free to act on its own. This is distinct from addressing needs of people on an ongoing basis without minimizing dependence.		
3.	Whether the intervention has in place specific factors that can make the various corrective actions sustainable in future without excessive dependency on the Company which is important for programs to indicate a cut-off date for withdrawal or resources committed for specific periodicity or annual time frames?		
4.	Are the parameters for sustenance such as new arrangements, systematic partnerships, renewed income generating capability, better networking, more resourcefulness, revived leadership, new conventions and practices that enable the community to continuously perform on its own to meet the required/ growing levels of performance?		

#### V. Learning and Innovation Transfer

S.No	Particulars	Yes/No	Comment
1.	Does the program capture its learning and innovations directly related to the project, meeting objectives and goals?		
2.	Will the new ways of conducting activities (performing eye operations, treating patients, teaching methods in schools or use of fertilizers, etc.) get documented for future use and for others?		
3.	Do as facilitators of a development process, the project owners of the Company learn new ways to organize, reduce costs,		

## Handbook on Role of Women Directors

	become more effective and enhance performance?		
4.	Has the company developed self-assessment processes so that facilitators could be encouraged to spend time and be helped to consciously align themselves?		
5.	Personal learning and revelations that arise out of an experience are essential aspects provided for in this item so does the facilitators openly declare their revelations in these experiences, if any?		

### VI. Health and Safety (H&S)

S.No	Particulars	Yes/No	Comment
1.	Does senior management demonstrate their commitment to Health & Safety e.g., H&S policy endorsed by senior management?		
2.	Does the company have a formal H&S system?		
3.	Does the company have the appropriate H&S resource (eg H&S manager, nurse, first aiders, fire fighters, etc)		
4.	Do workers have the appropriate information, instruction and training on H&S issues?		
5.	Is there a fully operational Health & Safety Committee (composition, frequency of meetings, minutes of meetings, etc)?		
6.	Is there a fully operational accident investigation and reporting system (management monitoring, investigation reports, close out of actions, etc)?		
7.	Are the appropriate health systems in place (pre-employment medicals / health surveillance, access to doctor/nurse etc)?		

**CSR Committee and its Checklist**

8.	Is the company appropriately prepared for a fire or other emergency (alarms, sprinklers, fire extinguisher, drills, etc)?		
9.	Does the company have the appropriate controls in place to manage risks from moving machinery (guards, interlocks, lock-out /tagout, etc)?		
10.	Is there a work permit system in place – If yes what does it cover?		
11.	Are hazardous chemicals/materials used (eg. solvents, dusts, asbestos, pesticides) – please provide detail?		
12.	Does the noise exposure of employees exceed 85 dB(A)?		

**VII. Environment**

S.No	Particulars	Yes/No	Comment
1.	Does the company have to comply with an environmental permit? If yes, does it?		
2.	Does the company have a formal environmental management system? (e.g. ISO 14001)		
3.	Does the company meet its water effluent consent? How often does it test for key parameters, e.g. BOD/COD, pH, SS, oil?		
4.	Does the company meet the requirements of any air emissions consent? Does it test for key parameters, e.g. SO <sub>2</sub> , NO <sub>x</sub> , particulates?		
5.	Is the nature of activities likely to affect air quality at the workplace, on the site and/or in the surrounding area e.g. plant and vehicle emissions, dust?		



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6.	Are large quantities of waste, or hazardous wastes, produced? What is the disposal route?		
7.	Does the company use/make Ozone depleting substances e.g. CFCs? How are they being phased out?		
8.	Is the company a significant energy user? Are there options for energy efficiency improvements?		
9.	Is the company a significant water user? Are there options for water efficiency improvements, e.g. re-cycle?		
10.	Are there noise and/or other nuisances? If so, please detail		

### VIII. Labour

S.No	Particulars	Yes/No	Comment
	<b>Compensation/ Working Hours</b>		
1.	Is the basic wage level (unskilled workers) higher than the minimum wage?		
2.	Is the average monthly overtime within the limits set by national/ international (e.g. ILO) standards?		
3.	Is there a premium rate for overtime payment?		
	<b>Freely Chosen Employment</b>		
1.	Does the employer hold workers' identity documents?		
2.	Are workers provided with employment contracts including any requirements for overtime work?		
3.	Do workers have to pay a deposit when they start work? If yes, is this refundable?		

