

# ICSI-NIRC NEWSLETTER

**INSIGHT**

**PRACTICING COMPANY SECRETARY -  
ROLE AS INDEPENDENT DIRECTOR ON  
BOARDS OF COMPANIES**

## THE REGIONAL COUNCIL

### CHAIRMAN

CS VIMAL KUMAR GUPTA

### VICE CHAIRMAN

CS SUSSHIL DAGA

### SECRETARY

CS DEVENDER SUHAG

### TREASURER

CS HIMANSHU HARBOLA

### MEMBERS (IN ALPHABETICAL ORDER)

CS AMIT GUPTA

CS BHUPESH GUPTA

CS GURVINDER SINGH SARIN

CS MONIKA KOHLI

CS SAURABH KALIA

CS SURESH PANDEY

CS SURYA KANT GUPTA

CS VINAY SHUKLA

### EX-OFFICIO MEMBERS

CS HITENDER MEHTA

CS MANISH GUPTA

CS NPS CHAWLA

CS RANJEET PANDEY

CS VINEET K. CHAUDHARY

### REGIONAL DIRECTOR

CS SONIA BAIJAL

## Inside:

- From the Chairman, NIRC

- Glimpses

- Articles

- CSBF

### Published by :

CS Sonia Baijal, Regional Director for and behalf of Northern India Regional Council of the Institute of Company Secretaries of India, 4 Prasad Nagar Institutional Area, New Delhi - 110005, e-mail : [niro@icsi.edu](mailto:niro@icsi.edu); Phones : 49343000, Published at : NIRC - ICSI, 4, Prasad Nagar Instl. Area, New Delhi

© The Northern India Regional Council of the Institute of Company Secretaries of India

## NIRC-ICSI NEWSLETTER

- NIRC-ICSI newsletter is generally published every month.
- Articles on subjects of interest to company secretaries are welcome.
- Views expressed by contributors are their own and the NIRC-ICSI does not accept any responsibility.
- The NIRC-ICSI is not in any way responsible for the result of any action taken on the basis of the advertisements published in the newsletter.
- All rights reserved.
- No part of this newsletter may be reproduced or copied in any form by any means without the written permission of the NIRC-ICSI.
- Soft copy of this issue of newsletter is also available on the website of the NIRC-ICSI.

### VISION

"To be a global leader in promoting good corporate governance"

### ICSI Motto

सत्यं वद। धर्मं चर। इष्टार्थं कुरु। त्वां कुरु। अर्थं कुरु।

### MISSION

"To develop high calibre professionals facilitating good corporate governance"



**FROM THE  
CHAIRMAN**



Dear Professional Colleagues,

Greetings from ICSI-NIRC!

India celebrated 5th September, 2021 as Teachers Day. Teacher plays a very crucial role in shaping the career of individual. A Company Secretary have to learn, unlearn and relearn throughout his professional life and our seniors support us as Mentor or Guru at various stages of our professional life. I think that we owe a lot to our seniors and teachers.

I am happy to share that ICSI, NIRC and all the Chapters of NIRC are celebrating Teacher's week during 5th September, 2021 to 11th September, 2021 by organizing various Programs for Students and Teachers.

I am delighted to share that NIRC-ICSI organized 1<sup>st</sup> physical Seminar on Saturday, the 11th September, 2021 at Hotel Shangri-La Eros New Delhi, Connaught Place, New Delhi. This was the first physical seminar organized by NIRC after a gap of almost 5 months. The topic of the seminar was 'Recent Labour Law Reforms and Role of Independent Director'. The succeeding pages of this Newsletter also throws light on Independent Director as the theme of this edition is PCS - Role as Independent Director on Boards Of Companies. Ministry of Corporate Affairs exempts PCS having at least 10 years of experience from taking the online proficiency self-assessment test in order to qualify for appointment as Independent Directors on the board of companies. I think that the presence of Company Secretaries as Director will help in the image building of the profession as well as lead to overall good governance.

Briefly sharing our endeavours' as follows:

## **Celebrations of 75<sup>th</sup> Independence Day**

75th Independence Day was celebrated on Sunday, the 15th August, 2021 at NIRC Prasad Nagar, Delhi. Flag hoisting ceremony was done following Social Distancing norms by the gracious hands of **CS Nagendra D. Rao, President, ICSI and Chief Guest for the occasion**. He addressed the participants and informed the future plans of ICSI and also discussed the matters related to Professional Development of members. CS Himanshu Harbola, Treasurer, NIRC-ICSI was the Program Co-ordinator. Celebrations were witnessed by good number of members.

## **Webinar on Extensible Business Reporting Language – XBRL on 27<sup>th</sup> August, 2021**

NIRC organized a Webinar on the theme 'eXtensible Business Reporting Language – XBRL' on 27th August, 2021. CS Rajender Kapoor, Director, Webtel Electrosoft Pvt. Ltd., CS Vijay Sahni, Director, Webtel Electrosoft Pvt. Ltd., CA Rajeev Khandelwal, Director, Webtel Electrosoft Pvt. Ltd and CS Gaurav Saini, Practising Company Secretary were the Guest Speakers. CS Himanshu Harbola, Treasurer, NIRC-ICSI was the Program Director. I am thankful to the speakers for sparing their time and sharing of knowledge with the participants. The webinar was attended by good number of participants.

## **Celebration of Peer Review Week**

With the object to popularize and familiarise concept of the Peer Review, ICSI organized Peer Review Week - 2021 from 25th August, 2021 to 1st September, 2021. NIRC Training Program for Empanelment as Peer Reviewers held on 28th August, 2021. CS NPS Chawla, Council Member, ICSI was the Program Director. I got the opportunity to Moderate the session. CS GS Sarin, Past Chairman, and Chairman, PCS Committee of NIRC-ICSI was the Facilitator. CS Prashant Balodia, Practising Company Secretary, CS S Koley, Practising Company Secretary and CS Venkataraman Krishnan, Practising Company Secretary were the Guest Speakers. A large number of members participated in the Webinar.

