

Board Effectiveness/ Building Better Boards

Lesson 3

KEY CONCEPTS

- Chairman/CEO
- Independent Director
- Board Independence
- Board Diversity
- Conflict Management
- Board Evaluation

Learning Objectives

To Understand:

- Factors affecting/influencing the Board effectiveness of companies.
- Regulatory provisions relating to Board effectiveness
- International framework, provisions of different Corporate Governance codes on Board effectiveness.
- Role, duties, liabilities of Chairman, Board
- Conflict Management and Related Party Transactions
- Indian and Global framework on Board Diversity and Independence
- Best Practices by Corporates

Lesson Outline

- Factors influencing Board effectiveness
- Composition of Board Structure
- Board Independence
- Lead Independent director
- Role of Chairman of the Board
- Appointment, Resignation and Removal
- Board Evaluation
- Board Diversity
- Conflict Management
- Duties/Responsibilities/Liabilities of Directors
- Code of Conduct/Ethics
- Succession Planning
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Companies Act, 2013
- SEBI (LODR) Regulations, 2015
- International Corporate Governance Codes
- Additional Corporate Governance norms for NSE Prime companies.

INTRODUCTION

The institution of board of directors was based on the premise that a group of trustworthy and respectable people should look after the interests of the large number of shareholders who are not directly involved in the management of the company. The position of the board of directors is that of trust as the board is entrusted with the responsibility to act in the best interests of the company.

The contribution of board of directors of companies is critical for ensuring appropriate directions with regard to leadership, vision, strategy, policies, monitoring, supervision, accountability to shareholders and other stakeholders, and to achieving greater levels of performance on a sustained basis as well as adherence to the best practices of corporate governance.

An effective board defines the company's purpose and then sets a strategy to deliver it, shapes its culture and the way it conducts its business. It sets the main trends and factors affecting the long-term success and future viability of the company – for example technological change or environmental impacts – and how these and the company's principal risks and uncertainties have been addressed.

The board should have sound understanding of how value is created over time, key strategies and business models towards a sustainable future. This is not limited to value that is found in the financial statements. An understanding of how value for intangible sources are developed, managed and sustained – for example a highly trained workforce, intellectual property or brand recognition – is increasingly relevant to an understanding of the company's performance and the impact of its activity. These are important considerations for boards when setting corporate strategy.

Boards have a responsibility for the health of the company and need to take a long-term view. This is in contrast to the priorities of some investors, not all of whom will be aligned with the pursuit of success over the long term. An effective board will manage the conflict between short-term interests and the long-term impacts of its decisions; it will assess shareholder and stakeholder interests from the perspective of the long-term sustainable success of the company.

Board Effectiveness may be assessed through various factors including:

1. Board Composition
2. Board Independence
3. Chairman/Board
4. Board Diversity
5. Board Engagement level
6. Appointment process
7. Code of Conduct
8. Conflict management
9. Board Evaluation
10. Succession planning
11. Duties/responsibilities/liabilities

This lesson proposes to cover aspects under each factor that will impact Board Effectiveness including:

1. Regulatory Framework (both Provisions of Companies Act and SEBI (LODR) Regulations)
2. Prescriptions for NSE Prime Companies*
3. Best Practices by Companies
4. Prescriptions by Proxy Advisory Firms
5. International perspective(prescriptions under Different Corporate Governance Codes)
6. Reports/outcome of surveys

BOARD COMPOSITION

Regulatory Prescriptions

(a) Companies Act, 2013

Minimum and Maximum Number of Directors – Section 149(1)

Every company shall have a Board of Directors consisting of individuals as Directors and shall have -

- (a) a minimum number of three Directors in the case of a public company, two Directors in the case of a private company, and one director in the case of a One Person Company; and
- (b) a maximum of fifteen Directors.

Provided that a company may appoint more than fifteen Directors after passing a special resolution.

Provided further that such class or classes of companies as prescribed under Rule 3 of the Companies (Appointment and Qualifications of Directors), Rules, 2014, shall have *at least one woman director*.

Rule 3 of the Companies (Appointment and Qualifications of Directors), Rules, 2014

Women Director: At least one woman director shall be appointed in every listed company within one year from the commencement of the Act. Every other public company having paid up share capital of ₹ 100 crores or more or turnover of ₹ 300 crores or more as on the last date of audited financial statements, shall appoint at least one woman director within one year from the implementation of the Act.

At least one Resident Director – Section 149(3)

Every company shall have *at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days during the financial year*.

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

Listed companies to have independent directors – Section 149(4)

Every listed public company shall have *at least one-third* of the total number of Directors as independent Directors and the Central Government may prescribe the minimum number of independent Directors in case of any class or classes of public companies.

Explanation. – For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

*(NSE Prime is a framework that prescribes higher standards of Corporate Governance of Listed Companies than those required by Regulations similar to Brazilian Government's Novo Mercado which is special Listing Agreement prescribing higher corporate governance standard)

(b) Regulation 17 of SEBI (LODR) Regulations, 2015**Composition of the Board of Director – Regulation 17(1)(a)**

The composition of board of directors of the listed entity shall be as follows:

- (a) 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 non-executive directors;*

Provided that the Board of directors of the top 1000 listed entities shall have at least one independent woman director;

Number of Independent Directors where the Chairperson is a non-executive – Regulation 17(1)(b)

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:

Provided that 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.

Explanation: For the purpose of this clause, the expression “related to any promoter” shall have the following meaning:

- (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
- (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

Minimum number of director in certain class of listed companies – Regulation 17(1)(c)

The board of directors of the top 2000 listed entities shall comprise of not less than six directors.

Suggested Board Size as per NSE and Proxy Advisory Guidelines- An Overview**(a) Additional requirements for NSE Prime Companies regarding Board Composition**

- The Board of Directors shall consist of a minimum of 8 Directors.
- The Chairperson of the Board of Directors shall not be a Relative of the Managing Director or Chief Executive Officer of the NSE Prime Company.
- Where the public shareholding is in excess of 50%, more than half of the Board of Directors shall comprise Independent Directors; and in case of any fractions, the same shall be rounded to the higher number.
- Where the public shareholding is 50 % or less, at least half of the Board of Directors shall comprise Independent Directors; and in case of any fractions, the same shall be rounded to the higher number.
- With effect from July 01, 2025, at least 2 Directors shall be women, with at least one such Woman Director also being an Independent Director.

(b) Preferable Board Size as per Proxy Advisors Guidelines**liAS**

liAS prefers a Board size of 6-15 members. Board size should be commensurate with the size and operations of the company. Their guidelines are therefore aligned with the Kotak Committee threshold of at least 6 directors. On the other hand, consensus on many critical issues may be difficult to achieve if Board size exceeds 15 members.

Key risks of big Board size highlighted by them include:

- Board size may be increased to accommodate family members;
- Large Board size may make consensus building difficult.

(c) InGovern

InGovern prefers a Board size of 7-15 members. A Board size outside of this range is considered less effective either due to low diversity of expertise and opinion, and low representation of Independent Directors on key committees or a big Board size of greater than 15 members present the disadvantages of delayed decision making that come along with an uncontrollable size and risk of having majority of promoters and related parties on Board. InGovern too is not in favour of huge Board size.

(d) SES

SES prefers a Board size of 6-15 members. If the proposed Board size is outside this range, SES expects that the Company would provide a rationale for the same.

BOARD INDEPENDENCE**Regulatory Prescriptions****(a) Independent Director – Definition****(i) Companies Act, 2013**

In terms of Section 2(47), “independent director” means an independent director referred to in sub-section (6) of section 149.

Section 149(6) provides that an independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b)
 - (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
 - (ii) who is not related to promoters or Directors in the company, its holding, subsidiary or associate company;
- (c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or Directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives –
 - (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year;

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

- (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or Directors, in excess of such amount *as prescribed under Rule 3 of the Companies (Appointment and Qualifications of Directors), Rules, 2014* during the two immediately preceding financial years or during the current financial year;
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or Directors of such holding company, for such amount *as prescribed under Rule 3 of the Companies (Appointment and Qualifications of Directors), Rules, 2014* during the two immediately preceding financial years or during the current financial year; or
 - (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);
- (e) who, neither himself nor any of his relatives—
- (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.

- (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
 - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
 - (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
 - (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, Directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
- (f) who possesses such other qualifications *as prescribed under Rule 4 of the Companies (Appointment and Qualifications of Directors), Rules, 2014*.

Rule 4(1) provides that the following class or classes of companies shall have at least two directors as independent directors -

- (i) the Public Companies having *paid up share capital of ten crore rupees or more; or*
- (ii) the Public Companies having *turnover of one hundred crore rupees or more; or*

- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:

Provided further that any intermittent vacancy of an independent 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:

Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

Rule 4(2) states that following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act.

(ii) Regulation 16(1)(b) of the SEBI (LODR) Regulations, 2015 states that, "independent director" means a non-executive director, other than a nominee director of the listed entity:

- (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 or member of the promoter group of the listed entity;
- (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 three immediately preceding financial years or during the current financial year;
- (v) none of whose relatives –
 - (A) is holding securities of or interest in the listed entity, its holding, subsidiary or associate company during the three immediately preceding financial years or during the current financial year of face value in excess of fifty lakh rupees or two percent of the paid-up capital of the listed entity, its holding, subsidiary or associate company, respectively, or such higher sum as may be specified;
 - (B) is indebted to the listed entity, its holding, subsidiary or associate company or their promoters or directors, in excess of such amount as may be specified during the three immediately preceding financial years or during the current financial year;

- (C) has given a guarantee or provided any security in connection with the indebtedness of any third person to the listed entity, its holding, subsidiary or associate company or their promoters or directors, for such amount as may be specified during the three immediately preceding financial years or during the current financial year; or
- (D) has any other pecuniary transaction or relationship with the listed entity, its holding, subsidiary or associate company amounting to two percent or more of its gross turnover or total income:

Provided that the pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors in relation to points (A) to (D) above shall not exceed two percent of its gross turnover or total income or fifty lakh rupees or such higher amount as may be specified from time to time, whichever is lower.

(vi) who, neither himself /herself, 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 or any company belonging to the promoter group of the listed entity, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed:

Provided that in case of a relative, who is an employee other than key managerial personnel, the restriction under this clause shall not apply for his / her employment.

- (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 –(1) a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or (2) 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;

(vii) who is not less than 21 years of age.

(viii) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.

Parameters considered to determine Directors' Independence by Proxy Advisors

(a) liAS

liAS will not treat the following directors as independent:

1. Directors who have cross linkages with each other across multiple Boards (Board interlock).
2. Those who do not satisfy the eligibility criteria laid down in Section 149(6) of the Act and Regulation (16)(1)(b) of the SEBI (LODR) Regulations, 2015.

3. Representatives of large shareholders (holding >2% stake) or lenders, even if they are not appointed on the Board as a nominee. However, former employees of such shareholders who continue to remain on the Board (even after they move on from their employment) may be considered independent. Similarly, directors who were earlier on the Board as nominees may be considered independent once the investor has sold its stake. Retired IAS officers/civil servants will also be considered as independent on the Board of Public Sector Enterprises.

(b) InGovern

- IDs should have no professional relationship with the company, and should not receive any fees, apart from sitting fees or any form of commission as determined by the Board for NEDs.
- For companies which have had major governance failures, InGovern does not recommend re-appointment of same IDs.

(c) SES

- Independent Director (ID) of Company must not have any pecuniary relationship with the Company, except for Directors' remuneration.

Any ID who had been associated with the Company or Group Company for a tenure of more than 10 years, is reckoned non-independent by SES irrespective of whether he was appointed as such, post the commencement of the Companies Act, 2013 or not

Indicative definition of Independent Director by International Financial Corporation

“Independent Director” means a Director who has no direct or indirect material relationship with the Company other than membership on the Board and who:

1. Has not been employed by the Company or its Related Parties in the past five years
2. Is not, and is not affiliated with a company that is an advisor or consultant to the Company or its Related Parties
3. Is not affiliated with a significant customer or supplier of the Company or its Related Parties
4. Has no personal service contracts with the Company, its Related Parties, or its senior management
5. Is not affiliated with a non-profit organization that receives significant funding from the Company or its Related Parties
6. Is not employed as an executive of another company where any of the Company's executives serve on that company's board of directors
7. Is not a member of the immediate family of an individual who is, or has been during the past five years, employed by the Company or its Related Parties as an executive officer
8. Is not, nor in the past five years has been, affiliated with or employed by a present or former auditor of the Company or of a Related Party.

Is not a controlling person of the Company (or member of a group of individuals and/or entities that collectively exercise effective control over the Company) or such person's brother, sister, parent, grandparent, child, cousin, aunt, uncle, nephew or niece or a spouse, widow, in-law, heir, legatee and successor of any of the foregoing (or any trust or similar arrangement of which any such persons or a combination thereof are the sole beneficiaries) or the executor, administrator or personal representative of any Person described in this sub-paragraph who is deceased or legally incompetent.

International Perspectives

Malaysia - Malaysian Code on Corporate Governance (2021)

At least half of the companies board are comprised of independent directors. Moreover, in case of large companies the independent directors are in majority in the boards.

Singapore – Singapore Code of Corporate Governance, 2018

An “independent” director is one who is independent in conduct, character and judgement, and has no relationship with the company, its related corporations, its substantial shareholders⁵ or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director’s independent business judgement in the best interests of the company.

Independent directors make up a majority of the Board where the Chairman is not independent.

Non-executive directors make up a majority of the Board.

Finland - Finnish Corporate Governance Code, 2025

The board of directors shall evaluate the independence of the directors and report which directors are independent of the company and which are independent of the significant shareholders. The reasoning for determining that a board member is not independent must also be reported.

The majority of the directors shall be independent of the company. At least two directors who are independent of the company shall also be independent of the significant shareholders of the company.

Independence of the company

A director is not independent of the company if

- a. the director has an employment relationship or service contract with the company;
- b. the director has had an employment relationship or service contract with the company in the last three years, and such employment relationship or service contract has not been temporary;
- c. the director receives, or has received during the past year, remuneration that is not insignificant for services that are not connected to the duties of a director, e.g. consulting assignments, from the company or members of the company’s operative management;
- d. the director belongs to the operative management of another corporation which has or has had during the past year a supplier, customer, or cooperation relationship with the company, and such relationship is or has been significant to the other corporation;
- e. the director is, or has been in the past three years, the auditor of the company, a partner or an employee of the present auditor, or a partner or an employee in an audit firm that has been the company’s auditor in the past three years; or
- f. the director belongs to the operative management of another company whose director is a member of the operative management of the company (interlocking control relationship).

Independence of major shareholders

A significant shareholder is a shareholder who holds at least 10% of all company shares or the votes carried by all the shares, or who has the right or obligation to acquire the corresponding number of already issued shares. A director is not independent of a significant shareholder if

- g. the director is a significant shareholder of the company or a director of a significant shareholder, or has a relationship such as referred to in sub-sections a) – b) above with a significant shareholder; or
- h. the director exercises direct or indirect control in a significant shareholder or is a director of a significant shareholder, or the director has a relationship such as referred to in sub-sections a) – b) above with a party who exercises direct or indirect control in a significant shareholder

Overall evaluation

In addition to the above-mentioned criteria, the board of directors may, based on an overall evaluation, determine that a director is not independent of the company or a significant shareholder. The following factors, inter alia, shall be taken into account when conducting the overall evaluation of independence:

- i. the director participates in the same performance-related or share-based remuneration scheme as the operative management of the company, which may be of substantial financial significance to the director;
- j. the director has served as a director for more than 10 consecutive years;
- k. a member of the director's family or a private or legal person closely related to the director is subject to circumstances such as described in this recommendation; or
- l. the company is aware of other factors that may compromise the independence of the director and the director's ability to represent all shareholders.

Rationale

The duty of the board of directors is to supervise and control the managing director of the company. In order to avoid conflicts of interest, the majority of the directors should not have an interdependent relationship with the company. Although it is recommended that directors hold shares in the company, the majority of directors, consisting of independent directors, shall include at least two directors who are also independent of significant shareholders of the company. Such a composition of the board of directors supports the objective that the board of directors shall act in the interests of the company and all of its shareholders.

The majority of the directors shall be independent of the company. At least two directors who are independent of the company shall also be independent of the significant shareholders of the company.

Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

Independent director – a director who is independent in conduct, character and judgement, and has no relationship with the company, its related corporations, its substantial shareholders (i.e., holding 1% of voting shares or more) or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement in the best interests of the company. (Refer to Principle 3.2 for a complete definition).

The presence of independent directors in the Board ensures the exercise of independent judgment on corporate affairs and proper oversight of managerial performance, including prevention of conflict of interests and balancing of competing demands of the corporation.

There is increasing global recognition that the presence of independent directors on the Board will help ensure more objective decision-making, particularly in conflict of interest situations.

In addition, experts have recognized that there are varying opinions on the optimal number of independent directors in the Board. However, the ideal number ranges from one third to a substantial majority.

To promote independent judgment by all board members and the integrity of the governance system, boards should have at least one-third independent directors.

Tenure of Independent Director – Critical to Board’s Independence

Tenure of Independent Director

Section 149(10) provides that subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board’s report.

Section 149(11) states that notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director.

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Explanation.—For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

Regulation 25(2) of the SEBI (LODR) Regulations, 2015 provides that the maximum tenure of independent directors shall be in accordance with the Companies Act, 2013 and rules made thereunder, in this regard, from time to time.

SEBI (LODR) Regulations, 2015

Regulation 25(2) of the SEBI (LODR) Regulations, 2015, provides that the maximum tenure of independent directors shall be in accordance with the Companies Act, 2013 and rules made thereunder, in this regard, from time to time.