**CSR Committee and its Checklist**

4.	If migrant labour is used locally, are there contractual terms which limit workers' ability to leave their jobs before the contract expires?		
<b>Consultative Workplace Structures</b>			
1.	Are workers members of a labour union or an alternate worker association?		
2.	Have workers been provided with any form of induction/training regarding their working conditions?		
<b>Non-Discrimination</b>			
1.	What is the ratio of female to male employees?		
2.	Are there more women (as compared to men) employed as contract workers?		
3.	Are crèche or similar facilities provided to women workers?		
4.	Does the company have a policy on sexual harassment?		
<b>Non local work force/ access to facilities</b>			
1.	Will the business import a non local work force requiring accommodation and facilities for more than 3 months?		
2.	Do existing or proposed facilities or services (housing, education, food, water, health) give cause for concern?		

**IX. Supply Chain**

<b>S.No</b>	<b>Particulars</b>	<b>Yes/ No</b>	<b>Comment</b>
1.	Are any aspects of the company's supply chain of particular concern in relation to environmental and social issues?		
2.	Does the company have a Code of Conduct for suppliers?		

## Chapter-X

# Important jurisprudence related to responsibilities of Directors/ Independent Directors

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### 10. Important Jurisprudence

#### 10.1 Case study No 1: Shailendra Swarup Vs Enforcement Directorate

FERA - In the relevant period, one M/s Modi Xerox Ltd. (MXL), made remittances abroad through its banker - The RBI issued a letter stating that M/s MXL had not submitted Exchange Control copy of the custom bills of Entry/Postal Wrappers as evidence of import of goods into India - The ED wrote to M/s MXL seeking invoices & purchase orders - M/s MXL provided some of the records, but some of the old records could not be traced - Meanwhile M/s MXL amalgamated & merged into M/s Xerox Modicorp Ltd. (M/s XMC) - Subsequently, an SCN was issued by the ED to M/s MXL and its Directors, one of whom is the appellant - The SCN proposed initiating adjudicating proceedings u/s 51 of the FERA r/w Sections 3,4 and 49 of FEMA - Date of hearing was fixed and notice was sent in this regard - The appellant replied to the SCN, stating to be a part-time, non-executive director of M/s MXL and that he was never in the company's employment and had no executive role in its functioning - He also stated that to never have been in charge of or responsible for the conduct of the company - The relevant authorities at the ED heard the appellant and the other directors and then proceeded to impose penalty on the appellant for contravening provisions of Section 8(3), 8(4) and 68 of FERA 1973 - The appellant's appeal against such order was dismissed by the Appellate Tribunal for Foreign Exchange and then by the High Court, which nonetheless stayed the imposition of penalty.

Held - Where the Deputy Director at the ED decided to hold adjudication proceedings u/s 51 of the FERA, any reply submitted in response to notice must statutorily be considered u/s 51 - Such reply cannot be ignored or rejected based on an erroneous assumption that such reply was furnished in

### **Important jurisprudence related to responsibilities of Directors...**

an afterthought - What is said by a person who is called for personal hearing even though given in the form of written representation dated 29.10.2003 required to be considered by the adjudicating officer otherwise the personal hearing shall become an empty formality and meaningless - Hence the High Court erred in discarding the reply submitted by the appellant - The affidavit of the Company Secretary is also uncontradicted, wherein it is stated that the appellant was only a part time director in M/s MXL and was not in charge of day to day business - Such affidavit was available before adjudicating authority and the High Court erred in holding that such information was not put forth before the adjudicating authority or the appellate tribunal - Such pleas of the appellant were erroneously rejected by the High Court, as nothing was put on record on behalf of the ED to disprove such pleas - Moreover, it is seen that the Adjudicating officer did not consider the pleas of the appellant or even hold them to be untenable - Hence the penalty has been imposed without returning a finding that it was the appellant who was liable for contravention of the provisions of Section 8(3), 8(4) and Section 68 of the FERA - Hence such order is unsustainable - The wordings of Section 68 of the FERA nowhere provide that all directors, irrespective of their role and responsibilities, would be guilty of contravention - When a person is proceeded with for committing an offence and is to be punished, necessary ingredients of the offence as required by Section 68 should be present - Even though the FERA 1973 does not contemplate filing of a written complaint but in proceedings as contemplated by Section 51, the person, who has to be proceeded with has to be informed of the contravention for which penalty proceedings are initiated. The expression "after giving that person a reasonable opportunity for making a representation in the matter" as occurring in Section 51 itself contemplate due communication of the allegations of contravention and unless allegations contains complete ingredients of offence within the meaning of Section 68, it cannot be said that a reasonable opportunity for making a representation in the matter has been given to the person, who is to be proceeded with - Hence, for imposing a penalty under Section 50, the adjudicating officer is required to hold an enquiry after giving the person a reasonable opportunity for making a representation in the matter - Thus the judgments of the High Court, the Appellate Tribunal and adjudicating authority merit being set aside: SC