## **Seminar on theme 'Recent Labour Law Reforms and Role of Independent Director' on 11<sup>th</sup> September, 2021**

NIRC organized Seminar on theme 'Recent Labour Law Reforms and Role of Independent Director' on Saturday, the 11th September, 2021 at Hotel Shangri-La Eros New Delhi, Connaught Place, New Delhi. CS Ranjeet Pandey, Past President, ICSI and Council Member, ICSI was the Chief Guest on the occasion. CS Hitender Mehta, Council Member, ICSI also graced the inaugural session. Ms. Raavi Birbal, Advocate Supreme Court of India was the Speaker of 1st Technical Session on the topic 'Significant Aspect of New Labour Codes'. Shri Ashok Pavadia, Founder & Director, Council for Research on Policy and Governance, New Delhi and Former Additional Secretary, Ministry of Home Affairs, Govt. Of India was the Speaker of 2<sup>nd</sup> Technical Session on the Topic 'Independent Director'. CS Suresh Pandey, Immediate Past Chairman & Regional Council Member, NIRC-ICSI was the Program Director. I wish to place on record my sincere thanks and gratitude to the Chief Guest and Guest Speakers for sparing their time & sharing their words of wisdom with the participants.

## **Online Teachers' Conference**

NIRC organized Online Teachers' Conference on the theme "Empowering Educators" on Saturday, the 11th September, 2021 for faculties. Dr. Alka Muddgal, Professor & Head, Amity Institute of Education address the participants on the topic Being an Effective Teacher and CS J K Bareja, Associate Professor, University of Delhi address the Participants on topic Career Opportunities as Company Secretary. The Conference was attended by more than 100 Faculties.

## **MOU for Academic Collaboration**

With a view to build up synergies, NIRC is making efforts for Academic Collaboration with the Universities and Institutions across the Northern Region to collaborate regarding ICSI Signature Award, ICSI Study Centre Scheme, Empanelment of Faculties as Trainers, ICSI Library Scheme, National and International Seminars and workshops, Faculty Development Programmes and Other aspects. ICSI signed MOU with Manav Rachna International Institute of Research and Studies, Faridabad and Sharda University, Uttar Pradesh. Further, If you know reputed Universities/ Institutions who are willing to collaborate with ICSI, please write us with details of concerned person at [niro@icsi.edu](mailto:niro@icsi.edu).

## **ICSI National Awards for Excellence in Corporate Governance, 2021**

As you are aware, the Institute confers “ICSI National Awards for Excellence in Corporate Governance” on best governed companies under Large, Medium & Emerging category in both Listed and Unlisted segment which imbibe and inculcate good governance practices. The Institute also confers the “ICSI Life Time Achievement Award for Translating Excellence in Corporate Governance into Reality” on one of the eminent corporate personalities in recognition of his ethical and creative entrepreneurship and contribution in achieving good corporate governance. The Institute also confers the “ICSI CSR Excellence Awards” with a view to recognize the good practices undertaken by corporates under the CSR umbrella.

From the year 2019, ICSI instituted an award under the category of “Best Secretarial Audit Report Award”. The aim of this Award is to recognize the efforts of Secretarial Auditor in elevating the culture of governance in the corporate sector and enhancing the importance of the Secretarial Audit Report. From the year 2021, ICSI has introduced an award under a new category of “Best PCS Firm Award” for the firms of Practicing Company Secretaries with an objective to encourage high standards of excellence and governance culture in the firms.

The Jury comprising select distinguished experts under the Chairmanship of former Chief Justice of India, Hon'ble Mr. Justice P. Sathasivam will adjudge the award winners for the year 2021.

In this context the questionnaires have been uploaded on the website, which are available at <https://www.icsi.edu/icsiexcellenceawards>. I request your good offices to please encourage the stakeholders to participate. The participants may submit their applications on or before October 6, 2021.

## **One Day Program for Students On Transforming Education on 8<sup>th</sup> September, 2021**

Institute conducted One Day free Online Program for the students of the Institute uniformly across the Country on International Literacy Day, 8th September, 2021 on the theme Transforming Education. NIRC organized special Motivational session and a session on Understanding Tax Mechanism of India which were highly appreciated by the students.

## 20<sup>th</sup> All India Debate Competition 2021

Northern India Regional Council of The Institute of Company Secretaries of India is organizing Delhi Round of 20<sup>th</sup> All India Debate Competition for students through online Video Conferencing. Winner and the Runner-up of Delhi Round will participate in the Northern India Regional Round. The topic for Debate Competition is Role of CS in Economic Development.

## Online CSEET Classes NIRC of the ICSI For November, 2021 Examination

Northern India Regional Council of the Institute of Company Secretaries of India (NIRC-ICSI) is organising Online Oral Tuition Classes (OTC) for the students of CSEET Programme for November, 2021 Examination for all four subjects. For more details please visit [www.icsi.edu/niro](http://www.icsi.edu/niro).

## CSBF

I appeal to all the members, who have not yet enrolled for the Company Secretaries Benevolent Fund, to become proud member of the Benevolent Fund. The detail of CSBF is published elsewhere in the newsletter for your reference.

Friends, NIRC has scheduled various State Conferences and Professional Development Programs in the month of September, 2021 on the various topics of professional interest for our members. The details of all the programs will be uploaded on [www.icsi.edu/niro](http://www.icsi.edu/niro). I request your participation in large numbers.

I would like to appreciate the entire NIRC team for their genuine enthusiasm and determination to continuously strive to happily serve our Stakeholders in many ways like organizing Seminars, Webinars, Online Oral Tuition Classes, MSOP, PDP, EDP etc.

I would also like to thank all the contributors who have stepped forward to pen down their articles around the theme and enrich the NIRC's Newsletter publication this time. So let's get into the pages and find out what your Newsletter has in store for you this time.

Looking forward to your valuable suggestions and feedback at [chairman.nirc@icsi.edu](mailto:chairman.nirc@icsi.edu).

Stay Safe, Stay Healthy & Take Care!