Tenure of Independent Directors and Minimum Attendance Requirements at Board and Committee Meetings for the Re-appointment of Directors as per Proxy Advisors Guidelines

(i) liAS

liAS will not treat the following directors as independent:

1. For directors who have been on the Board for more than 10 consecutive years. liAS makes two important distinctions:
 - (a) Unlike the Act, which computes tenure beginning 1 April 2014, liAS will compute tenure on a retrospective basis i.e., from date of first appointment.
 - (b) liAS will not support the (re)appointment of directors if their aggregate tenure with the company or the group will exceed 10 years during the completion of the proposed tenure.
2. Directors who have been on the Board of the parent/holding/ subsidiary for more than 10 consecutive years.
3. Former executive/non-executive directors who have not had a cooling-off period (complete detachment from the Board, company, and promoter group) for at least 3 years.
4. Former executives who are on the board along with their previous supervisors unless these executives have completed at least a five-year cooling period. liAS will consider the cooling period to have

been completed only if there is a complete break-away between the director and the company/group.

5. Directors who are simultaneously on the Board of a large number/ percentage of group companies, with a prolonged tenure of >10 years in any of these companies.

liAS believes that the attendance level of directors in board/committee/shareholder meetings is a critical indicator of the directors' commitment levels towards the company. liAS expects 100% attendance in board meetings, but for directors coming up for re-appointment, accepts a minimum attendance level of 75% in the just concluded year. In case the attendance is below this threshold, liAS reviews the attendance over the immediately preceding three-year period (participation through telephonic means or video conferencing is counted while looking at overall attendance) and will recommend voting FOR the re-appointment only if the attendance is above this 75% threshold.

(ii) InGovern

Independent Director may not serve on the Board for a period of more than 2 consecutive terms of 5 years each. InGovern recommend a vote "Against" the re-appointment of IDs beyond a 10 year aggregate tenure from their date of appointment.

No former independent director should serve in the company in any capacity even if 3 years cooling off period has passed since his / her resignation.

A former NED (Non-independent director) should not be reappointed as an ID even if a 3 year cooling off period has passed.

As per InGovern, directors should attend at least 75% of the Board and/or Committee meetings.

(iii) SES

The law provides that a term of an ID must not exceed 5 years. Further, IDs can be appointed for a maximum of 2 terms, post that they need to serve a cooling off period of 3 years, before being eligible for appointment as ID on the Board of the same Company. This means that a person cannot be appointed as ID on the Board for more than 10 years. (in two terms)

However, SES, as a policy, considers group association of the person proposed to be appointed as Independent Director unless 3 years has passed since cessation of association at the group level.

Past Employees as ID:

Appointment of past employees (including in a Group Company) as Independent Director can lead to conflict of interest issues. Without questioning the integrity of such employees, SES is of the opinion that the Company may still wield significant influence on such individuals without them realizing it and also, may not always be objective in their judgment, given past experiences.

Hence, SES will generally not support such proposals unless a minimum cooling off period of 10 years has passed since cessation of association with the Company/Group and the credibility of the Director is established due to their recent directorships/positions held at any listed or any other prominent entity.

International Perspective

28 of the jurisdictions surveyed by OECD set a maximum tenure of an Independent Director from 5 to 15 years (with 8-10 years most common). At the expiration of the tenure, these directors are required or recommended to no longer be regarded as independent (in 21 jurisdictions), or need an explanation regarding their independence (in seven jurisdictions).

In Singapore, effective from January 2022, the SGX Listing Rules require the appointment of independent directors who have served beyond nine years to be subject to a two-tier vote requiring approval by the majority of (i) all shareholders, and (ii) all shareholders excluding shareholders who also serve as directors or the CEO (and their associates).

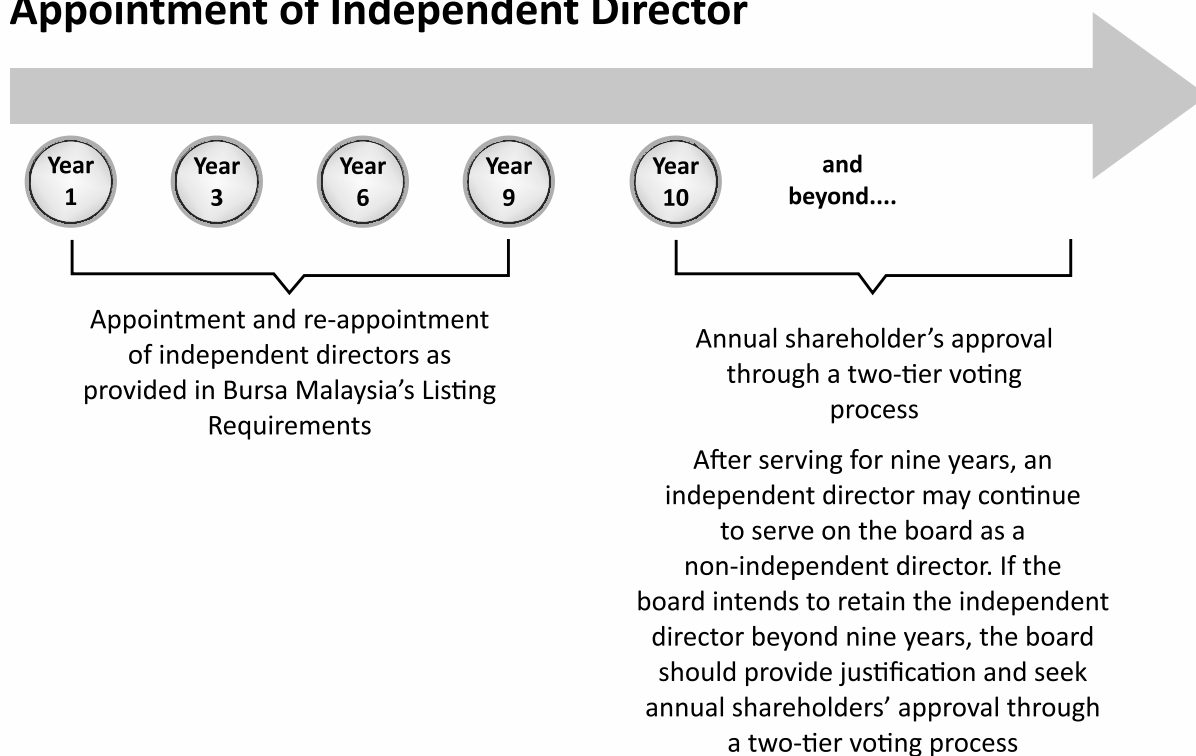
Malaysian Code on Corporate Governance 2021

The tenure of an independent director does not exceed a term limit of nine years. Upon completion of the nine years, an independent director may continue to serve on the board as a non-independent director.

If the board intends to retain an independent director beyond nine years, it should provide justification and seek annual shareholders' approval through a two-tier voting process.

The board has a policy which limits the tenure of its independent directors to nine years without further extension.

Appointment of Independent Director



Source: Malaysian Code on Corporate Governance (2021)

In light of the fact that long tenure of independent directors may exert a debilitating impact on the interests of the stakeholders, as long association of independent directors with the company may erode the objective of the board, in view of this, large corporate houses are not encouraged to retain an independent director for a period of more than nine years. However, to retain an independent director beyond the specified term of nine years, the board should undertake a rigorous review to determine whether the 'independence' of the director has been impaired. Findings from the review should be disclosed to the shareholders for them to make an informed decision.

If the board intends to retain an independent director beyond nine years, it should provide justification and seek annual shareholders' approval through a two-tier voting process.

Two-tier Voting Process

For Practice 5.3, companies should use the two-tier voting process in seeking annual shareholders' approval to retain an independent director beyond nine years.

Under the two-tier voting process, shareholders' votes will be cast in the following manner at the same shareholders meeting:

- **Tier 1:** Only the Large Shareholder(s) of the company votes; and
- **Tier 2:** Shareholders other than Large Shareholders votes.

For the purposes of Practice 5.3, Large Shareholder means a person who—

- is entitled to exercise, or control the exercise of, not less than 33% of the voting shares in the company;
- is the largest shareholder of voting shares in the company;
- has the power to appoint or cause to be appointed a majority of the directors of the company; or
- has the power to make or cause to be made, decisions in respect of the business or administration of the company, and to give effect to such decisions or cause them to be given effect to.

The decision for the above resolution is determined based on the vote of Tier 1 and a simple majority of Tier 2. If there is more than one Large Shareholder, a simple majority of votes determine the outcome of the Tier 1 vote.

The resolution is deemed successful if both Tier 1 and Tier 2 votes support the resolution. However, the resolution is deemed to be defeated where the vote between the two tiers differs or where Tier 1 voter(s) abstained from voting.

Vietnamese Corporate Governance Code of Best Practices, 2019

Principle 3.4: The Board's independent directors should serve for a maximum cumulative term of nine years.

Recommended Practices:

Service in a board for a long duration may impair a director's ability to act independently and objectively. Hence, the tenure of an independent director is set to a cumulative term of nine years.

After nine years, the independent director should be perpetually barred from re-election as such in the same company, but may continue to qualify for nomination and election as a non-independent director.

INDEPENDENT DIRECTOR, APPOINTMENT, REAPPOINTMENT AND REMOVAL AS PER COMPANIES ACT, 2013

Manner of selection of Independent Directors and maintenance of databank of independent directors – Section 150

- (1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent Directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such Directors:

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

- (2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.
- (3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as prescribed in **Rule 6** of the Companies (Appointment and Qualifications of Directors) Rules, 2014.
- (4) The Central Government may prescribe the manner and procedure of selection of independent Directors who fulfil the qualifications and requirements specified under section 149.

Appointment of Independent Director

Proviso to Section 152(5) provides that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

Manner of appointment:- Schedule IV (Code for Independent Directors)

- (1) Appointment process of Independent Directors shall be independent of the company management; while selecting independent Directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
- (2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.
- (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.
- (4) The appointment of independent Directors shall be formalised through a letter of appointment, which shall set out :
 - (a) the term of appointment;
 - (b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
 - (c) the fiduciary duties that come with such an appointment along with accompanying liabilities;
 - (d) provision for Directors and Officers (D and O) insurance, if any;
 - (e) the Code of Business Ethics that the company expects its Directors and employees to follow;
 - (f) the list of actions that a director should not do while functioning as such in the company; and
 - (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.
- (5) The terms and conditions of appointment of independent Directors shall be open for inspection at the registered office of the company by any member during normal business hours.

(6) The terms and conditions of appointment of independent Directors shall also be posted on the company's website.

Re-appointment:

The re-appointment of independent director shall be on the basis of report of performance evaluation.

Resignation or removal:

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

Retirement by Rotation of Independent Directors not applicable on IDs

Section 149(13) provides that the provisions of sub-sections (6) and (7) of section 152 in respect of retirement of Directors by rotation shall not be applicable to appointment of independent Directors

Appointment of Independent Director – SEBI (LODR) Regulations, 2015

According to Regulation 25(2A) of the SEBI (LODR) Regulations, 2015, the appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution.

Provided that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made.

Regulation 25(1) states that a person shall not be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.

For every appointment of an independent director, the Nomination and Remuneration Committee shall evaluate the balance of skills, knowledge and experience on the Board and on the basis of such evaluation, prepare a description of the role and capabilities required of an independent director. The person recommended to the Board for appointment as an independent director shall have the capabilities identified in such description. For the purpose of identifying suitable candidates, the Committee may:

- (a) use the services of an external agencies, if required;
- (b) consider candidates from a wide range of backgrounds, having due regard to diversity; and
- (c) consider the time commitments of the candidates.

Removal of Independent Director

Regulation 25(2A) of the SEBI (LODR) Regulations, 2015 states that the appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution.

Provided that where a special resolution for the appointment of an independent director fails to get the requisite

majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made under sub-regulation (2A).

Provided further that an independent director appointed under the first proviso shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.

Regulation 25(6) of the SEBI (LODR) Regulations, 2015 states that an independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than three months from the date of such vacancy;

Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.

Resigned Independent Director should not be appointed as Whole-time Director – Regulation 25(11)

No independent director, who resigns from a listed entity, shall be appointed as an executive / whole time director on the board of the listed entity, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an independent director.

Functions, Duties and Liabilities of Independent Director

Liability of Independent Director- Under the Companies Act, 2013

Section 149(12) provides that (12) Notwithstanding anything contained in this Act,—

- (i) an independent director;
- (ii) 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.

Under SEBI (LODR) Regulations, 2015

Regulations 25(5) provides that an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his /her knowledge, attributable through processes of board of directors, and with his /her consent or connivance or where he /she had not acted diligently with respect to the provisions contained in these regulations.

Liability of Independent Directors: Vicarious Prosecution of Independent Director for cheque bounce by company to be quashed when he was not signatory of cheque and only general allegations made in complaint. December 19, 2022 High Court of Delhi *Prakash Chand* December 19, 2022.

Independent Directors liability check judgements: In absence of any specific role attributed against him for active participation in the day-to-day affairs of the company and taking all decisions of the company, where he is not signatory to cheque in question vicarious liability could not be fastened. High court of Delhi. 7.01.2020, *Har Sarup Bhasin vs. Origo Commodities India*.

LEAD INDEPENDENT DIRECTOR

Appointment of Lead Independent Director

Internationally, it is considered a good practice to designate an independent director as a lead independent director or senior independent director. The lead independent director is a highly versatile intermediary between the chair, the board and the board's stakeholders. The lead independent director must keep a keen eye on whether the chair is performing their role to the board's satisfaction without losing objectivity or independence. They monitor the relationship between the chair and the CEO, and ensure that it is a well-functioning working relationship without becoming too close or powerful. The lead independent director also coordinates the activities of other non-employee directors and advises the chairman on issues ranging from the schedule of board meetings to recommending retention of advisors and consultants to the management.

Role of the lead independent director

- Acts as the principal liaison between the independent directors of the Board and the Chairman of the Board;
- Develops the agenda for and preside at executive sessions of the Board's independent directors;
- Advises the Chairman of the Board as to an appropriate schedule for Board meetings, seeking to ensure that the independent directors can perform their duties responsibly while not interfering with the flow of Company operations;
- Approves with the Chairman of the Board the agenda for Board and Board Committee meetings and the need for special meetings of the Board;
- Advises the Chairman of the Board as to the quality, quantity and timeliness of the information submitted by the Company's management that is necessary or appropriate for the independent directors to effectively and responsibly perform their duties;
- Recommends to the Board the retention of advisors and consultants who report directly to the Board;
- Interviews, along with the chair of the Nominating and Corporate Governance Committee, all Board candidates, and make recommendations to the Nominating and Corporate Governance Committee;
- Assists the Board and Company officers in better ensuring compliance with and implementation of the Governance Guidelines;
- Serves as Chairman of the Board when the Chairman is not present; and
- Serves as a liaison for consultation and communication with shareholders.

INTERNATIONAL PERSPECTIVE

Recommendations of the UK Corporate Governance Code, 2024

- The Board should appoint one of the independent non-executive directors as the senior independent director to provide a sounding chair for the Board and serve as an intermediary for other directors and shareholders. Led by the senior independent director, the non-executive directors should meet without the Chair present at least annually to appraise the Chair's performance, and on other occasions as necessary.

Malaysian Code on Corporate Governance Code, 2021

Where the board appoints a Senior Independent Director (SID), the role of the SID should also be explained in the board charter. This may include the SID acting as–

- a sounding board for the Chairman;
- an intermediary for other directors when necessary; and
- the point of contact for shareholders and other stakeholders.

To ensure independency of the independent directors, the focus is not only on whether a director’s background and current activities qualify him or her as independent but also whether the director can act independently of management or not.

As chair of the Nominating Committee, the independent director or a Senior Independent Director shall–

- lead the succession planning and appointment of directors, and oversee the development of a diverse pipeline for board and management succession, including the future Chairman, Executive Directors and CEO; and
- lead the annual review of board effectiveness, ensuring that the performance of each individual director and Chairman of the board are independently assessed.

Italian Corporate Governance Code, 2020

Non-executive directors and/or independent directors, led by the independent Chairman or other independent director as appropriate, meet regularly without the presence of Management. The chairman of such meetings provides feedback to the Board and/or Chairman as appropriate.

The board of directors appoints an independent director as lead independent director:

- (a) if the chair of the board of directors is the chief executive officer or holds significant managerial powers;
- (b) if the office of chair is held by the person who controls, also jointly, the company;
- (c) in large companies, even in the absence of the conditions indicated in letter a) and b), if requested by the majority of independent directors.

The lead independent director:

- (a) collects and coordinates the requests and contributions of non-executive directors and, in particular, of independent ones;
- (b) coordinates the meetings of the independent directors.

Vietnamese Corporate Governance Code of Best Practices, 2019

Principle 3.5: The Board should designate a lead director among the independent directors if the Chairman of the Board is not independent, including if the positions of the Chairman of the Board and Chief Executive Officer (CEO) are held by one person.

Recommended Practices

A suggested mechanism is the appointment of a strong “lead director” among the independent directors and it is also recommended that boards are comprised of majority of independent directors where the Chairman is not independent.

This lead director has sufficient authority to lead the Board in cases where the remaining directors (including the dual Chairman-CEO) have clear conflicts of interest.

Compliances/declaration by Independent Director

Compliances required by a person eligible and willing to be appointed as an independent director – Rule 6

(1) Every individual –

- (a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall **within a period of thirteen months** from such commencement; or
- (b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

- (2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.

- (3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.
- (4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of Two years from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Provided that an individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank,-

- (A) as a director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-
 - (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 the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of 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
- (B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,—

- (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or
 - (ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.
- (C) in the pay scale of Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development Authority of India or the Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws :

Provided further that for the purpose of calculation of the period of three years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.

Provided also that the following individuals, who are or have been, for at least ten years :-

- (A) an advocate of a court; or
- (B) in practice as a chartered accountant; or
- (C) in practice as a cost accountant; or
- (D) in practice as a company secretary, shall not be required to pass the online proficiency self-assessment test.

Explanation: For the purposes of this rule,-

- (a) the expression “institute” means the ‘Indian Institute of Corporate Affairs at Manesar’ notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;
 - (b) an individual who has obtained a score of not less than fifty percent in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;
 - (c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.
- (5) Any individual whose name has been removed from the databank under sub-rule (4), may apply for restoration of his name on payment of fees of one thousand rupees and the institute shall allow such restoration subject to the following conditions, namely :-
- (i) his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank, only, if he passes the said online proficiency self-assessment test and in such case, the fees paid by him at the time of initial registration shall continue to be valid for the period for which the same was initially paid; and
 - (ii) in case he fails to pass the online proficiency self-assessment test within one year from the date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh under sub-rule (1) for inclusion of his name in the databank.