- Appeal allowed: SUPREME COURT OF INDIA

Criminal Appeal No. 2463 of 2014

## **10.2 Case study No 2: V Selvaraj Vs RBI**

Whether an Independent Director can be held responsible for acts of commission/omission by a Company that occurred without his knowledge, consent or connivance –NO:HC

Whether an Independent Director can be classified as a Wilful Defaulter for acts of a Company when there is no evidence of wilful default on his/her part –NO:HC-

Case allowed: MADRAS HIGH COURT

### **Facts**

The Respondent No. 4 (Company) was a public limited company incorporated under the Companies Act, 1956. Upon invitation, the Petitioner joined the Board of the Company as a Non-Executive Independent Director. Thereafter, during the annual inspection, RBI found accounting malpractices in the Company and issued various directions to protect public interest. The Forensic Audit report identified the Managing Director of the Company for all the misdeeds and recommended to lodge criminal action to unearth the fraud committed by him and his team of employees. Meanwhile, the State Bank of Mysore, one of the creditors of the Company, declared its assets as NPA. The Petitioner gave a detailed explanation about his non-involvement in the alleged illegalities committed by the Company. However, Respondent No. 3 vide its impugned letter classified the Petitioner as a wilful defaulter. Thus, the Petitioner filed the Writ Petition for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned letter of Respondent No. 3, quash the same and consequently direct the Respondents to declassify the Petitioner from the List of Wilful Defaulters.

### **Decision**

The petition was allowed with no costs.

### **Reasoning**

1. The Court stated that out of 11 years of the Company's operations, the Petitioner had acted as its Independent Non-Executive Director for merely 7 months and participated in only 4 Board Meetings. The Petitioner had specifically stated that the Founder Member and Managing Director of the Company was heading all the Departments of the Company, including Finance and accounts and his decision was

### **Important jurisprudence related to responsibilities of Directors...**

final. Further more, no material was available to implicate the Petitioner for the misdeeds committed by the Managing Director.

2. Moreover, u/s 149 (12) of the Companies Act, an Independent Director shall be held responsible only in respect of such acts of commission or omission by a Company that occurred with his knowledge, consent or connivance. However, in the present matter, no materials were brought on record to show that the Petitioner had actively participated in the day-to-day affairs of the Company or in the Board Meeting and the commissions and omissions alleged against the Company had taken place with the knowledge, consent or connivance of the Petitioner to satisfy the ingredients of s 149(12) of the Act. The investigation report of the CBI also supported the case of the Petitioner.
3. Furthermore, persons identified as wilful defaulters have to meet the consequence of the subsequent proceedings to be initiated by the banks and financial institutions as per the Master Circular of the RBI. Therefore, unless the allegations are supported by material documents, no one can be declared as a 'wilful defaulter'. It is settled position of law that penal provisions require strict proof and cannot be permitted to be exercised in a casual manner.
4. The Wilful Defaulter Identification Committee of the State Bank of India, after perusing the entire records, had come to the conclusion that they were not sufficient to declare the Petitioner as a 'wilful defaulter'. There was absolutely no evidence available to declare the Petitioner as a 'wilful defaulter'. Moreover, the explanation offered by the Petitioner was not considered and the decision was taken against the provisions of the Act and the Master Circular issued by the RBI.

W.P.No.43433 of 2016 &W.M.P.No.37294 of 2016