With best regards,



**CS Vimal Gupta**  
Chairman, NIRC-ICSI  
Mob. 9983324282, 9314324282  
[chairman.nirc@icsi.edu](mailto:chairman.nirc@icsi.edu)



# GLIMPSES



Celebrations of 75<sup>th</sup> Independence Day at ICSI-NIRC



CS Nagendra D. Rao, President, ICSI gracing the Independence Day Celebrations as Chief Guest. Also seen CS Himanshu Harbola, Treasurer, NIRC-ICSI, CS Suresh Pandey, Past Chairman & Regional Council Member, NIRC-ICSI, CS Sonia Baijal, Regional Director, NIRC-ICSI along-with other dignitaries.

**Celebrations of 75<sup>th</sup> Independence Day**



CS (Dr.) Shyam Agrawal, Member, Appellate Authority & Past President, ICSI, CS Vimal Gupta, Chairman, NIRC-ICSI along-with other dignitaries during Independence Day Celebrations.

**Felicitation of Shri C.M. Karl Marx, ROC cum OL Jaipur by CS Vimal Gupta**



**Release of Poster**



Release of Poster by CS Vimal Gupta.

**ICSI-NIRC Webinar on eXtensible Business Reporting Language –  
XBRL on 27<sup>th</sup> August, 2021**



CS Rajender Kapoor, Director, Webtel Electrosoft Pvt. Ltd., CS Vijay Sahni, Director, Webtel Electrosoft Pvt. Ltd., CA Rajeev Khandelwal, Director, Webtel Electrosoft Pvt. Ltd and CS Gaurav Saini, Practising Company Secretary addressing the Participants. Also seen CS Vimal Gupta, CS Himanshu Harbola and CS Sonia Baijal.

**Training Programme for Empanelment as Peer Reviewers held on 28<sup>th</sup> August, 2021**



CS Prashant Balodia, Practising Company Secretary, CS S Koley, Practising Company Secretary, CS NPS Chawla, Council Member, ICSI, CS Vimal Gupta, CS Venkataraman Krishnan, Practising Company Secretary & CS GS Sarin, Past Chairman & Regional Council Member, NIRC-ICSI.

**Seminar on Theme 'Recent Labour Law Reforms and Role of Independent Director'  
on 11<sup>th</sup> September, 2021**



CS Ranjeet Pandey, Past President, ICSI and Council Member, ICSI, CS Hitender Mehta, Council Member, ICSI & CS Suresh Pandey.



Ms. Raavi Birbal, Advocate Supreme Court of India, CS Suresh Pandey and Shri Ashok Pavadia, Founder & Director, Council for Research on Policy and Governance and Former Additional Secretary, Ministry of Home Affairs, Govt. Of India.



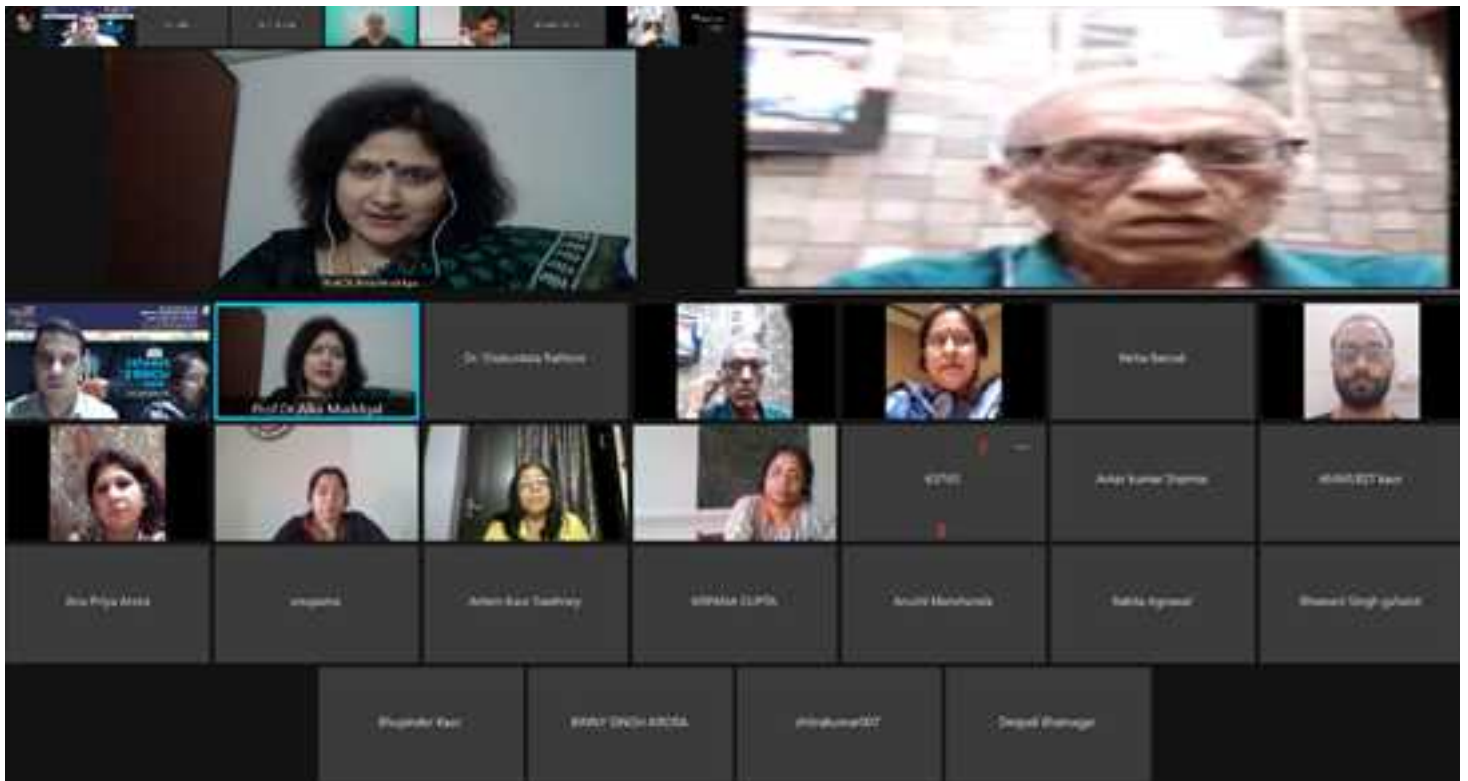
Participants during Seminar.