Declaration by Independent Director – Regulation 25(8)

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, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could

impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.

Regulation 25(9) provides that the board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.

Directors and Officers insurance for Independent Directors– Regulation 25 (10)

The top 1000 listed entities by market capitalization, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.

High Value Debt List Entity –Regulation 25(12)

A 'high value debt listed entity' shall undertake Directors and Officers insurance (D and O insurance) for all its independent directors for such sum assured and for such risks as may be determined by its board of directors.

Schedule IV of the Companies Act, 2013- Code for Independent Directors

I. Guidelines of professional conduct:

An independent director shall:

- (1) uphold ethical standards of integrity and probity;
- (2) act objectively and constructively while exercising his duties;
- (3) exercise his responsibilities in a bona fide manner in the interest of the company;
- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (9) assist the company in implementing the best corporate governance practices.

II. Role and functions:

The Independent Directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;

- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive Directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive Directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties :

The independent Directors shall—

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- (5) strive to attend the general meetings of the company;
- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
- (7) keep themselves well informed about the company and the external environment in which it operates;
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
- (10) 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;
- (11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law

BOARD EVALUATION

Review of performance of Non-independent Director

Regulation 25(4) of the SEBI (LODR) Regulations, 2015 states that the independent directors in the meeting referred in Regulation 25(3) shall, *inter alia*-

- (a) review the performance of non-independent directors and the board of directors as a whole;

- (b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors;
- (c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

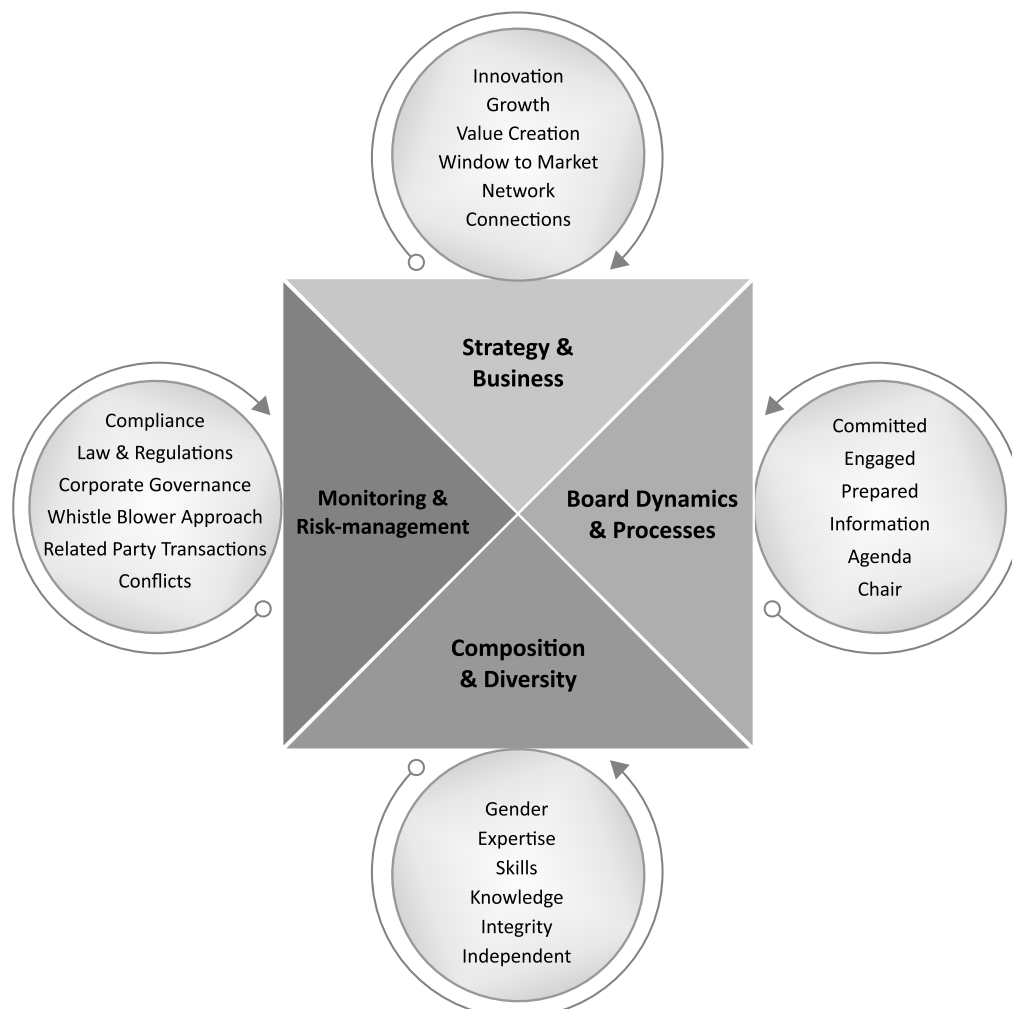
Evaluation mechanism:

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

Note: The provisions of sub-paragraph (2) and (7) of paragraph II, paragraph IV, paragraph V, clauses (a) and (b) of sub-paragraph (3) of paragraph VII and paragraph VIII shall not apply in the case of a Government company as defined under clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), if the requirements in respect of matters specified in these paragraphs are specified by the concerned Ministries or Departments of the Central Government or as the case may be, the State Government and such requirements are complied with by the Government companies.

Four dimensions to Board Evaluation by OECD

“Four Dimensions” of Board Evaluations –Board Evaluation-Overview of International practices by OECD



Board Evaluation (Under the Companies Act, 2013)

1. The Role of the Nominations and Remuneration Committee in performance evaluation of directors

Section 178 (2): The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

2. Independent Directors' role in performance evaluation of Boards, non-independent directors and Chairperson

Schedule IV [Part II (2)] : Independent directors are required to bring an objective view in the evaluation of the performance of board and management.

Schedule IV (Part VII) : The independent directors of the company shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting. The meeting shall:

- (a) review the performance of non-independent directors and the Board as a whole;
- (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
- (c) assess the quality, quantity and timeliness of flow of information between the company management and
- (d) the Board that is necessary for the Board to effectively and reasonably perform their duties.

3. Performance evaluation of Independent Directors

Schedule IV Part V: Re appointment - The reappointment of the independent directors would be based on their report of performance evaluation.

Schedule IV Part VIII : Evaluation mechanism - The performance of the independent directors would have to be done by the entire Board excluding the director to be evaluated. On the basis of the report of performance evaluation, the continuance or extension of the term of appointment of the independent director would be determined.

4. Inclusion of Performance evaluation in Board' Report

According to Rule 8 (4) of the Companies (Accounts) Rules, 2014 Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Board Evaluation (Under SEBI (LODR) Regulations, 2015)

It also requires Boards to conduct an annual performance evaluation and its disclosure in the annual report through the following provisions:

1. Regulation 4(2)(f)(ii) (9) states the Key functions of the board of directors which includes:

Monitoring and reviewing board of director's evaluation framework.

2. Regulation 17(10) mandates that evaluation of independent directors shall be done by the entire board of directors which shall include -

- (a) performance of the directors; and
- (b) fulfilment of the independent criteria as specified in these regulations and their independence from the management.

In the above evaluation process, the directors who are subject to evaluation shall not participate.

3. Regulation 19(4) read with Part D of Schedule II - It provides that the role of Nomination and Remuneration committee shall, inter-alia, include the following:

- (1) formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;

For every appointment of an independent director, the Nomination and Remuneration Committee shall evaluate the balance of skills, knowledge and experience on the Board and on the basis of such evaluation, prepare a description of the role and capabilities required of an independent director. The person recommended to the Board for appointment as an independent director shall have the capabilities identified in such description. For the purpose of identifying suitable candidates, the Committee may:

- a. use the services of an external agency, if required;
 - b. consider candidates from a wide range of backgrounds, having due regard to diversity; and
 - c. consider the time commitments of the candidates.
- (2) formulation of criteria for evaluation of performance of independent directors and the board of directors;
 - (3) devising a policy on diversity of board of directors;
 - (4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal;
 - (5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors;
 - (6) recommend to the board all remuneration, in whatever form, payable to senior management.

4. Disclosure on Performance evaluation criteria for independent directors has to be made under head Nomination and Remuneration Committee in the section on the corporate governance of the annual report.

Performance Evaluation of the Board and Management

Board evaluation is a key means by which boards can recognize and correct corporate governance problems and add real value to their organizations. A properly conducted board evaluation can contribute significantly to performance improvements on organisational; board and individual member level. Board evaluation typically examines the roles of the Board and the entailing responsibilities, and assesses how effectively these are fulfilled by the Board.

The stakeholders and investors are interested to know whether the members of Board are effectively functioning individually and collectively. The Board at many times requires new skills for promptly responding to the dynamic changing business environment. Performance measurement, against the set benchmarks, in the form of Board evaluation has the potential to significantly enhance Board effectiveness, maximize strengths, tackle

weaknesses and improve corporate relationships. Annual assessment is a powerful tool to convert good boards into great boards.

Evaluation provides the board and its committees with the opportunity to consider how group culture, cohesiveness, composition, leadership, meetings information processes and governance policies influence performance. Board Evaluation helps to identify areas for potential adjustment and provides an opportunity to remind directors of the importance of group dynamics and effective board and committee processes in fulfilling board and committee responsibilities.

Thus, Board evaluation contributes significantly to improved performance at three levels - organizational, Board and individual Board member level. It also improves the leadership, teamwork, accountability, decision-making, communication and efficiency of the board. A commitment to annual evaluation is powerful change agent.

The Board evaluation sets the standards of performance and improves the culture of collective action by Board. Evaluation also improves teamwork by creating better understating of Board dynamics, board-management relations and thinking as a group within the board. It helps to maximize board/ director contribution by encouraging participation in meetings and highlighting the skill gaps on the Board and those of individual members. Directors demonstrate commitment to improvement, based on the feedback provided on individual and collective skill gaps.

Rule 8(4) of the Companies (Accounts) Rules, 2014 provides that every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

The purposes of the Board evaluation may be enumerated as under:

- Improving the performance of Board towards corporate goals and objectives.
- Assessing the balance of skills, knowledge and experience on the Board.
- Identifying the areas of concern and areas to be focused for improvement.
- Identifying and creating awareness about the role of Directors individually and collectively as Board.
- Building Team work among Board members.
- Effective Coordination between Board and Management.
- Overall growth of the organisation.

Board Evaluation Framework and Parameters

Boards should understand the framework under which board and committee evaluations are conducted, and take steps to ensure evaluations are carried out effectively. As per the Companies Act 2013 or SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Board evaluation would generally include following:

1. Evaluation of the Board as a whole
2. Evaluation of the Committees
3. Evaluation of Individual Directors
 - Managing Director / Whole time Director / Executive Director
 - Independent Directors

- Non- executive Directors
4. Evaluation of the Chairperson.

Evaluation of the Board as a whole

The performance of the Board as a whole may be evaluated either from the reviews/ feedback of the directors themselves or by some external source. The Independent Directors at their separate meeting shall also assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties. The evaluation of the performance of the Boards is essentially an assessment of how the Board has performed on following parameters which determines the effectiveness of boards.

- **Board Structure** : its composition, constitution and diversity and that of its Committees, competencies of the members, Board and Committee charters, frequency of meetings, procedures;
- **Dynamics and Functioning of the Board** : annual Board calendar, information availability, interactions and communication with CEO and senior executives, Board agenda, cohesiveness and the quality of participation in Board meetings;
- **Business Strategy Governance**: Board's role in company strategy;
- **Financial Reporting Process, Internal Audit and Internal Controls**: The integrity and the robustness of the financial and other controls regarding abusive related party transactions, vigil mechanism and risk management;
- **Monitoring Role**: Monitoring of policies, strategy implementation and systems;
- Supporting and Advisory Role; and
- The Chairperson's Role.

Evaluation of the Committees

- The Board is responsible for the evaluation of the performance of the Committees of the Board. The performance of the committees may be evaluated by the Directors, on the basis of the terms of reference of the committee being evaluated. Alternatively, the evaluation may be externally facilitated.

The broad parameters of reviewing the performance of the Committees, inter alia, are:

- Discharge of its functions and duties as per its terms of reference;
- Process and procedures followed for discharging its functions;
- Effectiveness of suggestions and recommendations received;
- Size, structure and expertise of the Committee;
- Conduct of its meetings and procedures followed in this regard; and
- Recommendations made to the Board.

Evaluation of Individual Director(s)

(a) Evaluation of Managing Director / Whole time Director / Executive Director

The performance evaluation of Managing Director, Executive Director of the Company may be done by all the directors. External facilitation may also serve as an efficient tool for evaluation. The Code for Independent Directors also provides that Independent Directors should review the performance of non-independent

Directors, which include Managing Director / Whole time Director/Executive Director. The broad parameters for reviewing the performance of Managing Director/Executive Director are:

- Achievement of financial/business targets prescribed by the Board;
- Developing and managing / executing business plans, operational plans, risk management, and financial affairs of the organization;
- Display of leadership qualities i.e. correctly anticipating business trends, opportunities, and priorities affecting the Company's prosperity and operations;
- Development of policies, and strategic plans aligned with the vision and mission of Company; and
- which harmoniously balance the needs of shareholders, clients, employees, and other stakeholders;
- Establishment of an effective organization structure to ensure that there is management focus on key functions necessary for the organization to align with its mission; and Managing relationships with the Board, management team, regulators, bankers, industry representatives and other stakeholders.

(b) Evaluation of Independent Directors:

The performance evaluation of independent directors should be done by the entire Board of Directors, excluding the director being evaluated. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director. The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors. The company should disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report.

Major Factors for Evaluation

- The quality of the issues that get raised, discussed and debated at the meetings of the Board and its Committees.
- The guidance provided by the Board in the light of changing market conditions and their impact on the organisation.
- The methodology adopted by the Board to solve issues referred to them.
- The effectiveness of the directions provided by the Board on the issues discussed in meetings.

Parameters: In addition to the parameters laid down for Directors, which shall be common for evaluation to both Independent and Non- executive directors, an Independent director shall also be evaluated on the following parameters:

- Exercise of objective independent judgment in the best interest of Company;
- Ability to contribute to and monitor corporate governance practice; and
- Adherence to the code of conduct for independent directors;
- Performance of the Board against the benchmark performance set;
- Overall value addition by the discussions taking place at the Board meetings;
- The regularity and quality of participation in the deliberations of the Board and its Committees;
- The answerability of the top management to the Board on performance related matters.

(c) Evaluation of Non-Executive Directors

In terms of the Code for Independent Directors, the Independent director(s) on the Board of the Company should evaluate the performance of Non-independent director(s) which include nonexecutive director(s). Peer Review method or external evaluation may also facilitate the purpose of evaluating Non-executive directors. The broad parameters for reviewing the performance of Non-executive Directors are:

- Participation at the Board / Committee meetings;
- Commitment (including guidance provided to senior management outside of Board/ Committee meetings);
- Effective deployment of knowledge and expertise;
- Effective management of relationship with stakeholders;
- Integrity and maintaining of confidentiality;
- Independence of behaviour and judgment; and
- Impact and influence.

Evaluation of Chairperson of the Board

The performance of the Chairperson is linked to both the functioning of the Board as a whole as well as the performance of each director. The Code for Independent Directors provides that the Independent Directors should review the performance of the Chairperson of the company taking into account the views of the executive directors and non-executive directors.

Therefore, all the directors of the Board of the company thereof contribute in evaluating the performance of the Chairperson of the Board. External agencies may also be involved in evaluating the Chairperson.

The broad parameters for reviewing the performance of Chairperson of the Board are:

- Managing relationship with the members of the Board and management;
- Demonstration of leadership qualities;
- Relationship and communication within the Board;
- Providing ease of raising of issues and concerns by the Board members; and
- Promoting constructive debate and effective decision making at the board;
- Relationship and effectiveness of communication with the shareholders and other stakeholders;
- Promoting shareholder confidence in the Board and;
- Personal attributes i.e. Integrity, Honesty, Knowledge, etc.

INTERNATIONAL PERSPECTIVES – BOARD EVALUATION

1. Malaysia - Malaysian Code on Corporate Governance (2021)

Practice (6.1)

The board should undertake a formal and objective annual evaluation to determine the effectiveness of the board, its committees and each individual director. The board should disclose how the assessment was carried out its outcome, actions taken and how it has or will influence board composition.

For Large Companies, the board engages independent experts at least every three years, to facilitate objective and candid board evaluations

Guidance (G6.1)

G6.1 An objective and well-managed board evaluation process can lead to substantial improvement in board effectiveness, bringing significant benefits to the company. There are many ways in which board evaluations can be carried out such as through self-assessment, peer review, facilitated by the company secretary or an external facilitated independent board evaluation, with oversight of the entire process and methodology by the Nominating Committee. Given that every board is different and their needs, roles, priorities and capacities vary depending on the company's size and stage in its life cycle, a box-ticking approach to evaluation is ineffective and unacceptable.

Further board evaluations should not focus entirely on historical assessment of directors' performance but also include forward looking considerations, such as mapping current board competencies against those required, to drive the company's future strategies. The board evaluation should also help determine the upskilling or development needs of individual directors or the board, collectively.

A board evaluation which is periodically facilitated by a professional, experienced and independent party will lend greater objectivity to the assessment by providing an unbiased perspective on a director's performance and his ability to contribute effectively to the board.

The annual assessment on individual directors should include an evaluation of their:

- Will and ability to critically challenge and ask the right questions;
- Character and integrity in dealing with potential conflict of interest situations;
- Commitment to serve the company, due diligence and integrity; and
- Confidence to stand up for a point of view.

In disclosing the evaluation carried out on effectiveness of the board, its committees and individual directors, the Nominating Committee should disclose the following information in its CG Report:

- How the evaluation was conducted, the criteria used such as the assessment of fit and properness, contribution and performance, calibre and personality of directors;
- Whether an independent expert was engaged, or was it internally facilitated;
- Key strengths and/or weaknesses that were identified from the evaluation;
- Steps or enhancements proposed to be undertaken to mitigate or address the weaknesses identified; and
- impact of the evaluation on board composition (if any).

Sparse and/or vague disclosures on the evaluation methodology and outcomes should be avoided.

2. Italy - Italian Corporate Governance Code 2020**Principle (XIV)**

The board of directors periodically evaluates, through formalised procedures, its effectiveness and the contribution made by individual directors. The implementation of the board evaluation procedures is supervised by the board itself.

Recommendations (21 & 22)

21. The board evaluation assesses the size, composition and functioning of the board and its committees. It includes also the board's active involvement in the definition of the company's strategy and in the monitoring

of the management of the company's business as well as the appropriateness of the internal control and risk management system.

22. The board evaluation is conducted at least every three years, before the renewal of the board of directors.

In large companies other than those with concentrated ownership, the board evaluation is conducted on an annual basis and can be diversified according to the term of the board's mandate. In such companies, the board considers whether to appoint an external facilitator for its evaluation at least once every three years.

3. Finland - Finnish Corporate Governance Code 2025

Recommendation (13)

Performance Evaluation of the Board of Directors

The board of directors shall conduct an annual evaluation of its operations and working methods.

Rationale

Board work requires a considerable amount of work from the directors. In addition to attending the meetings, a significant part of board work consists of preparing for the meetings, committee work, familiarisation with the company's business operations and operating environment, and monitoring and assessing the operations of the company.

In order to ensure and improve the efficiency and continuity of its work, the board of directors shall make sure that its operations and working methods are evaluated regularly. The evaluation may be carried out in the form of an internal self-evaluation. Using an external evaluator at intervals and to the extent deemed necessary by the company may provide new and more objective perspectives.

The evaluation may focus on, for example, the composition of the board of directors, the organisation and effectiveness of the board of directors as a team, the meeting preparations, cooperation with the managing director, and the competence, special expertise, and efficiency of each director and the board of directors as a whole. The evaluation may also include an assessment on how successfully the board of directors has operated in relation to the set objectives. It may also be justified to conduct similar evaluations of the committees of the board of directors.

The company has a duty to ensure that the findings of such evaluations are provided, in confidence, to the body in charge of preparing the proposal for the composition of the board of directors as set forth in RECOMMENDATION 7 in so far as the findings may affect the planning of the preparation concerning the composition of the board of directors.

The company shall report the number of board meetings held during the financial period and the meeting attendance of each director.

4. Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

The primary responsibilities of the CGNR committee are to: Coordinate an annual evaluation of the Board, directors and committees.

Principle 5: Ensuring Effective Performance for Board

The best measure of the Board's effectiveness is through board assessment and remuneration process. The Board should regularly carry out evaluations to appraise its performance as a body, and assess whether it

possesses the right mix of backgrounds and competencies, in addition to having a motivated and transparent remuneration for board members.

Principle (5.1)

The Board should conduct an annual self-assessment of its performance, including the performance of the Chairman, individual members and committees. Every three years, the assessment should be supported by an external facilitator.

Recommended Practices (5.1.1, 5.1.2, 5.1.3 & 5.1.4)

5.1.1 Board assessment helps the directors to thoroughly review their performance and understand their roles and responsibilities.

5.1.2 The periodic review and assessment of the Board's performance as a body, the board committees, the individual directors, and the Chairman show how the afore-mentioned should perform their responsibilities effectively.

5.1.3 In addition, it provides a means to assess a director's attendance at board and committee meetings, participation in boardroom discussions and manner of voting on material issues.

5.1.4 The use of an external facilitator in the assessment process increases the objectivity of the same. The external facilitator can be any independent third party such as, but not limited to, a consulting firm, academic institution or professional organization.

Principle (5.2)

The Board should have in place a system that provides, at the minimum, criteria and process to determine the performance of the Board, the individual directors, and its committees. Such a system should allow for a feedback mechanism from the shareholders.

Recommended Practices (5.2.1, 5.2.2 & 5.2.3)

5.2.1 Disclosure of the criteria, process and collective results of the assessment ensures transparency and allows shareholders and stakeholders to determine if the directors are performing their responsibilities to the company.

5.2.2 Companies are given the discretion to determine the assessment criteria and process, which should be based on the mandates, functions, roles and responsibilities provided in the Board and Committee Charters.

5.2.3 In establishing the criteria, attention is given to the values, principles and skills required for the company. Normally, the Corporate Governance Nomination and Remuneration Committee (*Principle 4.3*) oversees the evaluation process.

5. UK Corporate Governance Code

- There should be a formal and rigorous annual evaluation of the performance of the Board, its committees, the chair and individual directors. The Chair should consider having a regular externally facilitated Board evaluation. In FTSE 350 companies this should happen at least every three years. The external evaluator should be identified in the annual report and a statement be made regarding any other connection it has with the company or individual directors.
- The annual report should describe how the Board evaluation has been conducted by the nomination committee, the nature and extent of an external evaluator's contact with the Board and individual directors, the outcomes and actions taken, and how it has or will influence Board composition.

The **ASX Corporate Governance Council Principles and Recommendations** provides that a listed entity should:

- have and disclose a process for periodically evaluating the performance of the Board, its committees and individual directors; and
- disclose for each reporting period, whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period.

King III recommended that an evaluation of the governing body, its committees and its individual members be conducted every year. To provide for sufficient time to appropriately respond to the results of such performance evaluations, the **King IV** Code recommends for a formal evaluation process to be conducted at least every two years. Every alternate year, the governing body should schedule an opportunity for consideration, reflection and discussion of its performance.

6. Code of Corporate Governance, the Monetary Authority of Singapore

Provides that there should be a formal annual assessment of the effectiveness of the Board as a whole and that of each of its Board committees and individual directors.

7. Corporate Governance Principles for US Listed Companies – 2017

5.7 Boards should disclose mechanisms to ensure there is appropriate board refreshment. Such mechanisms should include a regular and robust evaluation process, as well as an evaluation of policies relating to term limits and/or retirement ages.

Best Practices by Indian Corporates on Board Evaluation

Hindustan Unilever Limited

Company engages an Independent Consultant for review / development of the Board evaluation process.

Bharti Airtel Limited

To ensure confidentiality, the evaluation process for FY 2020-21 was facilitated online by a leading independent consulting firm. The consolidated reports on outcome were submitted by the consulting firm to the Board through the Company Secretary.

Tech Mahindra Limited

Board evaluation is done on the basis of various parameters. Gaps if any, identified in case of any particular director, are communicated to the concerned director by the Chairman of the Board.

AU Small Finance Bank Limited

The results of the evaluation of concerned individual director performance are recorded in evaluation format wherein the chairperson discusses the results individually with each director and identified gaps are communicated to concerned Director.

Mindtree Limited

The NRC and the Board of Directors have appointed an external Independent Agency to carry out the evaluation. The Chairperson of NRC circulates the individual director's evaluation report to the respective directors and discuss the same with them. The gaps and the findings are analyzed by Chairperson of NRC with Board Chairman and Vice Chairman and necessary actions are taken.

BOARD DIVERSITY

Board diversity matters but concentrating only on gender diversity may not be enough. Social diversity and professional diversity are both important for increasing the diversity of perspectives represented on the Board. Diversity should be looked at in different ways viz experience, age, ethnicity, gender, skills, expertise, demographics, etc.

Gender Diversity

India's attempts to diversify corporate Boards are limited to gender diversity. Gender diversity across Boards and an enhanced representation of women in executive positions continues to require further attention.

As per Credit Suisse Research Institute, female representation on Boards of large Indian companies has increased by 5.9 percentage points from 11.4 per cent in 2015 to 17.3 per cent in 2021. However, it is still significantly below the global average.

INTERNATIONAL PERSPECTIVE- GENDER DIVERSITY

1. Malaysia - Malaysian Code on Corporate Governance (2021)

All boards should comprise at least 30% women directors. Numerous studies have proven the business case for board diversity, in particular the participation of women on boards. If the composition of women on a board is less than 30%, the board should disclose the action it has or will be taking to achieve 30% or more and the timeframe to achieve this. A reasonable timeframe is one that is three years or less.

The board should also review the participation of women in senior management to ensure there is a healthy talent pipeline.

The participation of women in decision-making positions should not be focused on board positions alone but should be broadened to include members of senior management as the same benefits apply. Thus, the board should establish gender diversity policies to support the participation of women on the board as well as senior management.

The SC's review of corporate governance disclosures shows that gender diversity policies and disclosures relating thereto remain poor and vague. Boilerplate and generic statements are often used to describe the board's approach on diversity. Disclosing aspirational statements such as 'achieving a culture of inclusivity', while worthwhile, are unlikely to be effective in improving gender diversity unless they are supported by concrete action numerical targets and a mechanism to track performance against these targets.

2. Singapore - Singapore Code of Corporate Governance 2018

Principle (2)

There is a clear division of responsibilities between the leadership of the Board and Management, and no one individual has unfettered powers of decision-making.

Provisions (2.2, 2.3, & 2.4)

- 2.2 Independent directors make up a majority of the Board where the Chairman is not independent .
- 2.3 Non-executive directors make up a majority of the Board.
- 2.4 The Board and board committees are of an appropriate size, and comprise directors who as a group provide the appropriate balance and mix of skills, knowledge, experience, and other

aspects of diversity such as gender and age, so as to avoid groupthink and foster constructive debate. The board diversity policy and progress made towards implementing the board diversity policy, including objectives, are disclosed in the company's annual report.

3. Italy - Italian Corporate Governance Code 2020

Principle (VII)

The company applies diversity criteria, including gender ones, to the composition of the board of directors, ensuring the primary objective of adequate competence and professionalism of its members.

Recommendation (8)

8. The company defines the diversity criteria for the composition of the board of directors and the control body and identifies the most suitable tool for their implementation, taking into account its ownership structures.

At least a third of the board of directors and the control body, where the latter is autonomous, is to be comprised of members of the less represented gender.

Companies adopt measures to promote equal treatment and opportunities among genders within the entire organisation, monitoring their specific implementation.

4. Finland - Finnish Corporate Governance Code 2025

Recommendation (9)

Diversity of the Board of Directors

The company shall define and report principles concerning the diversity of the board of directors.

Rationale

Diversity of the board of directors supports the company's business operations and development. Diversity of the know-how, experience, and opinions of the directors promotes the ability to have an open-minded approach to innovative ideas and also the ability to support and challenge the company's operative management. Adequate diversity promotes open discussion and independent decision-making. Diversity also promotes good corporate governance, efficient supervision of the company's directors and executives, as well as succession planning.

The company shall define the diversity principles for its own purposes, taking into account the scale of its business operations and the requirements of its development stage. Factors to be taken into account when defining the diversity principles may include, for example, age and gender as well as occupational, educational, and international background. The company shall decide the matters to be incorporated into its diversity principles and the objectives included therein on the basis of its own circumstances.

The preparation of diversity principles is carried out in a manner chosen by the company and can be assigned, for example, to the nomination committee or the shareholders' nomination board. Decisions on the election of directors shall be made in the general meeting.

The company can decide the extent in which the diversity principles are reported. However, the information reported shall always include at least the objectives relating to both genders being represented in the company's board of directors, the means to achieve the objectives, and an account of the progress in achieving the objectives.

The diversity principles are also applied to a possible supervisory board.

5. Germany - German Corporate Governance Code

Principle (3)

The Management Board stipulates target values for the share of women in the two management levels below the Management Board.

Recommendation (A.2)

- A.2 When making appointments to executive positions, the Management Boards shall consider diversity.

Principle (10 & 11)

The Supervisory Board consists of shareholder representatives, and of employee representatives, if applicable. Shareholder representatives are usually elected by the General Meeting. The applicable co-determination acts stipulate – depending on the number of employees and the respective industry sector – if and how many Supervisory Board members must be elected by employees. Shareholder representatives and employee representatives are obliged in equal measure to act in the best interests of the enterprise.

The composition of the Supervisory Board has to ensure that its members collectively possess the knowledge, skills and professional expertise required to properly perform their duties; furthermore, the legal gender quota must be considered.

Recommendations (C.1, C.2 and C.3)

- C.1 The Supervisory Board shall determine specific objectives regarding its composition, and shall prepare a profile of skills and expertise for the entire Board while taking the principle of diversity into account. The Supervisory Board's skills and expertise profile shall also comprise expertise regarding sustainability issues relevant to the enterprise. Proposals by the Supervisory Board to the General Meeting shall take these objectives into account, while simultaneously aiming at fulfilling the overall profile of required skills and expertise of the Supervisory Board. The implementation status shall be disclosed in the form of a qualification matrix in the Corporate Governance Statement. This statement shall also provide information about what the shareholder representatives on the Supervisory Board regard as the appropriate number of independent Supervisory Board members representing shareholders, and the names of these members.
- C.2 An age limit shall be specified for members of the Supervisory Board and disclosed in the Corporate Governance Statement.
- C.3 The term of Supervisory Board membership shall be disclosed.

6. Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

Principle (2.1)

Collectively, the Board should possess a diversified and broad range of views, expertise, skills, and competencies, sufficient to provide effective stewardship and oversight of the company.

Recommended Practices (2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.1.6, 2.1.7 & 2.1.8)

- 2.1.1 Board diversity is crucial because it allows the company to take advantage of a plurality of arguments and of a richer and more reliable decision-making process.
- 2.1.2 The composition of the board of directors must consider diversity of knowledge, experiences, behaviours, cultural aspects, age and gender.

- 2.1.3 The Board must ensure that the executive management defines and promotes policies that provide equal opportunities for women to access high leadership positions within the organization.
- 2.1.4 The Board should develop Board skills matrix with a description of the role and capabilities required for Board appointments, including factors such as independence, diversity, age, gender, future succession planning, integrity, skills, expertise, breadth of experience, knowledge about the company's business and industry, and willingness to devote adequate time and effort to Board responsibilities in the context of the existing composition and needs of the Board and its committees.
- 2.1.5 The Board, with assistance of nomination committee, should select and recommend director nominees for election by shareholders. The nomination committee of the Board should oversee the development and implementation of the formal board nomination process. The Board should disclose the process in appointing new directors, and the criteria used to select new directors.
- 2.1.6 All shareholders should have the opportunity to nominate candidates to the Board of Directors. The shareholders owning at least 5 (five) percent of company's shares should be provided with a right to propose nominees. The shareholders owning less than 5 (five) percent of company's voting shares should be provided with the opportunity to propose nominees. The deadlines for nominee director proposals, procedures for considering them and including into the agenda should be determined in the Board charter.
- 2.1.7 An odd number of Board members between five and eleven is recommended. This number may vary according to the company's industry, size, complexity, as well as where it is in its life cycle, and whether what committees need to be created.
- 2.1.8 The Board should aim to have at least two female members or 30% of female directors to optimize the benefits of gender diversity on board.

Board Diversity Approach of Regulatory / Other Organizations

On August 6, 2021, the **U.S Securities and Exchange Commission (SEC)** approved a proposal by the Nasdaq Stock Market LLC (Nasdaq), which aims to enhance the corporate Board diversity for Nasdaq-listed companies. This particular measure does not restrict itself to the representation of women in the Boardroom but goes one step further to include at least one director who self-identifies as an under-represented minority or LGBTQ+. However, the proposal is a 'comply-or-explain' provision, requiring companies to provide an explanation if they fail to meet the criterion.

Corporate Governance Principles for US Listed Companies – 2017

5.1 Boards should be composed of directors having a mix of direct industry expertise and experience and skills relevant to the company's current and future strategy. In addition, a well-composed board should also embody and encourage diversity, including diversity of thought and background.

As per **Australian Institute of Company Directors**, composition of women on ASX 200 Boards (as on November 30, 2021) was 34.2%. Further, 41.8% of new appointments to ASX 200 Boards comprised of women and there are no Boards in the ASX 200 without women.

Exemplars of Board Diversity – Indian Scenario

1. Bharti Airtel Limited

- The Board has 3 Women Directors out of 11 Members.

- The Company has two Women Independent Directors.

2. HDFC Life Insurance Company Limited

The Board includes 3 Women Directors (female representation in the Board stands at 27%).

3. Tata Chemicals Limited

The Company has two Women Independent Directors.

4. Tech Mahindra Limited

The Company has three Women Independent Directors.

5. Mindtree Limited

The Company has two Women Independent Directors.

6. Rallis India Limited

The Company has two Women Independent Directors.

Data from Institutional Investor Advisory Services (IIAS) Study

- On 31 March 2022, the NIFTY-500 companies had 4,694 directorships, of which 827 (17.6%) were held by women.
- On 31 March 2022, 48.6% of the NIFTY-500 companies had two or more women directors on their boards. This is a rise from 45% on 31 March 2021, and 44% on 31 March 2020.
- On 31 March 2022, 159 of the NIFTY 500 companies had women representation in excess of 20% of board composition; this is a steady rise from and 146 companies on 31 March 2021 and 139 companies on 31 March 2020.
- PSUs continue to fare poorly on gender diversity, given that several of them do not comply with board composition norms prescribed by regulations.
- A closer look at the board composition of the NIFTY-500 index suggests several companies voluntarily aim to build a diverse board, beyond the regulatory requirements.
- Women are now getting a say on board composition and executive remuneration.
- Women chair the board of 22 of the NIFTY 500 companies
- 25 women are CEOs and another 62 hold executive directorships
- Women now chair one in five NRCs and CSR Committees, and one in ten audit committees.
- In aggregate, the NIFTY-500 companies have 2960 committees, for an average of 5.9 committee for each entity. 442 (14.9%) of these are chaired by women and the remainder 2518 by men.
- The average age for women is 58.7 years (56.0 years in 2020) and that of their male colleagues is 62.3 years (61.0) showing that this age gap is slowly narrowing.

IIAS Report 2023

Women held about 18% of board seats in the BSE 100 on 31 December 2022, of which about 13.6% were held as Independent Directors. While Corporate India has used the regulatory push to increase the number of women on boards, the count has stagnated over the past 24 months.

The conversation for gender diversity needs to change – it is no longer about having one woman on the board, but it must be seen as a share of the board size. In India, board sizes range between 9 and 10 members (median) and having one woman on the board automatically means 10% of the board. For the full effect of gender diversity, it is believed that women must comprise at least 30% of the board. On 31 December 2022, the median board representation of women in the BSE100 was a little over 16%.