**MOU Signing Ceremony for Academic Collaboration between the ICSI and Manav Rachna International Institute of Research and Studies**



L to R: CS.(Dr.) Monika Goel- Dean-Faculty of Commerce and Business Studies, Manav Rachna International Institute of Research & Studies, Dr Pradeep Kumar - Pro Vice Chancellor- MRIIRS, FBD, CS Arun Goel - Chairman , FBD Chapter of NIRC of ICSI, Dr. Sanjay Srivastava- Vice Chancellor- MRIIRS, FBD, CS Nagendra D Rao- President, ICSI, CS Suresh Pandey, Shri R K Arora- Registrar, MRIIRS, FBD & Dr. Amit Seth- Director, Faculty of Commerce and Business Studies, MRIIRS, FBD.

**Glimpses of Teachers' Conference held on 11<sup>th</sup> September, 2021**



Dr. Alka Muddgal, Professor & Head, Amity Institute of Education and CS J K Bareja, Associate Professor, University of Delhi addressing the Participants.



# ARTICLES



CS (Dr.) S K Gupta\*, FCS  
cbst.sk Gupta@gmail.com

# Practicing Company Secretary as Independent Director – An unbeatable Role mix

## Independent Directors as watch dog of companies

Section 2(47) of the Companies Act, 2013 defines Independent director in conjunction with section 149(6) which provides an exhaustive list of qualifications to decide that who can be an independent director and who cannot be. Schedule IV notified by the Ministry of Corporate Affairs provides for code of conduct of Independent directors and exhaustive guidelines regarding duties, manner of appointment, meetings, etc. and requires every Independent director to abide by it.

An Independent Director (“ID”) is a director other than a managing director or a whole-time director or a nominee director, who, in the opinion of the board, is a person of integrity and possesses relevant expertise and experience, not being a promoter of such company or its affiliates, not being a relative of promoters or directors of the company or its affiliates, is an independent director. Such individual cannot have any pecuniary relationship with that company, its promoters, senior management or affiliate companies, during the past two years or the current year. Moreover, the independent director cannot be related to promoters or the senior management and should not have been an executive with the company, partner or executive director of the auditors, lawyers, consultants of the company in preceding three years. It has been witnessed that IDs are rarely chosen based on qualification and/ or experience of the candidate, but mostly through close associates or nomination basis.

Such a Non-executive director plays the role of a watchdog in companies as they are responsible for handling affairs of the Company to boost up ethics of corporate governance and to ensure transparency in the Company. It can be said that the general duty of such directors is to strive for benefit of the company by utilizing its experience in corporate governance and to ensure transparency in the functioning of the company to avoid the commission of frauds and wrongdoings by the officers of the company.

The importance of having outside directors is being increasingly viewed as essential to protecting public investors, especially in controlled companies, all over the world. Accordingly, several countries have adopted one or more of the following arrangements: (i) public company boards are expected to include some fraction of independent directors; (ii) independent directors must serve on committees that play an active role in monitoring management and controlling shareholders; The importance of the institution of independent directors has been aptly captured by the SEBI report on corporate governance chaired by Mr. Uday Kotak (2017) as: The institution of independent directors forms the backbone of the corporate governance framework worldwide and in India. Independent directors are expected to bring objectivity into the functioning of the board and improve its effectiveness. Independent directors are required to safeguard the interests of all stakeholders, particularly minority shareholders, balance the conflicting interest of the stakeholders and bring an objective view to the evaluation of the performance of the board and management.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

## Can PCS be appointed as an Independent Director ?

Independent Director is Non-executive Director and a Practicing Company Secretary can be appointed as Independent Director. The Council had at the 156th meeting held on 19th – 20th March, 2005, in exercise of its powers under regulation 168 of the Company Secretaries Regulations, 1982 accorded general permission to members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practicing member holds substantial interest in that company.

The Council had also allowed members in practice to become non-executive directors/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practicing member does not hold substantial interest in the company. The term non-executive director was defined to mean an ordinary director who is required to attend the meetings of the board or its committees only, not paid any remuneration except the sitting fees for attending the board/committee meetings and any remuneration to which he is entitled as ordinary director, and devoting his time for the company only to attend meetings of the board or committee thereof and not for any other purpose.

## Practicing Company Secretary - The new NED

Company Secretary possesses a very particular mix of aptitudes and attributes. From maintaining a broad view of the totality of an organization's governance requirements, to the diplomatic management of relationships with the board and executive, to developing deep technical knowledge, including a combination of wisdom, initiative and strong influencing skills in equal measure. Being independent in character and judgement are both inextricable elements of any company secretary's unwritten job description.

It comes as no surprise then that organizations are increasingly recognizing the contributions that company secretaries are able to make as Non – Executive Director's (NEDs) either on internal or external boards. As veterans of the Board Room nuances, experienced Practicing company secretaries are able to transition seamlessly into these roles.

**Listed below are experiential attributes that Practicing Company Secretaries possess which make them best suited for the position as an Independent director of a Company are listed below:**

- Company Secretaries in practice possess huge practical experience in fields such as: Promotion, formation and incorporation of companies and related matters. Secretarial Audit and Certification Services. Signing of Annual Return. Representing on behalf of a company and other persons before National Company Law Tribunal. Corporate Restructuring and takeover. Appointment as a scrutinizer, to scrutinize the e- voting process in a fair and transparent manner. Administrator in respect of rehabilitation or revival of sick companies. Appointment as Company Liquidator/ Provisional Liquidator. Professional assistance to Company Liquidator. Technical Member of National Company law Tribunal. A Company Secretary may become a registered valuer under various provisions of the Act. Pre-certification and e-filing of various e- forms. Developing a corporate compliance management system and social sustain ability framework for a company. A company secretary can also become part of a Mediation & Conciliation Panel consisting of experts having prescribed qualifications for mediation between the parties during the pendency of proceedings before Central Govt./NCLT/NCLAT.
- Possessing crisp and thorough knowledge of the business environment in which the organization operates as well as of the laws, rules, and regulations that govern its activities.



- Identifying what and advising why certain corporate governance best practices should be adopted by the organization. This may be as a result of compliance with laws, regulations, standards and codes or because the practices make good operational sense for the organization.
- Implementing within the organization those best practices through the creation and maintenance of cultures and relationships.
- Being flexible, creative and detailed, not losing sight of perspective and giving the board and managers a “heads up” about new developments.
- Having a holistic view of the governance framework and ensuring that this framework and any supporting policies and procedures are clearly implemented by the Company.
- Being articulate about the decision to be taken and what impact it would have on implementation

The institution of independent directors is absolutely indispensable to the corporate governance regime and, hence, it would not be wrong to say that they are in a way insurers of good corporate governance practices. Thus, it is the need of the hour that the Independent Directors be more proactive in the boardroom for the dual purpose of corporate governance and to protect themselves against the liability.

### **PCS as Independent Directors : Risk and Liabilities**

Once considered a dream position, the post of Independent Director has lost its sheen, as it is not the case of the private sector but even the public sector undertakings are not finding suitable candidates to fill the positions lying vacant for some time. There are multiple reasons why the position of an Independent Director has become a challenging option in today's era. Independent Directors are required to improve the functioning and effectiveness of the board and to safeguard the interests of all stakeholders, to maintain checks and balances and to question the decisions of the board as an independent authority in an impartial manner.

Recently, there have been considerable exits of independent directors ('IDs') from listed companies due to apprehensions about their potential liability on account of the wrong doings of the companies. It is in this context that the Ministry of Corporate Affairs ('MCA') issued a much required clarification on March 2, 2020 that prosecution proceedings will not be initiated against independent and non-executive directors ('NEDs') unless there are sufficient evidences to prove that such default or violation had been committed with his knowledge or consent or he was guilty of gross and willful negligence or fraud.

MCA has therefore clarified that another provision of the Act [Sec. 149(12)] expressly provides that an ID and NED can only be held liable in respect of such defaults which occur with his knowledge and consent attributable through board processes, and that they should not be held liable for any criminal or civil proceedings under the Act unless the said criteria is met. As per the Circular, monitoring the day to day compliances of the Company is not the responsibility of the IDs and NEDs and hence an ID or NED cannot be held liable for acts which are beyond their control like failure on the part of the Company to maintain and update statutory registers, minutes of meetings, filing of returns etc.

## Conclusion

With the increasing focus in recent years on corporate governance, the role of the company secretary has grown in importance. In many ways, the secretary is now seen as the guardian of the company's proper compliance with both the law and best practice. The Practicing Company Secretary has a wide experience of various facets of the role and dimensions of Corporate functioning while handling professional assignment for various companies. This makes a Practicing Company Secretary aptly suited for being appointed as an Independent Director.

## References

- Balasubramanian, Bala N., and Jaideep Singh Panwar, 'The Spirit of Independence Remains Unaddressed', Live Mint, October 10, 2017;
- Kobi Kastiel and Aaron Nili, "'Captured Boards": The Rise of "Superior Directors" and the Case for a Board Suite"', Harvard Law School Forum on Corporate Governance and Financial Regulation, June 28, 2017.
- Lucian A. Bebchuk & Assaf Hamdani, 'Independent Directors and Controlling Shareholders' (2017), University of Pennsylvania Law Review, Vol. 165, No. 6, 1280.
- N. Sundaresha Subramanian, 'How Independent are Independent Directors?', Business Standard, March 17, 2017.
- Report of the Committee to Review Offences under the Companies Act, 2013, Ministry of Corporate Affairs, Government of India (August, 2018),
- SEBI Report of the Committee on Corporate Governance (2017)
- Simon Witney, 'Corporate Opportunities Law and the Non-Executive Director' (2016), Journal of Corporate Law Studies, Vol. 16, No. 1, 145- 146





CS Parul Jain\*, ACS

csparulnishujain10121@gmail.com

# Practicing Company Secretary- Role As Independent Director on Boards Of Companies

A member of the ICSI not in any employment is entitled to practice after obtaining a Certificate of Practice from the Institute.

Section 2(25) of the Companies Act, 2013 defines the term "company secretary in practice" which means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980.



Section 2(2) of the Company Secretaries Act, 1980 provides that a member of the Institute shall be deemed to be in practice when individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed, does any of the following in consideration of remuneration received or to be received:

- a. Engages himself in the practice of the profession of company secretaries to or in relation to any company; or
- b. Offers to perform or performs services in relation to the promotion, formation, incorporation, amalgamation, reconstruction, reorganisation or winding up of companies; or
- c. Offers to perform or performs such services as may be performed by:
  - An authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,
  - A share transfer agent,
  - An issue house,
  - A share and stock broker, a secretarial auditor or consultant, an advisor to a company on management including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947, the Industries (Development and Regulation) Act, 1951, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, any of the rules or bye-laws made by a recognised stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969, the Foreign Exchange Regulation Act, 1973 or under any other law for the time being in force issuing certificates on behalf of or for the purposes of a company; or
- d. Holds himself out to the public as a company secretary in practice; or
- e. Renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of company secretaries; or renders such other services as in the opinion of the Council are or may be rendered by a company secretary in practice.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

## Role of Company Secretary

The company secretary is a building block of a company; he must perform his duties with reasonable care. Other than being a legal mentor he must ensure all business procedures to be matching with all legal provisions; if not complied he may be held responsible for misconduct and may be dismissed on grounds of dishonesty or infringement of legal rights of the company.