Diversities driving Board Diversity

(i) Ethnic Diversity

The discussion that gender and ethnic diversity will improve the key Board role of oversight or monitoring of executive management has been made in many quarters. In contrast to gender diversity, there is a paucity of such knowledge on racial and ethnic diversity.

With the aim of improving the availability of clear, reliable and easily comparable information on the diversity of Boards, the Financial Conduct Authority (FCA) is proposing to amend the Listing Rules to require that in- scope entities publish, in their annual report and accounts:

- a “comply or explain statement” on whether they have achieved the following targets as at a specific reference date;
- at least 40% of the Board are women (including individuals self- identifying as women);
- at least one of the senior Board positions (Chair, CEO, SID or CFO) is held by a woman (including individuals self-identifying as women); and
- at least one member of the Board is from a non-White ethnic minority background (as categorised by the ONS); and
- in a tabular format, numerical data on the gender and ethnic diversity of their Board, senior Board positions (Chair, CEO, SID and CFO) and most senior level of executive management.

International Perspective

In response to low ethnic Board diversity in the UK, the Parker Review Committee recommended that each Financial Times Stock Exchange (FTSE) 100 Board should have at least one minority director by 2021.

Observations of Parker Committee Review Report:

- 74 FTSE 100 companies had ethnic representation on their Boards (Nov 2020), compared to 52 in January 2020.
- 21 FTSE 100 companies had no ethnic representation on their Boards (Nov 2020) (Plus, three no responses and two unable to provide information).
- By March 2021, a further seven FTSE 100 companies reported that they had appointed a director from a minority ethnic group, showing there is still time to act to meet the ‘One by 2021’ target.
- FTSE 250 companies will be surveyed by the end of 2021 and have until 2024 to appoint at least one ethnic minority director on their Boards.

(ii) Competency Diversity

SEBI (LODR) Regulations, 2015 with the objective of improving transparency have widened the perspective of Board diversity by adding skill diversity as an element of Board composition. As per Schedule V of the SEBI

(LODR) Regulations, 2015 every listed entity should disclose in its annual report, a chart or a matrix setting out the skills/expertise/competence of the Board of directors, specifying:

- (a) list of core skills/expertise/competencies identified by the Board of directors as required in the context of its business(es) and sector(s) for it to function effectively, and those actually available with the Board, with effect from financial year ended March 31, 2019; and
- (b) names of directors who have such skills/expertise/competence, with effect from financial year ended March 31, 2020.

Building the right Board requires an understanding of director competencies which involves consideration of the directors' experience, skills, attributes and capabilities. Director competencies encompass two distinct areas: Technical Competencies and Behavioural Competencies.

Technical Competencies	<ul style="list-style-type: none"> (i) Accounting and Legal Skills. (ii) Industry Knowledge. (iii) Experience in Strategic Planning and Corporate Governance.
Behavioral Competencies	<ul style="list-style-type: none"> (i) Ability to positively influence people and situations. (ii) Ability to assimilate and synthesise complex information. (iii) Time availability. (iv) Honesty and Integrity. (v) High Ethical Standards.

International Perspective

As per **UK Guidance on Board Effectiveness** the skill matrices that map the existing skillset against that required to execute strategy and meet future challenges can be an effective way of identifying skills gaps. They are a useful tool for role evaluation and succession planning.

The **Corporate Governance Principles and Recommendations by ASX Corporate Governance Council** recommends that a listed entity should have and disclose a Board skills matrix setting out the mix of skills that the Board currently has or is looking to achieve in its membership. A Board "Skills Matrix" is a tool that can help the Board identify any gaps in its collective skills that should be addressed by providing professional development to existing directors or taking on new directors. It can also assist the Board in its succession planning.

DUTIES / RESPONSIBILITIES / LIABILITIES OF DIRECTORS

Duties of Directors

Section 166 provides that -

- (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.
- (2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

- (3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- (4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- (5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- (6) A director of a company shall not assign his office and any assignment so made shall be void.
- (7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

DIRECTOR RESPONSIBILITIES

Director to Intimate Director Identification Number – Section 156

Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

Number of Directorship – Section 165

Maximum number of directorship – Section 165(1)

No person, after the commencement of this Act, shall hold office as a director, including any alternate Directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation I – 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.

Explanation II – For reckoning the limit of Directorships of twenty companies, the Directorship in a dormant company shall not be included.

Reduction in number of directorship – Section 165(2)

Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as Directors.

Surrender of directorship in excess of permissible numbers -Section 165(3)

Any person holding office as director in companies more than the limits as specified in sub-section (1), immediately before the commencement of this Act shall, within a period of one year from such commencement,—

- (a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director;
- (b) resign his office as director in the other remaining companies; and
- (c) intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.

Effect of despatch of resignation letter by the director – Section 165(4)

Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned.

After despatch of resignation letter, number of directorship to be kept within permissible limits– Section 165(5)

No such person shall act as director in more than the specified number of companies,—

- (a) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (b) of sub-section (3); or
- (b) after the expiry of one year from the commencement of this Act, whichever is earlier.

Penalty for exceeding the number of directorship – Section 165(6)

If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.

Disclosure of Interest by Director – Section 184**Disclosure of interest by new director at first meeting of the board and thereafter at the first meeting of board in every financial year – Section 184(1)**

Every 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 disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

Disclosure of interest by director at board meeting in which he is interested – Section 184(2)

Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

- (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

Non-disclosure of interest by the director at board meeting in which he is interested - Section 184(3)

A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, **shall be voidable at the option of the company.**

Penalty for non-disclosure of interest – Section 184(4)

If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be liable to a penalty of one lakh rupees.

Interest of Director in any contract – Section 185 (5)

Nothing in this section—

- (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
- (b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the Directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

VACATION OF OFFICE OF DIRECTOR**Vacation of office of director - Section 167(1)**

The office of a director shall become vacant in case—

- (a) he incurs any of the disqualifications specified in section 164;
 Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.
- (b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- (c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- (d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
- (e) he becomes disqualified by an order of a court or the Tribunal;
- (f) he is 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:

Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)-

- (i) for thirty days from the date of conviction or order of disqualification;
- (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
- (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.
- (g) he is removed in pursuance of the provisions of this Act;
- (h) he, having been appointed a director by virtue of his holding any office or other employment in the

holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

17.2. Occupying the office of director when knowing its vacant -Section 167(2)

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Filling up of the vacant position of director -Section 167(3)

Where all the Directors of a company vacate their offices under any of the disqualifications specified in subsection (1), the promoter or, in his absence, the Central Government shall appoint the required number of Directors who shall hold office till the Directors are appointed by the company in the general meeting.

Private company may provide other grounds - Section 167(4)

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

ROLE/DUTIES RESPONSIBILITY – INTERNATIONAL PERSPECTIVE

Malaysia - Malaysian Code on Corporate Governance (2021)

All directors should objectively discharge their duties and responsibilities at all times as fiduciaries in the interests of the company. All directors must act with integrity, lead by example, keep abreast of his responsibilities as a director and of the conduct, business activities and development of the company.

Italy - Italian Corporate Governance Code 2020

- I. The board of directors leads the company by pursuing its sustainable success.
- II. The board of directors defines the strategies of the company and the group it heads in accordance with principle I and monitors its implementation.
- III. The board of directors defines the corporate governance system that is most functional for carrying out the company's business and pursuing its strategies, taking into account the flexibility offered by the legal framework. If necessary, the board of directors evaluates and promotes the appropriate changes and submit them to the shareholders' meeting when such changes are necessarily subject to the shareholders' vote.
- IV. The board of directors promotes dialogue with shareholders and other stakeholders which are relevant for the company, in the most appropriate way.

Recommendations

1. The board of directors:

- a) reviews and approves the business plan of the company and the group it heads, also on the basis of matters that are relevant for the long-term value generation. That analysis is carried out with the possible support of a committee whose composition and functions are defined by the board of directors;
- b) periodically monitors the implementation of the business plan and assesses the general course of the business, comparing the results achieved with those planned;

- c) defines the nature and level of risk compatible with the company's strategic objectives, including all the elements that can be relevant for the company's sustainable success;
- d) defines the corporate governance system of the company and the structure of the group it heads, and assesses the adequacy of the company's organisational, administrative and accounting structure and of its strategically important subsidiaries, with particular reference to the internal control and risk management system;
- e) approves transactions of the company and its subsidiaries that have a significant impact on the company's strategies, profitability, assets and liabilities or financial position; to this end, it establishes the general criteria for identifying significant transactions;
- f) on proposal of the chair in agreement with the chief executive officer, adopts a procedure for the internal and external management of documents and information concerning the company, with particular reference to inside information, in order to ensure the correct management of corporate information.

2. If deemed necessary for the effectiveness of the company's corporate governance system, the board of directors develops specific proposals to be submitted to the shareholders' meeting on the following issues:

- a) choice and characteristics of the corporate model (traditional, "one-tier", "two-tier");
- b) size, composition and appointment of the board of directors and term of office of its members;
- c) structure of the shares' administrative and property rights,
- d) percentages established for the exercise of the prerogatives set up to safeguard minority shareholders.

In particular, if the board of directors intends to propose to the shareholders' meeting the introduction of increased voting rights (so-called "voto maggiorato"), it provides adequate reasons in the report that will be submitted to the shareholders prior to their annual meeting. The report indicates the expected effects on the company's ownership and control structure and its future strategies. In the same report, the board discloses the decision-making process followed for the definition of such a proposal and any dissenting opinions voiced within the board.

3. Upon proposal of the chair in agreement with the chief executive officer, the board of directors adopts and describes in the corporate governance report a policy for managing dialogue with the generality of shareholders, taking into account the engagement policies adopted by institutional investors and asset managers.

The chair ensures that the board of directors is in any case informed, within the first suitable meeting, of the development and the significant contents of the dialogue that has taken place with all the shareholders.

The board of directors defines the rules and procedures for its functioning, ensuring an efficient flow of information to directors.

The board of directors ensures an adequate division of its functions and establishes board committees with preliminary, propositional and consultative functions.

The board of directors appoints an independent director as lead independent director:

- a) if the chair of the board of directors is the chief executive officer or holds significant managerial powers;
- b) if the office of chair is held by the person who controls, also jointly, the company;
- c) in large companies, even in the absence of the conditions indicated in letter a) and b), if requested by the majority of independent directors.

The board of directors sets up internal committees with preliminary, propositional and consultative functions regarding appointments, remuneration and control and risks. These functions can be either assigned to the three board committees recommended by the Code or distributed in a different manner or even combined in a single committee. In any case, the company ensures an adequate disclosure on the tasks and activities carried out by each of the assigned functions, as well as an adequate composition of each committee.

The functions of one or more committees can even be assigned to the board of directors, under the coordination of the chair.

The board of directors defines the tasks of the committees and their composition, favouring the competence and experience of their members and avoiding, in large companies, an excessive concentration of offices.

Each committee is coordinated by a chair who informs the board of directors about the committee's activities at the first useful board meeting.

The chair of the committee may invite the chair of the board of directors, the chief executive officer, the other directors and, by informing the chief executive officer, the managers of the corporate functions that are competent on the matters of the committee meeting, to individual committee's meetings. The members of the control body can attend the meetings of each committee.

Board committees can have access to the information and the corporate functions that are necessary for the performance of their duties. Board committees have adequate financial resources and can avail themselves of external consultants according to the conditions set forth by the board of directors.

The board of directors, upon proposal of the chair, provides for the appointment and dismissal of the board secretary and defines his or her professional requirements and attributes in the board's internal rules.

The board secretary supports the activities of the chair and provides impartial assistance and advice to the board of directors on all aspects relevant to the proper functioning of the corporate governance system.

In companies other than those with concentrated ownership, the board of directors:

- sets forth guidelines on board composition deemed optimal before its renewal, considering the outcome of the board evaluation;
- requires anyone submitting a slate with a number of candidates that is higher than half the number of members to be elected to provide adequate information on the compliance of the slate with the board guidelines mentioned above, and with the board diversity criteria set forth in principle VII and recommendation 8. In such cases, the slate also identifies its candidate for the chairmanship of the board, whose appointment is conducted according to the company's bylaws. All the information mentioned in this paragraph are disclosed in the documentation attached to the slate during its filing process.

In large companies, the board of directors:

- elaborates, with the support of the nomination committee, a plan for the succession of the chief executive officer and executive directors by identifying, at least, the procedures to be followed in the event of an early termination of office;
- ascertains the existence of appropriate procedures for the succession of the top management.

Finland - Finnish Corporate Governance Code, 2025

The board of directors shall see to the administration of the company and the appropriate organisation of its operations. The board of directors consists of directors appointed by the general meeting. The number of directors depends on the provisions of the company's articles of association and the general meeting's decisions and varies from one company to another. The boards of directors of Finnish listed companies usually consist of

three to ten directors. The boards of directors of a majority of Finnish listed companies consist exclusively of directors who are not members of the company's operative management (non-executive directors).

The board of directors has an extensive general competence. The competence of the board of directors generally covers all matters that are not within the general meeting's powers or part of the general competence of the managing director. It is the duty of the board of directors to ensure that the company is duly organised and that the board of directors is kept up to date with the development of the company's circumstances and financial situation. The board of directors is responsible for the appropriate arrangement of the control of the company accounts and finances.

The most essential tasks of the board of directors include appointing and discharging the managing director, deciding on the terms of the managing director's contract, such as the remuneration within the framework of the valid remuneration policy presented to the general meeting, as well as defining the company's strategy and monitoring its implementation. Furthermore, the most important business decisions, such as mergers and acquisitions, major contracts, investments, and financing arrangements fall under the general competence of the board of directors.

The Limited Liability Companies Act does not contain detailed provisions on the role of the chair of the board of directors, and the duties of chair of the board of directors can therefore vary from one company to another. The chair is responsible for ensuring that the board of directors convenes when necessary and that the decisions taken by the board of directors are documented. In other respects, the role or powers of the chair do not differ from those of the other directors under the Limited Liability Companies Act. In practice, however, the role of the chair of the board of directors is often considerably more extensive than that of the other directors in a listed company. The chair of the board of directors is responsible for the organisation of the work of the board of directors. The chair assists the managing director in his/her work and often represents the company in relation to important stakeholders. Depending on the company, the role of the chair can be particularly important, especially in strategically significant business transactions. The board of directors appoints the chair from amongst its members, unless the articles of association stipulate otherwise or a decision to the contrary is made when appointing the board of directors.

The board of directors can increase its efficiency by forming smaller compositions, committees, to take charge of certain specific tasks of the board of directors. The committees have no formal legal status or independent decision-making powers, and their role is to provide support in the preparation of the decision-making. The responsibility for the decisions remains with the board of directors even if the matter has been delegated to a committee. The most common committees in listed companies are the audit committee, remuneration committee, and nomination committee, which are discussed in more detail in the Recommendation Section III of the Corporate Governance Code. In addition, the board of directors can also set up ad-hoc committees, for example, for the purpose of preparing for a major business transaction or in the event of conflicts of interest.

The board of directors has the power to appoint and discharge the managing director, who shall see to the daily administration of the company in accordance with the instructions and orders given by the board of directors. In listed companies, the managing director is responsible for the company's operative activities. In addition to the daily administrative tasks, the decisions of the board of directors are often based on the managing director's proposals, and the managing director is also responsible for their implementation. In practice, it is the managing director who organises the company's operations, negotiates and concludes major business arrangements, and represents the company. Pursuant to the Limited Liability Companies Act, the managing director shall see to it that the accounts of the company are in compliance with the law and that its financial administration has been arranged in a reliable manner.

Vietnam - Vietnamese Corporate Governance Code of Best Practices, 2019

The functions of the lead director include, among others, the following:

- Serves as an intermediary between the Chairman and the other directors when necessary;
- Convenes and chairs meetings of the nonexecutive directors; and
- Contributes to the performance evaluation of the Chairman, as required.

Board members must perform their duties based on technical knowledge, with full objectivity and without the influence of any personal or professional relationships. They must create and preserve value for the organization as a whole, within the appropriate legal and ethical guidelines.

Board members who are conflicted on a particular matter must refrain from participating in the discussion and the decision on that specific issue. Board members who feel they can no longer maintain an appropriate level of objectivity in discharging their duties due to improper pressure or influence, should resign from the board if they cannot otherwise mitigate the issue.

Independent, non-conflicted directors should be identified and their duties with regard to RPTs formalized in a committee charter. These directors should support implementation of the RPT policy, review and (dis) approval processes and have close interactions with the internal audit function and the external auditor who provide RPT assurance.

The Board of Directors should establish an internal audit function that provides objective assurance and consulting activity designed to add value and improve an organization's operations.

RESIGNATION OF DIRECTOR

Resignation by director – Section 168(1)

A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of Directors laid in the immediately following general meeting by the company:

Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

Effective date of resignation – Section 168(2)

The resignation of a director shall take 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:

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

Appointment of director by promoter or Central Government – Section 168(3)

Where all the Directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of Directors who shall hold office till the Directors are appointed by the company in general meeting.

REMOVAL OF DIRECTORS**Removal of director - Section 169(1)**

A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of Directors according to the principle of proportional representation.

Special notice for removal / appointment - Section 169 (2)

A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

Copy of special notice to be sent to the director concerned - Section 169 (3)

On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

Representation of director - Section 169 (4)

Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

- (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
- (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company),

and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

Appointment of another director - Section 169 (5)

A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

Tenure of the new director appointed in lieu of outgoing director - Section 169 (6)

A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

Casual vacancy - Section 169 (7)

If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

Compensation to director - Section 169 (8)

Nothing in this section shall be taken—

- (a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or
- (b) as derogating from any power to remove a director under other provisions of this Act.

SEPARATION OF ROLE OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER

Chairman: Good boards are created by good chairmen. The chairman creates the conditions for overall board and individual director effectiveness. The chairman should demonstrate the highest standards of integrity and probity, and set clear expectations concerning the company's culture, values and behaviours, and the style and tone of board discussions. The chairman, with the help of the executive directors and the company secretary, sets the agenda for the board's deliberations.