The company secretary role includes:

- Advising board of directors on legal rules
- Monitoring that company rules are followed
- Coordinating dispatch of board and committee papers
- Keeping track of minutes for meetings

## Role of Company Secretary

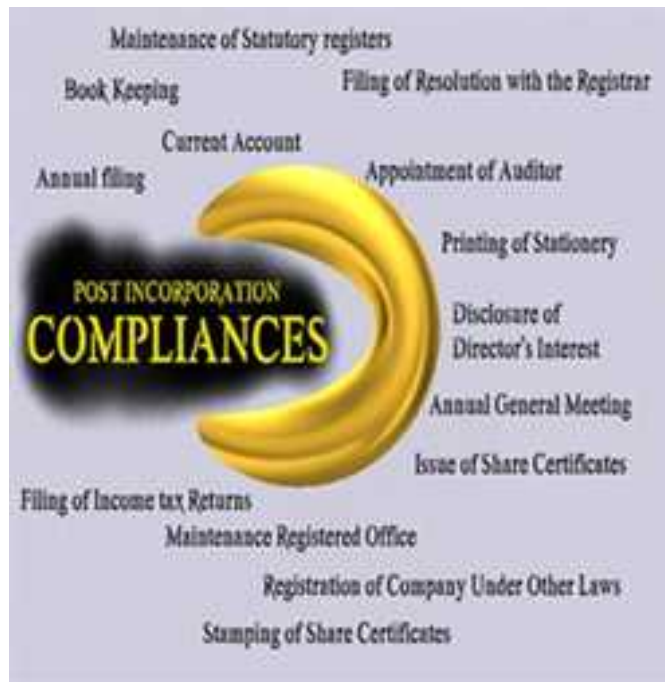
- Firstly, to assist the Board in the conduct of the affairs of the company.
- Secondly, to provide guidance to the directors about their duties.
- Ensuring and Complying with Corporate Governance.
- Ensuring that the company complies with secretarial standards.
- To take the required permissions from the board and various government bodies. Hence, he also has to follow the provisions regarding the permission acquisition.
- Lastly, to facilitate the convening of meetings.

## Advantages and Disadvantages

Advantages	Disadvantages
He is free to select his area of specialization.	Income is not constant and subject to market risks.
His functional area is not fixed by any agreement.	The laws are not strict decreasing their demand.
His income is directly proportional to the revenue of the firm.	It requires a complex skill set along with knowledge related to CS, like promotion and marketing skills to attract clients.

## Responsibilities of Company Secretary in Practice

1. Promotion, formation, and incorporation of companies and related matters
2. Representing on behalf of a company and other persons before NCLT
3. Handling Corporate Restructuring and takeover
4. Administrator in respect of rehabilitation and revival of sick companies
5. Provide Professional assistance to Company Liquidator
6. Secretarial Audit and Certification Services
7. The signing of Annual Return
8. Pre-certification and e-filing of various e- forms



**Need for Practicing Company Secretary**

The need for CS in Practice has increased over a period of time.



This is because of the various provisions under various acts. There are two major elements which increase the need for CS in Practice that are:

1. Annual Return
2. Secretarial Audit Report

**Annual Return**

The annual return is the snapshot of certain company information as they stood on the close of the financial year. In case of a non-listed company, an annual return has to be signed by a CS in Employment and Director of the company. If the company has not employed any CS then it is signed by CS in Practice.

# ANNUAL RETURN

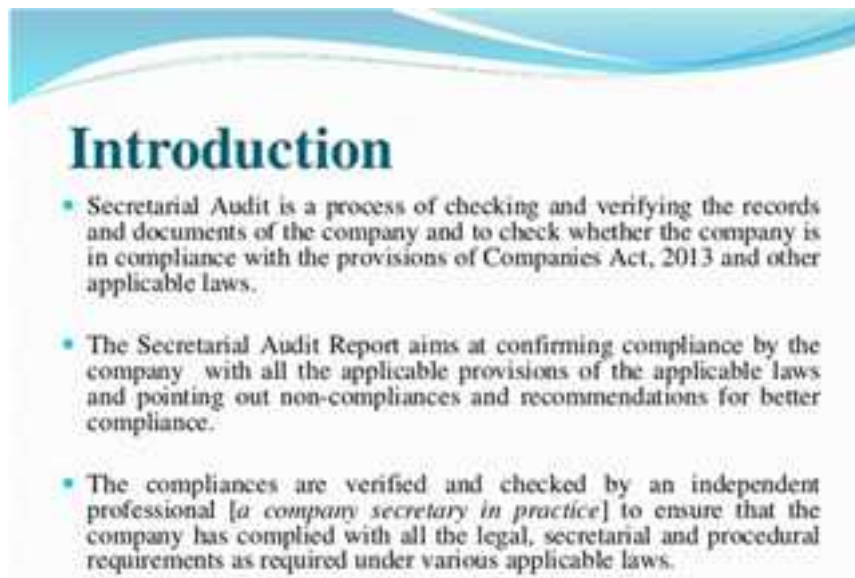
## SECTION 92 OF THE COMPANIES ACT, 2013

In case of listed companies, even if the annual return is signed by the CS in Employment, it is to be certified by a CS in Practice. Company Rules 2014 states that this rule is applicable to listed companies only if their-

- Paid-up share capital is more than Rs. 10 crores
- Turnover is more than Rs. 50 crores

### Secretarial Audit Report

Secretarial Audit is an audit to check compliance of various legislations including the Companies Act. Companies Act, 2013 states that every listed company and other class of companies need to submit a Secretarial Audit Report along with the Board Report which is certified by a CS in Practice.



This report is submitted in form MR 3. Other classes of companies include those companies of which:

- ü Paid-up share Capital exceeds Rs. 50 crores; and
- ü Turnover exceeds Rs. 250 crores.

### Company Secretary in Employment

A Company Secretary in Employment is the attachment of the CS with the organization through an agreement of employment.

The Companies Act, 2013 provides certain guidelines for a certain class of the organization to appoint a CS. The Act recognizes him as a Key Managerial Personnel (KMP) along with Chief Executive Officer, Manager, Managing Director, Whole Time Officer, and Chief Financial Officer.