The Companies Act, 2013 does not legally recognize chairman of a company. They are elected by the board to take the chair at a particular meeting. Boards are not bound to continue with the same chairman for successive meetings. In law, all directors have broadly equal responsibilities and chairmen are no more equal than any other board member.

Thus, under the law, chairman or chairperson is not legal position but a momentary position in meetings. The chairman is responsible for leadership of the board, ensuring its effectiveness on all aspects of its role and setting its agenda. The chairman is also responsible for ensuring that the directors receive accurate, timely and clear information. The chairman should ensure effective communication with shareholders.

The chairman's role includes:

- demonstrating ethical leadership;
- setting a board agenda which is primarily focused on strategy, performance, value creation and accountability, and ensuring that issues relevant to these areas are reserved for board decision;
- ensuring a timely flow of high-quality supporting information; regularly considering succession planning and the composition of the board etc.

Chief Executive Officer (CEO):

The Board appoints the CEO based on the criterion of his capability and competence to manage the company effectively. As per Section 2(18) of the Companies Act, 2013, "Chief Executive Officer" means an officer of a

company, who has been designated as such by it. His main responsibilities include developing and implementing high-level strategies, making major corporate decisions, managing the overall operations and resources of a company, and acting as the main point of communication between the board of directors and the corporate operations. He is involved with every aspect of the company's performance. The CEO is supported and advised by a skilled board and CEO is ultimately accountable to the board for his actions. The most important skill of a CEO is to think strategically.

Separation of Role: It is perceived that separating the roles of chairman and chief executive officer (CEO) increases the effectiveness of a company's board. It is the board's and chairman's job to monitor and evaluate a company's performance. A CEO, on the other hand, represents the management team. If the two roles are performed by the same person, then there is less accountability. A clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/CEO promotes balance of power.

The benefits of separation of roles of Chairman and CEO can be:

- *Director Communication:* A separate chairman provides a more effective channel for the board to express its views on management | Guidance: A separate chairman can provide the CEO with guidance and feedback on his/her performance.
- *Shareholders' interest:* The chairman can focus on shareholder interests, while the CEO manages the company.
- *Governance:* A separate chairman allows the board to more effectively fulfil its regulatory requirements.
- *Long-Term Outlook:* Separating the position allows the chairman to focus on the long-term strategy while the CEO focuses on short-term profitability.
- *Succession Planning:* A separate chairman can more effectively concentrate on corporate succession plans.

Provisions under Companies Act, 2013

First proviso to Section 203(1) of the Companies Act, 2013 provides for the separation of role of Chairman and Chief Executive Officer subject to conditions thereunder. It specifies that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) the articles of such a company provide otherwise;
- (b) the company does not carry multiple businesses.

This proviso does not apply to public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such businesses. For the purposes of this, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

According to the Report on 'Indian Boards: Structure and Breadth' by IIAS, as on December 31, 2020, 286 of the NIFTY 500 companies had Non-Executive Chairpersons, of which 249 companies had Chairpersons not related to the Managing Director or CEO of the company.

Further, as per the said report an area that needs attention is appointing women as Chairpersons of the Board. Only 21 companies out of the NIFTY 500 companies had a female Chairperson in 2020, despite the increase in women directorships over the years.

Chairperson Emeritus

There is a growing trend among Indian companies to appoint a Chairperson Emeritus. This title usually goes to the company's founders or an individual who has been in the company for a longish period and contributed significantly to its growth. The Chairperson Emeritus is not recognized in the Companies Act, but some are permanent invitees to the company's Board meeting without having the authority to vote at such meetings.

As per the Report on 'Indian Boards: Structure and Breadth' by liAS, as on December 31, 2020, 14 of the NIFTY 500 companies had a Chairperson Emeritus.

Chairman Emeritus as per Proxy Advisors Guidelines liAS

There is a steady increase in the number of individuals getting appointed as Chairpersons Emeritus. With the separation of the role of Chairperson and CEO, liAS expects these appointments to increase in the future. Taking this into consideration, liAS has, for the first time included a discussion on their appointment and compensation.

liAS expects a Chairperson Emeritus to play a mentorship role in the company and do not encourage them to be a part of the Board or any of the Board committees. Their being on the Board might result in two power centres and ambiguity regarding the chain of command.

SES

Certain companies designate a senior member who generally is an Ex- Director or former Chairman of their Board as 'Chairman Emeritus' which is a designation used to indicate respect for his contribution. However, in some cases, the person to be appointed as Chairman Emeritus is not a director on the Board, but he may be privy to the Board discussions. SES understands that while on one hand, his experience and knowledge will benefit the Company, since this is not a legally recognized position, there is no accountability on the person so appointed under the law. SES in such case will consider the appointment on case to case basis, based on the profile of the person who is proposed to be appointed so.

INTERNATIONAL PERSPECTIVE

Malaysia - Malaysian Code on Corporate Governance (2021)

Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

Practice (1.2, 1.3 & 1.4)

- 1.2 A Chairman of the board who is responsible for instilling good corporate governance practices, leadership and effectiveness of the board is appointed.
- 1.3 The positions of Chairman and Chief Executive Officer (CEO) are held by different individuals.
- 1.4 The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

Guidance (G1.2, G1.3, G1.4 & G1.6)

G1.2 Key responsibilities of the Chairman include–

- providing leadership for the board so that the board can perform its responsibilities effectively;

- leading the board in the adoption and implementation of good corporate governance practices in the company.
- setting the board agenda and ensuring that directors receive complete and accurate information in a timely manner;
- leading board meetings and discussions;
- encouraging active participation and allowing dissenting views to be freely expressed;
- managing the interface between board and management; and
- ensuring appropriate steps are taken to provide effective communication with stakeholders and that their views are communicated to the board as a whole.

Where the CEO or executive directors form part of the board, the non-executive directors are encouraged to meet among themselves at least annually to discuss among others strategic, governance and operational issues.

The SC has also found prolonged vacancy in the position of Chairman in several boards of listed companies, and for some, the chairperson of the board meeting is appointed at each meeting and the role is assumed by different directors. Such prolonged vacancy and inconsistency in the leadership of the board is against the principles of good corporate governance. The Chairman plays a critical role and one should be appointed to ensure there is accountability on the execution of the Chairman's role and the role of the board.

G1.3 Separation of the positions of the Chairman and CEO promotes accountability and facilitates the division of responsibilities between them. In this regard, no one individual can influence the board's discussions and decision-making. The responsibilities of the Chairman should include leading the board in its collective oversight of management, while the CEO focuses on the business and day-to-day management of the company. This division should be clearly defined in the board charter.

G1.4 Having the same person assume the positions of Chairman of the board, and Chairman of the Audit Committee, Nomination Committee or Remuneration Committee gives rise to the risk of self-review and may impair the objectivity of the Chairman and the board when deliberating on the observations and recommendations put forth by the board committees. Thus, the Chairman of the board should not be involved in these committees to ensure there is check and balance as well as objective review by the board.

G1.6 The Chairman should set the board meeting agenda, and ensure adequate time is allocated for discussion of issues tabled to the board for deliberation. Directors should receive information and materials required for the meeting at least five business days in advance of the board meeting. All directors should ensure that the minutes of meetings accurately reflect the deliberations and decisions of the board, including any dissenting views and if any director had abstained from voting or deliberating on a particular matter.

The Chairman should also ensure that board committee meetings are not combined with the main board meeting. It has come to the SC's attention that certain companies have convened both the board meeting and the audit committee meeting together and thereafter prepared the minutes separately to give the impression that the meetings were held at different times.

Board committee meetings should be conducted separately from the board meeting to enable objective and independent discussion during the meeting. Particularly the Audit Committee under the Listing Requirements, must comprise non-executive directors, majority of whom are independent. Further, to form a quorum of an Audit Committee meeting, the majority of members present must be independent directors. The latter requirement may not be met, if the Audit Committee meeting is combined with the main board meeting, where there may executive directors present.

Singapore - Singapore Code of Corporate Governance 2018

Principle (3)

There is a clear division of responsibilities between the leadership of the Board and Management, and no one individual has unfettered powers of decision-making.

Provisions (3.1,3.2 & 3.3)

- 3.1 The Chairman and the Chief Executive Officer (“CEO”) are separate persons to ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making.
- 3.2 The Board establishes and sets out in writing the division of responsibilities between the Chairman and the CEO.
- 3.3 The Board has a lead independent director to provide leadership in situations where the Chairman is conflicted, and especially when the Chairman is not independent. The lead independent director is available to shareholders where they have concerns and for which contact through the normal channels of communication with the Chairman or Management are inappropriate or inadequate.

Italy - Italian Corporate Governance Code 2020

Principle (X)

The chair of the board of directors plays a *liaison* role between executive and non-executive directors and ensures the effective functioning of the board.

Recommendations (12 & 34)

12. The chair of the board of directors, with the help of the board secretary, ensures that:
 - a) the pre-meeting information and the complementary information provided during the meeting are suitable to allow directors to act in an informed manner;
 - b) the activity of the board committees with preliminary, propositional and consultative functions is coordinated with the activity of the board of directors;
 - c) in agreement with the chief executive officer, the managers of the company and those of the companies of the group it heads, who are competent on the issues concerned, participate in the relevant board meetings to provide appropriate insights on the items on the agenda, also upon request of one or more directors;
 - d) all the members of the board of directors and control body can take part, after the appointment and during the mandate, in initiatives aimed at providing them with adequate knowledge of the industry in which the company operates, the company dynamics and their evolution, also in relation to the company’s sustainable success. Such initiatives also cover the risk management issues as well as any relevant part of the regulatory and self-regulatory framework;
 - e) to provide for the adequacy and transparency of the board review, with the support of the nomination committee.
34. The chief executive officer:
 - a) identifies the main business risks, considering the characteristics of the activities carried out by the company and its subsidiaries, and periodically submit them to the examination of the board of directors;

- b) implements the guidelines defined by the board of directors, providing for the design, implementation and management of the internal control and risk management system and constantly verifying its adequacy and effectiveness, as well as adapting it to the dynamics of the operating conditions and the legislative and regulatory landscape;
- c) can entrust the internal audit with the tasks of carrying out specific controls on defined operational areas and on compliance with internal rules and procedures in the implementation of company transactions. Such requests are contextually conveyed to the chair of the board of directors, to the chair of the control and risk committee and to the chair of the control body;
- d) reports promptly to the control and risk committee on problems and critical issues that emerged in the performance of his or her activity or of which he or she nevertheless has information so that the committee can take appropriate actions.

Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

The Board should designate a lead director among the independent directors if the Chairman of the Board is not independent, including if the positions of the Chairman of the Board and Chief Executive Officer (CEO) are held by one person.

The Chairman of the Board and the CEO are separate persons to ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making. It is also recommended that the Chairman is an independent director.

In cases where the Chairman is not independent and where the roles of Chair and CEO are combined, putting in place proper mechanisms ensures independent views and perspectives. More importantly, it avoids the abuse of power and authority, and potential conflict of interest.

A suggested mechanism is the appointment of a strong “lead director” among the independent directors and it is also recommended that boards are comprised of majority of independent directors where the Chairman is not independent.

This lead director has sufficient authority to lead the Board in cases where the remaining directors (including the dual Chairman-CEO) have clear conflicts of interest.

King III recommends that the Chairperson should be an independent non- executive director. The Chairperson should not also be the CEO. While the Chairperson is required to retain an objective viewpoint of the affairs of the company, the CEO is often required to become intimately involved in developing and executing management plans for the company.

As per **UK Corporate Governance Code, 2024** the roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company. If, exceptionally, this is proposed by the Board, major shareholders should be consulted ahead of appointment. The Board should set out its reasons to all shareholders at the time of the appointment and also publish these on the company website.

The **King report on Governance for South Africa 2009 (King III)** and the **UK Corporate Governance Code** require a clear division between the position and role of the Chairman and the CEO. In most instances it is a requirement that the chairman should be an independent director, and that the chairman should not also be the chief executive of the company.

International Corporate Governance Network (ICGN) also encourages a separation of the CEO/chair role. As a corollary, ICGN recognizes there are many cases in which the CEO and the chair may be a combined role,

and this is something that may get addressed by appointing a lead independent director to balance things out. So the principles advocate the presence of a lead independent director to complement the Board.

Corporate Governance Principles for US Listed Companies – 2017

- 4.2 There are two common structures for independent board leadership in the U.S.:
- 1) an independent chairperson; or
 - 2) a lead independent director. Some investor signatories believe that independent board leadership requires an independent chairperson, while others believe a credible independent lead director also achieves this objective.
- 4.3 The role of the independent board leader should be clearly defined and sufficiently robust to ensure effective and constructive leadership. The responsibilities of the independent board leader and the executive chairperson (if present) should be agreed upon by the board, clearly established in writing and disclosed to shareholders. Further, boards should periodically review the structure and explain how, in their view, the division of responsibilities between the two roles is intended to maintain the integrity of the oversight function of the board.

Role of Chairman – Insights from Deloitte’s Report on “Board Effectiveness and the Chair of The Future: Five Fundamental Forces that Define the Modern Chair’s Role” Published In 2022

This report presents the reality, aspirations, and advice expressed by more than 300 chairs. It was collated from Deloitte’s research into the chair of the future in Australia, Belgium, Canada, China, East Africa (Kenya and Uganda), Germany, India, Ireland, Italy, Japan, New Zealand, the Netherlands, South Africa, the United Kingdom, and the United States. These board chairs, who represent major listed companies and significant private, sometimes family-owned firms, provided their insight into fundamental questions such as: What will the “chair of the future” look like? What skills, capabilities, and experiences will be required to be a successful chair? And how should chairs oversee management as their organizations face these manifold challenges?

The report identifies five fundamental forces that define the modern Chair’s role:

- Organizational governance needs more chair input
- Society expects more from business
- Climate change forces business to respond
- Crisis leadership is becoming the norm
- Board operations call for digital enhancement and agility.

❖ Organizational governance needs more chair input

As traditional roles evolve, chairs can encourage new thinking and help foster innovation. Chairs should:

- Serve as stewards of the organization
- Help accelerate strategic initiatives
- Scan the horizon for risks
- Cultivate talent and culture
- Support and challenge the CEO.

❖ Society expects more from business

Chairs recognize they play a key role in driving the company-society relationship and effecting positive change through environmental, social, and governance (ESG) strategies and stakeholder engagement. As this responsibility deepens in the years to come, chairs should work harder to:

- Bring societal concerns to the board
- Drive stakeholder engagement
- Integrate ESG into business strategy
- Promote ESG-aligned performance frameworks
- Debate the profitability and sustainability equation.

❖ Climate change forces business to respond

All chairs agreed on the importance of educating the board on the climate challenge. This, of course, involves devoting time to reading and self-study, but chairs also find value in inviting climate specialists to the board to raise climate fluency levels. There's less consensus on whether boards should add a climate specialist or establish a specialist committee. For example, while threequarters of Italian chairs surveyed note their organization has an ESG committee, some chairs from other countries say the board should explore climate issues together. Regardless of structure, most chairs coalesced around these necessary tasks:

1. Encourage and if necessary 'cajole' management. The Chairman's role is to support, cajole, keep people honest, to give encouragement and to push through the right behaviours.
2. Connect Climate change to strategy. Chairs agreed they must help their companies understand that climate change is an integral part of business strategy. Climate change puts whole survival of the company at risk, yet many view a climate change strategy as a key business opportunity.
3. Bringing stakeholders along: Chairs of the future will likely become frontline climate ambassadors between company and its stakeholders.

❖ Crisis leadership is becoming the norm

To support agility, chairs say they are holding shorter but more frequent meetings and enabling members to attend virtually, to fit those additional meetings into their schedules. And they have also intensified the number and cadence of communications with the CEO and had greater access to the senior management team. Looking ahead, the chair of an organization based in India expects boards to resolve smaller issues by having more frequent virtual meetings. Chairs also emphasized their role in preparing their boards and companies for uncertain futures, for example, by leading discussions on scenario planning. Companies that managed to enable business continuity during the pandemic also took decisive measures to reconfigure their business models, accelerating digital transformation. And organizations that started their digital journey years earlier had an easier time pivoting.

❖ Board operations call for digital enhancement and agility

Chairs expect to capture what is effective from both options by adopting a hybrid model of virtual and in-person board meetings. For example, chairs may use virtual meetings to discuss ongoing board business, such as monitoring progress, financial reporting, and risks. In-person meetings, meanwhile, may be devoted to topics involving the direction of the organization, such as strategy, climate, and technology; important workforce matters such as diversity, equity, and inclusion; and executive pay. To make board and committee meetings as effective as possible, chairs are constantly exploring how prereads and other materials can be deployed to help streamline agendas. Whatever the mix ultimately looks like, chairs agreed they must strive to:

The report also highlighted the following eight Leading practices for being a Board Chair and five for becoming the Chair, assembled from the collective wisdom of the chairs who participated;

Leading practices for being a Board Chair

- Build relationships. Create bonds with the board, management, stakeholders, and, especially, with the CEO, while also maintaining the independence of thought.
- Prioritize for the long term. Don't sweat the small stuff. Understand and focus on what really matters.
- Understand the business. Chairs may struggle if they don't know the many facets of the business, its operations, people, competitive landscape, and culture.
- Lead on purpose and values. Chairs must make tough and, at times, unpopular decisions in the long-term interest of the reputation of their organizations.
- Be a learning leader. Confronted with many unknowns, chairs must be comfortable asking for help, continuing to learn and must lead a "learning board."
- Nurture a broader skill set. Technical skills matter, but so do emotional intelligence and the ability to draw out the best in others.
- Embrace diversity. Diversity in all its forms drives productive discussion and helps prevent groupthink.
- Be a good listener. Adding value to the organization requires listening to those around you, especially when opinions vary, to allow views to be fully explored before drawing a consensus.

Five Factors for becoming a Chair

- *Be careful not to overcommit.* Given the demands of serving as chair, think seriously about the number of board appointments you accept.
- *Be realistic.* This is a prestigious position, but one that carries great responsibility. Be prepared to roll up your sleeves and work hard.
- *Build your pathway.* Most chairs have held other board positions prior to taking the leadership role.
- *Manage the transition from CEO to chair.* If you have stepped up from CEO to chair, the transition, particularly of your mindset, can be challenging, especially for first-time chairs.
- *Find a mentor.* Chairs are willing to support each other. Find someone who has already experienced the challenges to help you embrace your first chair role with confidence.

Deloitte's "Chair of the future – India perspective" Published in September 2022

Thirty Five Chairs of Indian corporations with an almost equal mix of executive and non-executive Chairs were interviewed.

The Chairs that we interacted with, spoke about various factors that will impact and reshape how Boards of the future will look. Chairs believe that one of the biggest changes to Board governance over the next few years will be in Board composition. Boards of the future will be younger, non-traditional, diverse, and much more agile. Boards of the future will be designed on the basis of "what you know" and not "who do you know".

❖ Demand for digital understanding will shape Board compositions and operations

Boards of the future will demand that a majority, if not all, directors understand operations through a digital lens and also have a few specialist "digital directors" on the Board. Boards of the future will need to be digital native, just as the Boards currently are required to be finance literate.

❖ Supporters of the sustainability agenda

Sustainability and social issues are rising on the Board agenda, and the questions from shareholders on Environment, Social and Governance (ESG) matters are gaining prominence. Boards need to have a clear oversight on the notion of sustainability and long-term value creation. They should be able to ask questions around the organisation's ability to transition to lower carbon initiatives, the removal of waste from supply chains, the climate impact on and of the business, and its social and community impact across the value chain and supply systems, amongst others.

❖ Diversity continues to be a challenge

Designing a Board should be like multiple algorithms arranged together, so that you are able to address a wide array of problems and challenges. The Board must have multiple and diverse skills with people coming in from different backgrounds. It is extremely important to think through the competency of the people you need on the Board. Boards must be diverse in age, gender, knowledge, and background. We need to actively seek and place women on Boards, and not just to meet the regulatory mandate.

❖ Boards to get younger

It is important to listen to younger voices and challenge the status quo. To engage better with the youth, Board members should have an open state of mind and be in a position to relate with any age group.

❖ Performance and not personality driven Boards

Historically, Board positions were generally taken up by professionals from accounting and law backgrounds, and by ex-bureaucrats, academicians, and retired CXOs. The selection processes have been largely informal, relying on mutual connections and network of the leadership and/or the promoter group. Headhunting firms were not actively engaged in finding Board members. This is gradually changing, as Boards get a more contemporary makeover and new agenda items arise on the Board's table. Professional networks and skills, both within and outside the country, will need to be tapped into.

❖ Digital, data, cyber, and technology

The demand for digital skills on the Board is rising, apropos to the appearance of technology investments and digital strategy on the Board's agenda. Over the next decade, technology and digital will continue to keep a high mindshare on Boards, along with the rising risk factors around cyber and data security. Technology and data specific risk and compliance matters will find a permanent spot on the agendas for the future Boards.

❖ The elephant in the room gets a slot on the agenda - Environment, Social and Governance (ESG)

To tackle climate change, and other ESG issues, a long-term, outward looking focus will be required at the Board and executive level. This will expect Boards to look beyond the quarterly and annual performance and review the risks from a climate, environmental, and social standpoint, which may impact the sustainability of the organisation. Chairs will have to ensure that these subjects get the due attention of the Board, and the right questions are asked of the management on their ESG strategy.

❖ Risk and compliance will continue to keep their mindshare

Boards must move towards strategic risk management, aligned with the risk appetite of the organisation, while evaluating key business decisions. Boards will now be looking at mechanisms to provide early warning indicators towards emerging external, macro, and systemic risks. Crisis management and business continuity will emerge as topics that Boards of the future will be concerned about, as questions on business sustainability are raised.

❖ Future of work, workplace, and workforce

Workforce strategies such as maintaining employee health, wellness, and rights have become critical components of business strategies, and thus, are emerging to be crucial on the Board agenda. A focus on diversity across the workforce—and in the Boardroom—in addition to an inclusive culture, is critical for achieving equity as an outcome. Boards are constantly focussing on matters of diversity and inclusion at the organisational, executive, and the Board levels.

As per IAS report Titled “Corporate Governance Scores increasing Expectations” published in March 2023, the number of companies in the BSE 100 that have separated the two roles has only been increasing - from 57% in 2019 to 69% in 2022. Of these 69 companies, just 4 companies have Chairpersons that are related to the Executive Vice-Chairperson and / or the Managing Director.

Directors Training, Development and Familiarisation

The company concerned shall undertake training programme for its new Board members (Functional, Government, Nominee and Independent) in the business model of the company including risk profile of the business of company, responsibility of respective Directors and the manner in which such responsibilities are to be discharged. They shall also be imparted training on Corporate Governance, model code of business ethics and conduct applicable for the respective Directors.

Regulation 4(2)(f)(iii)(4) of SEBI (LODR) Regulations, 2015 states that the board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

BOARD EFFECTIVENESS AND THE ROLE OF COMPANY SECRETARY

A Company Secretary acts as a vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities. A Company Secretary is a close confidante of the board and commands confidence of individual directors so as to ensure that the culture of independence is promoted at the board and committee meetings and at the level of individual directors.

As per Section 2(24) of the Companies Act, 2013, “company secretary” or “secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

Under Section 2(60) of the Companies Act, 2013, the company secretary has also been included in the category of the officer of the company and shall be considered to be in default in complying with any provisions of the Companies Act, 2013.

Company Secretary:

- acts as a vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities
- plays a key role in ensuring that the Board procedures are followed and regularly reviewed
- provides the Board with guidance as to its duties, responsibilities and powers under various laws, rules and regulations
- acts as a compliance officer as well as an in-house legal counsel to advise the Board and the functional departments of the company on various corporate, business, economic and tax laws
- is an important member of the corporate management team and acts as conscience keeper of the company.

The Companies Act, 2013 confers a special status to Company Secretary as the key managerial personnel and has bracketed him along with Managing Director (MD) or Chief Executive Officer (CEO) or Manager, Whole-time director(s) and Chief Financial Officer (CFO).

According to Section 203(1) of the Companies Act, 2013, read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, it is mandatory for every listed company and every other public company having a paid up share capital of ten crore rupees or more to appoint a whole time Key Managerial Personnel (KMP) including a whole time Company Secretary. Also a company other than a company covered above which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary.

The company secretaries have also been empowered as secretarial auditors under section 204 of the Companies Act, 2013. The Company Secretaries are recognised as advisors to the Board on the affairs of the Company and all matters to ensure good Corporate Governance by the Companies Act itself. They are also required to guide the Board of its own role, responsibilities and duties.

Regulation 6(1) of SEBI (LODR) Regulations, 2015 also provides that every listed entity shall appoint a qualified company secretary as the compliance officer.

In order to enhance effectiveness of board functioning, the company secretary should report to the chairman on all board governance matters. The company secretary should ensure the presentation of high-quality information to the board and its committees. The company secretary can also add value by fulfilling, or procuring the fulfilment of, other requirements of the Code on behalf of the chairman, in particular director induction and development. This should be in a manner that is appropriate to the particular director, and which has the objective of enhancing that director's effectiveness in the board or board committees, consistent with the results of the board's evaluation processes. The chairman and the company secretary should periodically review whether the board and the company's other governance processes, for example board and committee evaluation, are fit for purpose, and consider any improvements or initiatives that could strengthen the governance of the company. The company secretary's effectiveness can be enhanced by his or her ability to build relationships of mutual trust with the chairman, the senior independent director and the non-executive directors, while maintaining the confidence of executive director colleagues.

INTERNATIONAL PERSPECTIVE

Malaysia - Malaysian Code on Corporate Governance (2021)

The responsibility of the company secretary has evolved from merely advising on administrative matters to advising boards on governance matters. The company secretary through the Chairman, plays an important role in good governance by helping the board and its committees function effectively and in accordance with their terms of reference and best practices.

The roles and responsibilities of a company secretary include, but are not limited to the following:

- Manage all board and committee meeting logistics, attend and record minutes of all board and committee meetings and facilitate board communications;
- Advise the board on its roles and responsibilities;
- Facilitate the orientation of new directors and assist in director training and development;
- Advise the board on corporate disclosures and compliance with company and securities regulations and listing requirements;
- Manage processes pertaining to the annual shareholder meeting;

- Monitor corporate governance developments and assist the board in applying corporate governance practices to meet the board's needs and stakeholders' expectations; and
- Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.

A suitably qualified company secretary possesses the knowledge and experience to carry out his functions. These may include knowledge in company and securities law, finance, governance and other areas of compliance such as the listing requirements. The company secretary should undertake continuous professional development.

Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

Corporate Secretary

Corporate Secretary - a senior management position in a public company. The corporate secretary plays an essential role in a company's governance and administration by providing critical support to enable the Board of Directors and other key governing bodies of the company to perform their duties and responsibilities. This position has a wide range of responsibilities that cover the four main areas: Governance, Advice, Communication and Compliance.

The Board shall appoint a professionally qualified Corporate Secretary who is accountable directly to the Board of Directors on all matters to do with the proper functioning of the Board.

Recommended Practices:

The modern Corporate Secretary is normally a senior management position of the company and is now expected to provide professional guidance to shareholders, boards, individual directors, management, and other stakeholders on the governance aspects of strategic decisions.

The Corporate Secretary typically would act as a bridge for information, communication, advice, and arbitration between the board and management. The Corporate Secretary would also act as a bridge between the company and its shareholders and stakeholders, however in big companies this is the job of an "investor relations officer".

The roles and responsibilities of a Corporate Secretary include, but are not limited to the following:

- a. Manage all board and committee meeting logistics, attend and record;
- b. Minutes of all board and committee meetings and facilitate board communications;
- c. Advise the board and board committees on its roles and responsibilities;
- d. Facilitate the orientation of new directors and assist in director training and development;
- e. Advise the board on corporate disclosures and compliance with company and securities regulations and listing requirements;
- f. Manage processes pertaining to the annual shareholder meeting;
- g. Monitor corporate governance developments and assist the board in applying governance practices to meet the board's needs and stakeholders' expectations; and
- h. Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.

To carry out his/her role effectively, a corporate secretary needs to act with the highest integrity and independence in protecting the interests of the company, its shareholders, and others with a legitimate interest in the company's affairs. This level of responsibility calls for a thorough knowledge of the business environment in which the company operates as well as of the laws, rules, and regulations that govern its activities. The

Corporate Secretary should undertake continuous professional development and maintain neutrality and objectivity in supporting the Board and relevant bodies in its work.

SUCCESSION PLANNING

With about 2/3rd of companies in the S&P BSE 500 index (considered as a broad-market index) classified as family-owned businesses, they form the largest chunk of companies in India. CEO succession is a sensitive and crucial topic in these companies where multiple generations of the family have managed the business in the past, and continue to do so even now. A large proportion of these companies are still family-run and have not separated ownership from management.

Succession planning is a strategy for identifying and developing future leaders. Succession plans are used to address the inevitable changes that occur when directors resign, retire or die. Attention to succession planning can help ensure the board includes directors with a balanced level of institutional knowledge and fresh perspectives.

A well-prepared board should develop a succession plan that provides guidance on identifying and sourcing potential board members who can fulfil key requirements. Succession planning is an ongoing process of identifying, assessing and developing people to ensure the continuity of the Board. It is most important that boards of directors are prepared for resignation and/or retirement of its members. The board should continually ensure that it has the right set of skills, talents, and attributes represented.

Succession planning for the Board includes succession and renewal for the Board as a whole and the Board's leadership positions. The key to getting succession planning right is maintaining an ongoing and dynamic process. The nomination and remuneration committee should review the skills required, identify the gaps, develop transparent appointment criteria and inform succession planning. The nomination and remuneration committee should periodically assess whether the desired outcome has been achieved, and propose changes to the process as necessary.

Executive directors may be recruited from external sources, but companies should also develop internal talent and capability. Initiatives might include middle management development programmes, facilitating engagement from time to time with non-executive directors, and partnering and mentoring schemes.

Some leading practices for board succession planning are:

- Using a skills matrix to proactively shape board composition that incorporates strategic direction and opportunities, regulatory and industry developments, challenges, and transformation
- Conducting robust annual performance evaluations, including facilitation by an independent third party
- Establishing and enhancing written director qualification standards that align with the company's business and corporate strategy, and including these standards in corporate governance policies and bylaws as appropriate
- Reviewing evolving committee and board leadership needs, including the time commitments required
- Considering director election results and engagement by investors regarding board composition, independence, leadership and diversity
- Prioritizing an independent mindset on boards, through board diversity, to foster debate, challenge norms and invigorate board oversight processes and strategy development
- Making sure mentoring and development opportunities are available for incoming directors.

Under Companies Act, 2013: There is no specific provision of succession planning under the Companies Act, 2013. It is usually included in terms of reference of Nomination and Remuneration Committee.

SEBI (LODR) Regulations, 2015: Regulation 4(2) (f)(ii)(3) of states that key functions of the board of directors are

Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.

INTERNATIONAL PERSPECTIVE

Malaysia - Malaysian Code on Corporate Governance (2021)

As chair of the Nominating Committee, the independent director or a Senior Independent Director shall lead the succession planning and appointment of directors, and oversee the development of a diverse pipeline for board and management succession, including the future Chairman, Executive Directors and CEO.

Singapore - Singapore Code of Corporate Governance 2018

Provision (4.1)

4.1 The Board establishes a Nominating Committee (“NC”) to make recommendations to the Board on relevant matters relating to:

- (a) the review of succession plans for directors, in particular the appointment and/or replacement of the Chairman, the CEO and key management personnel;

Italy - Italian Corporate Governance Code 2020

19. The board of directors entrusts the nomination committee to support it on:

- a) the development, updating and implementation of succession plan for the chief executive officer and the other executive directors.

Germany - German Corporate Governance Code

Recommendation (B.2)

B.2 Together with the Management Board, the Supervisory Board shall ensure that there is long-term succession planning. The approach shall be described in the Corporate Governance Statement.

Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

Principle (1.4)

The Board should be responsible for ensuring and adopting an effective succession planning program for directors, CEO and key executive management positions to ensure growth and a continued increase in the shareholders’ value.

Recommended Practices (1.4.1, 1.4.2 & 2.1.4)

- 1.4.1 The transfer of company leadership to highly competent and qualified individuals is the goal of succession planning. It is the Board’s responsibility to implement a process to appoint competent, professional, honest and highly motivated management officers who can add value to the company.
- 1.4.2 A good succession plan is linked to the documented roles and responsibilities for each position, and should start in objectively identifying the key knowledge, skills, and abilities required for the position.
- 2.1.4 The Board should develop Board skills matrix with a description of the role and capabilities required for Board appointments, including factors such as independence, diversity, age, gender, future succession planning, integrity, skills, expertise, breadth of experience, knowledge about the company’s business and industry, and willingness to devote adequate time and effort to Board responsibilities in the context of the existing composition and needs of the Board and its committees.

CONFLICT OF INTEREST

- The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.
- Senior management shall make disclosures to the board of directors relating to all material, financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the listed entity at large.
- There shall be adequate disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large.

RELATED PARTY TRANSACTIONS (RPTS)

Meaning of Related Party Transactions

Under Companies Act, 2013

In terms of Section 2(76) “related party”, with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any company which is—
 - (A) a holding, subsidiary or an associate company of such company; or
 - (B) a subsidiary of a holding company to which it is also a subsidiary;
 - (C) an investing company or the venturer of the company;”;

Explanation.— For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

- (ix) such other person as may be prescribed;

Meaning of Related Party Transactions under SEBI (LODR) Regulations, 2015

In terms of Regulation 2(1)(zc) “related party transaction” means a transaction involving a transfer of resources, services or obligations between:

- (i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or

- (ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;

regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract:

Provided that the following shall not be a related party transaction:

- (a) the issue of specified securities on a preferential basis, subject to compliance of the requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;
- (b) the following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:
 - i. payment of dividend;
 - ii. subdivision or consolidation of securities;
 - iii. issuance of securities by way of a rights issue or a bonus issue; and
 - iv. buy-back of securities.
- (c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by the Board:

Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

Company not to engage with Related Party Transactions (RPTs) - Section 188(1)

Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, no company shall enter into any contract or arrangement with a related party with respect to—

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party’s appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company;

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions exceeding such sums, as prescribed in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, shall be entered into except with the prior approval of the company by a resolution:

Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party;

Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis:

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Explanation. –In this sub-section,–

- (a) the expression “office or place of profit” means any office or place–
 - (i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
 - (ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
- (b) the expression “arm's length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

Contract or Arrangement with a Related Party – Rule 15

A company shall enter into any contract or arrangement with a related party subject to the following conditions, namely:-

- (1) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-
 - (a) the name of the related party and nature of relationship;
 - (b) the nature, duration of the contract and particulars of the contract or arrangement;
 - (c) the material terms of the contract or arrangement including the value, if any;
 - (d) any advance paid or received for the contract or arrangement, if any;
 - (e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
 - (f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
 - (g) any other information relevant or important for the Board to take a decision on the proposed transaction.
- (2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement-
- (3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into,-

- (a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mention below-
- (i) sale, purchase or supply of any goods or material, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188:
 - (ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percent or more of net worth of the company, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
 - (iii) leasing of property any kind amounting to ten percent or more of the turnover of the company, as mentioned in clause (c) of sub-section (1) of section 188:
 - (iv) availing or rendering of any services, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Explanation.- It is hereby clarified that the limits specified in sub-clause (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

- (b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and a half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188.
- (c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one percent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

Explanation.- (1) The turnover or net worth referred in the above sub-rules shall be computed on the basis of the audited financial statement of the preceding financial year.

- (2) In case of wholly owned subsidiary, the resolution is passed by the holding company shall be sufficient for the purpose of entering into the transaction between the wholly owned subsidiary and the holding company.
- (3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:-
- (a) name of the related party;
 - (b) name of the director or key managerial personnel who is related, if any;
 - (c) nature of relationship;
 - (d) nature, material terms, monetary value and particulars of the contract or arrangements;
 - (e) any other information relevant or important for the members to take a decision on the proposed resolution.