As per Company Rules 2014 (Rule 8), Every Listed Company and other public companies (of which paid-up share capital exceeds Rs. 10 crore) need to appoint a whole time key-managerial personnel. Companies other than covered under Rule 8 have to appoint a whole time key managerial personnel. It happens only if their paid-up share capital exceeds Rs. 5 crores.

## Responsibilities of Company Secretary in Employment

The following are the major responsibilities:

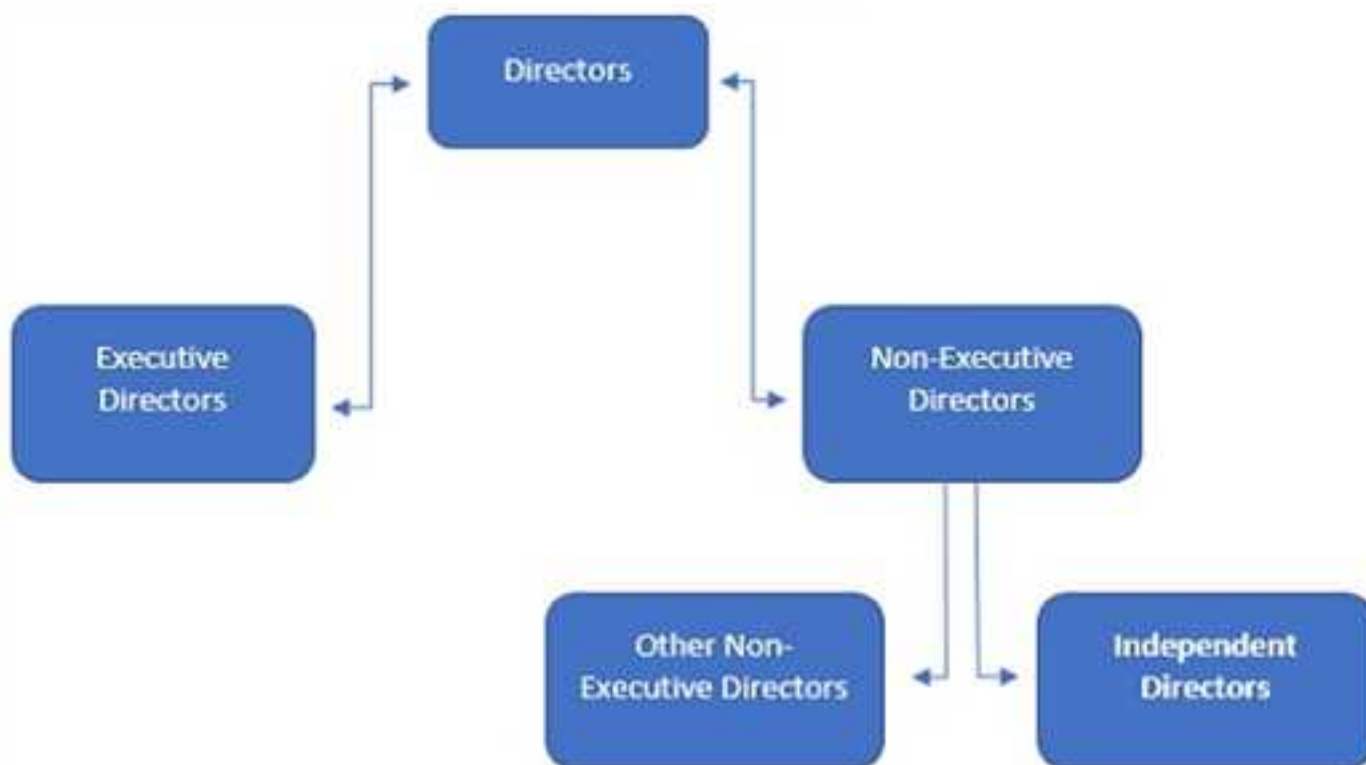
- To assist the Board of Directors
- To comply with the various law-related provisions
- To ensure that the company complies with secretarial standards

## Advantages and Disadvantages of CS in Employment

Advantages	Disadvantages
It is the highest post in the organization which is a dream for many managers.	The income is stable and is not proportional to the increase in the revenue of the organization.
Under this steady growth is available without any risk.	The agreement binds the functioning of the CS.
It does not involve any initial investment.	The area of specialization is not a choice in the job.

## Independent Director

Independent Director is a director other than a managing director or a Whole time Director or a nominee Director who fulfils all criteria as given in Section 149(6) along with Rule 4 and Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014.