RPTs to be in the Board's Report – Section 188(2)

Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

RPTs if not ratified by the shareholders is voidable at the option of the Board - Section 188(3)

Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the

date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board or, as the case may be, of the shareholders and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the Directors concerned shall indemnify the company against any loss incurred by it.

Company may proceed against a director who entered into RPT in contravention – Section 188(4)

Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

Director liable for penalty – Section 188(5)

Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—

- (i) in case of listed company, be liable to a penalty of twenty-five lakh rupees; and
- (ii) in case of any other company, be liable to a penalty of five lakh rupees.

Related Party Transactions

Related Party Transactions – Regulation 23 of Under the SEBI (LODR) Regulations, 2015

- (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly:

Provided that a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

Provided further that with effect from April 01, 2025, in case of a listed entity which has listed its specified securities on the SME Exchange, a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds Rupees fifty crore or ten per cent. of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

- (1A) Notwithstanding the above, with effect from July 01, 2019 a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed five percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

- (2) All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity:

Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions.

Provided further that:

- (a) the audit committee of a listed entity shall define “material modifications” and disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions;
- (b) a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of

such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds ten per cent of the annual consolidated turnover, as per the last audited financial statements of the listed entity;

- (c) with effect from April 1, 2023, a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual standalone turnover, as per the last audited financial statements of the subsidiary;
- (d) prior approval of the audit committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to in (d) above, the prior approval of the audit committee of the listed subsidiary shall suffice.

- (e) remuneration and sitting fees paid by the listed entity or its subsidiary to its director, key managerial personnel or senior management, except who is part of promoter or promoter group, shall not require approval of the audit committee provided that the same is not material in terms of the provisions of sub-regulation (1) of this regulation.
 - (f) The members of the audit committee, who are independent directors, may ratify related party transactions within three months from the date of the transaction or in the immediate next meeting of the audit committee, whichever is earlier, subject to the following conditions:
 - (i) the value of the ratified transaction(s) with a related party, whether entered into individually or taken together, during a financial year shall not exceed rupees one crore;
 - (ii) the transaction is not material in terms of the provisions of sub-regulation (1) of this regulation;
 - (iii) rationale for inability to seek prior approval for the transaction shall be placed before the audit committee at the time of seeking ratification;
 - (iv) the details of ratification shall be disclosed along with the disclosures of related party transactions in terms of the provisions of sub-regulation (9) of this regulation;
 - (v) any other condition as specified by the audit committee: Provided that failure to seek ratification of the audit committee shall render the transaction voidable at the option of the audit committee and if the transaction is with a related party to any director, or is authorised by any other director, the director(s) concerned shall indemnify the listed entity against any loss incurred by it.
- (3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity or its subsidiary subject to the following conditions, namely-
- (a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions and such approval shall be applicable in respect of transactions which are repetitive in nature;
 - (b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
 - (c) the omnibus approval shall specify:
 - (i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,

- (ii) the indicative base price / current contracted price and the formula for variation in the price if any; and
- (iii) such other conditions as the audit committee may deem fit:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

- (d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity or its subsidiary pursuant to each of the omnibus approvals given.
 - (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:
- (4) All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2) shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not:

Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice.

Provided further that the requirements specified under this sub-regulation shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved;

- (5) The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases:
- (a) transactions entered into between two public sector companies;
 - (b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.
 - (c) transactions entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.
 - (d) transactions which are in the nature of payment of statutory dues, statutory fees or statutory charges entered into between an entity on one hand and the Central Government or any State Government or any combination thereof on the other hand.
 - (e) transactions entered into between a public sector company on one hand and the Central Government or any State Government or any combination thereof on the other hand.
- (6) The provisions of this regulation shall be applicable to all prospective transactions.
- (7) All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.
- (8) The listed entity shall submit to the stock exchanges disclosures of related party transactions in the format as specified by the Board from time to time, and publish the same on its website:

Provided that a 'high value debt listed entity' shall submit such disclosures along with its standalone financial results for the half year:

Provided further that the listed entity shall make such disclosures every six months within fifteen days from the date of publication of its standalone and consolidated financial results:

Provided further that the listed entity shall make such disclosures every six months on the date of publication of its standalone and consolidated financial results with effect from April 1, 2023.

Provided further that the remuneration and sitting fees paid by the listed entity or its subsidiary to its director, key managerial personnel or senior management, except who is part of promoter or promoter group, shall not require disclosure under this sub-regulation provided that the same is not material in terms of the provisions of sub-regulation (1) of this regulation.

INTERNATIONAL PERSPECTIVE

Finland - Finnish Corporate Governance Code 2025

Decision Making and Conflict of Interest Regulations

It is vital to identify related party transactions, because legislation requires that the company's board of directors decide on agreements and other legal acts to be carried out with related parties that are not part of the company's ordinary course of business and that are not implemented under arms-length terms. Related party transactions that are part of the ordinary course of business and are implemented under arms-length terms do not require a decision of the board of directors under the Limited Liability Companies Act.

The decision making of the board of directors must also take provisions on conflicts of interest into account, because board members cannot participate in deciding a matter concerning themselves. Board members also have a conflict of interest and cannot participate in decisions concerning a transaction with one of their related parties if that transaction is not part of the company's ordinary course of business or is not implemented under arms-length terms.

When the general meeting decides on a related party transaction due to the board having deferred the decision to the general meeting or due to the articles of association assigning the decision to the general meeting, the decision-making process must take into account that the Limited Liability Companies Act expressly lists transactions that are not subject to the conflict of interest provisions relating to shareholders' related party transactions. Such transactions include, for example, transactions with fully-owned subsidiaries and resolutions of the general meeting concerning the remuneration of the board of directors.

Germany - German Corporate Governance Code

Principle 20

The members of the Management Board and Supervisory Board are bound to observe the enterprise's best interests. In all their decisions, they must neither pursue personal interests nor exploit for themselves business opportunities to which the enterprise is entitled. Management Board members are subject to comprehensive non-compete clauses throughout the duration of their appointment.

Recommendations:

Each member of the Supervisory Board shall inform the Chair of the Supervisory Board of any conflicts of interest without undue delay. In its report, the Supervisory Board shall inform the General Meeting of any conflicts of interest that have arisen and how they were addressed. Material conflicts of interest involving a member of the Supervisory Board that are not merely temporary shall result in the termination of that member's Supervisory Board mandate.

Each Management Board member shall disclose conflicts of interest to the Chair of the Supervisory Board and to the Chair or Spokesperson of the Management Board without undue delay and shall inform the other members of the Management Board.

Members of the Management Board shall only assume sideline activities, especially Supervisory Board mandates outside the enterprise, with the approval of the Supervisory Board.

Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

Conflict of Interest – means a situation that has or has the potential to undermine the impartiality of a person because of a clash of personal self-interest and professional or public interest, or in this case also the company's interests. The self-interest may be pursued at the expense of the company's interests.

In corporate governance, a conflict of interest refers to a situation where directors, senior managers, shareholders, employees or others have a direct and competing interest which actually or potentially or may be perceived to be in conflict with the person's duties towards the company and its shareholders collectively.

The presence of independent directors in the Board ensures the exercise of independent judgment on corporate affairs and proper oversight of managerial performance, including prevention of conflict of interests and balancing of competing demands of the corporation.

There is increasing global recognition that the presence of independent directors on the Board will help ensure more objective decision-making, particularly in conflict of interest situations.

In cases where the Chairman is not independent and where the roles of Chair and CEO are combined, putting in place proper mechanisms ensures independent views and perspectives. More importantly, it avoids the abuse of power and authority, and potential conflict of interest.

Principle 9.5: Related-party transactions (RPTs) should be approved and conducted in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders.

ROLE OF DIRECTOR'S IN PREVENTION OF INSIDER TRADING

Section 194 and 195 which were relating to the 'Prohibition on Forward dealing in securities by director or key managerial personnel' and 'Prohibition on insider trading of securities' respectively has been omitted from the Companies Act, 2013.

The SEBI (Prohibition of Insider Trading) Regulations, 2015 (Insider Regulations) is relevant here to mention.

Meaning of Insider – Regulation 2(1)(g)

"Insider" means any person who is: (i) a connected person; or (ii) in possession of or having access to unpublished price sensitive information.

Meaning of unpublished price sensitive information - Regulations 2(1)(n)

"Unpublished price sensitive information", means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

- (i) financial results;
- (ii) dividends;
- (iii) change in capital structure;

- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business, award or termination of order/contracts not in the normal course of business and such other transactions;
- (v) changes in key managerial personnel, other than due to superannuation or end of term, and resignation of a Statutory Auditor or Secretarial Auditor.

Communication or procurement of unpublished price sensitive information - Regulation 3

- (1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.
- (2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.
- (2A) The board of directors of a listed company shall make a policy for determination of “legitimate purposes” as a part of “Codes of Fair Disclosure and Conduct” formulated under regulation 8. Explanation – For the purpose of illustration, the term “legitimate purpose” shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.
- (2B) Any person in receipt of unpublished price sensitive information pursuant to a “legitimate purpose” shall be considered an “insider” for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.
- (3) Notwithstanding anything contained in this regulation, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:–
 - (i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company;
 - (ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine to be adequate and fair to cover all relevant and material facts.
- (4) For purposes of sub-regulation (3), the board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.
- (5) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with

the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

Provided that entry of information, not emanating from within the organisation, in structured digital database may be done not later than 2 calendar days from the receipt of such information.

- (6) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.

Trading when in possession of unpublished price sensitive information – Regulation 4

- (1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

Explanation –When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –

- (i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.

Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.;

- (ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision; Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.
- (iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.
- (iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.
- (v) in the case of non-individual insiders: –
- (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

- (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;
- (vi) the trades were pursuant to a trading plan set up in accordance with regulation 5.
- (2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.
- (3) The Board may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

Trading Plans – Regulation 5

- (1) An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.
- (2) Such trading plan shall:–
 - (i) not entail commencement of trading on behalf of the insider earlier than one hundred and twenty calendar days from the public disclosure of the plan;
 - (ii) not entail overlap of any period for which another trading plan is already in existence;
 - (iii) set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and
 - (iv) not entail trading in securities for market abuse.
- (3) The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.
 Provided that pre-clearance of trades shall not be required for a trade executed as per an approved trading plan. Provided further that trading window norms shall not be applicable for trades carried out in accordance with an approved trading plan.
- (4) The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either execute any trade in the securities outside the scope of the trading plan or to deviate from it except due to permanent incapacity or bankruptcy or operation of law. Provided that the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation.
- (5) The compliance officer shall approve or reject the trading plan within two trading days of receipt of the trading plan and notify the approved plan to the stock exchanges on which the securities are listed, on the day of approval.

Code of Fair Disclosure -Regulation 8

- (1) The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.
- (2) Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

Code of Conduct – Regulation 9

- (1) **The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct** with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.

- (2) The board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner. *Explanation* - Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations.
- (3) Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.
- (4) For the purpose of sub regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:-
- (i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body;
 - (ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors;
 - (iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;
 - (iv) Chief Executive Officer and employees upto two levels below Chief Executive Officer of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;
 - (v) Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information.

Institutional Mechanism for Prevention of Insider trading – Regulation 9A

- (1) **The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls** to ensure compliance with the requirements given in these regulations to prevent insider trading.

- (2) **The internal controls shall include** the following:
- (a) all employees who have access to unpublished price sensitive information are identified as designated person;
 - (b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;
 - (c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;
 - (d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
 - (e) all other relevant requirements specified under these regulations shall be complied with;
 - (f) periodic process review to evaluate effectiveness of such internal controls.
- (3) The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with regulation 9 and sub-regulations (1) and (2) of this regulation.
- (4) The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.
- (5) Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.
- (6) The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
- (7) If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

GUIDANCE ON BOARD EFFECTIVENESS (ISSUED BY FRC, UK- 2024)

The primary purpose of the Guidance on Board Effectiveness (the Guidance) is to stimulate boards' thinking on how they can carry out their role and encourage them to focus on continually improving their effectiveness. The Guidance on Board Effectiveness includes commentary on areas such as culture, relations with the workforce and wider shareholders and diversity. It also incorporates new sections on the workings of board committees, notably the remuneration committee. Helpfully, the Guidance includes questions for boards to ask themselves or, in some cases, to ask management, about effectiveness in key areas.

The Guidance is not mandatory and is not prescriptive. It contains suggestions of good practice to support directors and their advisors in applying the Code.

The Guidance also includes some of the procedural aspects of governance and is intended to act as a reminder

to boards and their support teams that good practice and procedure should continue to be followed. The tools and techniques for board effectiveness are suggested in the Guidance to assist companies in applying the Principles of good corporate governance.

BOARD EFFECTIVENESS INDICATOR

Sample questions which can be used as a quick check for board effectiveness in any organization.

Are the majority of your board members independent from the organization?

- Do you have a set of required competencies articulated for your board (and committees), and do your current board members as a whole display the entire set of required competencies?
- Do you have a board manual that articulates terms of reference for the board, board committees, individual directors, and the code of conduct? Does it have a forward list of topics for the year?
- Does at least one member of the board have extensive experience in the industry of your organization?
- Does each director get a comprehensive orientation on the business of the organization and meet key senior staff before the first board meeting?
- Are directors offered continuing education in governance or a program of director certification?
- Does each director display a keen interest or passion in the undertaking of the organization?
- Do directors regularly attend both board and committee meetings?
- Are directors encouraged and supported when asking difficult or awkward questions of management?
- Does the Chairman solicit views from each director specifically?
- Does the Chairman ask board members to refrain from expressing their personal views at the outset of a discussion?
- Does the Chair manage the timing of the board meetings to ensure there is sufficient time for discussion after each topic addressed by management?
- Does the board regularly have outside experts attend to present on specific topics?
- Does the board have an in-camera meeting both before and after each board meeting?
- Does the board retain an independent consultant to help evaluate director and board performance?
- At the beginning of a board meeting, do the committee chairs have an opportunity to summarize (verbally or in writing) the issues addressed and decisions taken at prior committee meetings?
- Does the board have an effective system to provide board members with timely, relevant and reliable financial and strategic information about the organization?
- Does the board review the risk identification and management system of the organization?
- Does the board approve the business plan and major expenditures?
- Does the board work with the CEO and senior staff to develop and review the strategic plan?

LESSON ROUND-UP

- The Board of Directors plays a pivotal role in ensuring good governance. The contribution of directors on the Board is critical to the way a corporate conducts itself.
- Responsibilities of Board - to establish an organizational vision and mission, giving strategic direction and advice, overseeing strategy implementation and performance, developing and evaluating the CEO, to ensure the organization has sufficient and appropriate human resources, ensuring effective stakeholder relations, risk mitigation, procuring resources.
- The board functions on the principle of majority or unanimity. A decision is taken on record if it is accepted by the majority or all of the directors. A single director cannot take a decision.
- Executive director or ED is a common post in many organisations, but the Companies Act, 2013 does not define the phrase.
- Non-executive directors do not get involved in the day-to-day running of the business.
- Independent directors are known to bring an objective view in board deliberations. They also ensure that there is no dominance of one individual or special interest group or the stifling of healthy debate. They act as the guardians of the interest of all shareholders and stakeholders, especially in the areas of potential conflict Board composition is one of the most important determinants of board effectiveness.
- A board should have a mix of inside/Independent Directors with a variety of experience and core competence if it is to be effective in setting policies and strategies and for judging the management's performance objectively.
- The effectiveness of the board depends largely on the leadership skills, capabilities and commitment to corporate governance practices of each individual director.
- The Chairman's primary responsibility is for leading the Board and ensuring its effectiveness.
- Induction and continuous training of Directors is of utmost importance to keep them updated with latest happenings in the company and major developments that impact the company.
- A formal evaluation of the board and of the individual directors is one potentially effective way to respond to the demand for greater board accountability and effectiveness.
- An effective board evaluation requires the right combination of timing, content, process, and individuals.

GLOSSARY

- **Globalization:** Globalization implies the opening of local and nationalistic perspectives to a broader outlook of an interconnected and interdependent world with free transfer of capital, goods, and services across national frontiers. However, it does not include unhindered movement of labour and, as suggested by some economists, may hurt smaller or fragile economies if applied indiscriminately.
- **Accountability:** The obligation of an individual or organization to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. It also includes the responsibility for money or other entrusted property.

- **Corporate Citizen:** The legal status of a corporation in the jurisdiction in which it was incorporated.
- **Familiarization Programmes:** The Familiarization Programmes are aimed to familiarize the independent directors with the company, their roles responsibilities in the company, nature of industry in which the company operates and business model of the company by imparting suitable training sessions.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)

1. Mr. Dutta is the Chairman and CEO of ABC Ltd. Mr. Ramesh, Company Secretary of ABC Ltd. is of the opinion that the role of Chairman and CEO be separated. Should the role of Chairman and CEO be separated?
2. ABC Ltd. is a FMCG company. You as a company Secretary are required to prepare a draft of valid questions for the purpose of Board evaluation.
3. Write Short Notes on –
 - (a) Board Composition
 - (b) Training of Directors
 - (c) Board Charter
 - (d) Lead Independent Director
 - (e) Board Evaluation

LIST OF FURTHER READINGS

- Board Effectiveness: What Works Best, 2nd Edition by Price Waterhouse Coopers
- Diversity and Inclusion Matters: Tactics and Tools to Inspire Equity and Game-Changing Performance by Jason Thompson
- Towards Managing Diversity by Dr. Deepak Dogara
- Leading Global Diversity, Equity, and Inclusion: A Guide for Systemic Change in Multinational Organizations by Rohini Anand
- HBR's 10 Must Reads on Diversity (with bonus article "Making Differences Matter: A New Paradigm for Managing Diversity" By David A. Thomas and Robin J. Ely
- Bloomsbury Guide for Independent Directors Company Law, SEBI Guidelines, Corporate Governance By Sanjiv Agarwal, Ankita Agarwal Edition July 2020
- Guide for Independent Directors by Dr. Suneel Maggo
- Guide to Independent Directors by Vinod Kothari & Sikha Bansal
- Are Independent Directors Really Independent? - A Cross Jurisdictional Analysis by Kumar Sheetal
- Corporate Conflict Management: Concepts and Skills by Omiko and Nelson