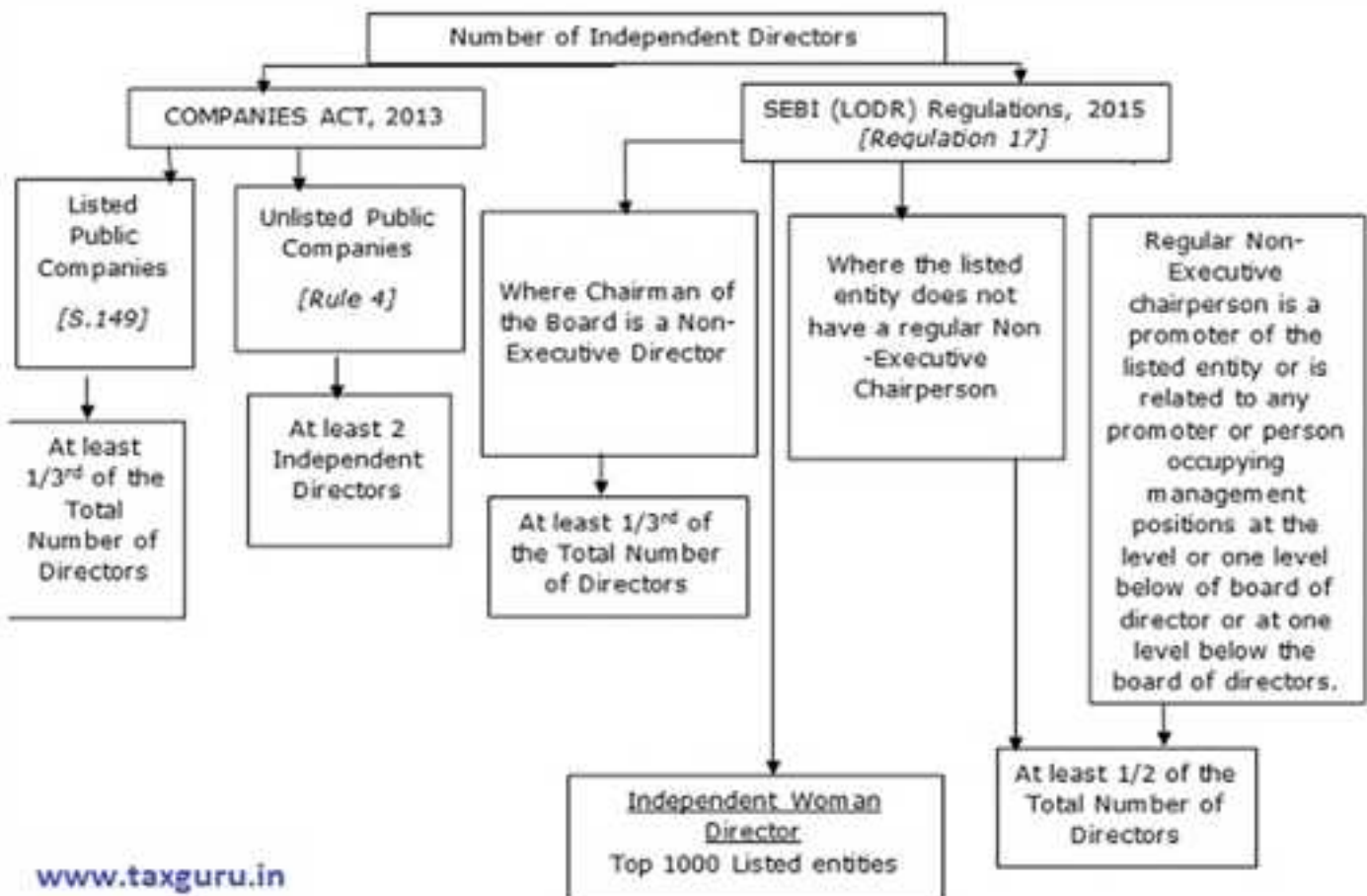
An independent director is a non-executive director of a company who helps the company in improving corporate credibility and governance standards. He does not have any kind of relationship with the company that may affect the independence of his judgement.

The term “Independent Director” has been defined in the Act, along with several new requirements relating to their appointment, duties, role and responsibilities.



The provisions relating to the appointment of independent directors are contained in Section 149 of the Companies Act, 2013 should be read along with Rule 4 and Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

## Applicability on appointing an Independent Director





## Listed Public Company

Every listed public company shall have at least one-third of a total number of directors as independent directors. Any fraction contained in that one-third shall be rounded off as one.

## Unlisted Public Company

The Central Government may prescribe the minimum number of independent directors in case of any class(es) of public companies. As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following classes of companies shall have at least two directors as independent directors.

- Public companies with paid-up share capital of Rs. 10 crores or more.
- Public companies with a turnover of Rs. 100 crores or more.
- Public companies with aggregate outstanding loans, debentures, and deposits exceeding Rs. 50 crores.

Such amount shall be calculated on the basis of the amount existing on the last date of latest audited financial statements shall be taken into account for calculating the paid-up share capital or turnover or outstanding loans, debentures and deposits.

The company must appoint a higher number of directors if a higher number of independent directors is required to compose audit committee.

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 when a situation arises which affects his status of independence, the terms and conditions of appointment of independent directors shall also be posted on the company's website.

## Exemptions

The provisions of independent director are not applicable to private company.

Where a company ceases to fulfil any of the conditions as mentioned above and laid down in Rule 4 of Companies (Appointment & Qualification of Directors) Rules 2014 for consecutive 3 years, it shall not be required to comply with these provisions until it meets any of such conditions (Third proviso to Rule 4 of Companies (Appointment & Qualification of Directors) Rules 2014).

A joint venture, wholly owned subsidiary and dormant company are not required to appoint an independent director even if they meet the eligibility criteria for appointment of independent directors.

## Role of an Independent Director

Independent Director acts as a guide, coach and mentor to the Company. The role includes improving corporate credibility and governance standards by working as a watchdog and help in managing risk. Independent directors are responsible for ensuring better governance by actively involving in various committees set up by the company.

## Role of Independent Directors

In the schedule IV of the companies act, 2013 the roles and duties have been laid down:-

- Impartial judgment
- Strategic advisor to the company
- Watchdog for interest of stakeholders
- Moderate in the interest of the company in conflict situations
- Transparency
- Innovative or creative suggestions for better future prospects of the company
- Overview that the company is following good governance policy

The independent directors are required because they perform the following important roles:

- Facilitate withstanding and countering pressures from owners.
- Support in bringing independent judgment to bear the board's deliberations especially on issues such as strategy, performance, risk management, resources, key appointments and standards of conduct.
- Bring an objective view in the evaluation of the performance of board and management of the company.
- Scrutinizing, monitoring and reporting management's performance regarding goals and objectives agreed in the board meetings.
- Safeguard the interests of all stakeholders, particularly the minority shareholders.
- Balance the conflicting interest of the stakeholders.
- Check on the integrity of financial information and ensure financial controls and systems of risk management are in operation.
- moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.
- Establishing suitable 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.

### Duties of an Independent Director

The independent directors shall:

- Undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company.
- Strive to attend company's general meetings and Board of Directors' meetings and board committees meeting being a member.
- Have adequate knowledge about the company and the external environment in which it operates.
- Report matters concerning unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy.

- Acting within his or her authority, assist in protecting the legitimate interests of the company, shareholders and its employees.
- Not to unfairly obstruct the functioning of the company or committee of the Board.
- Participate in the Board's committee being chairpersons or members of that committee.
- Not to 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.
- 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.
- 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.

### **Other Provisions Related to Independent Directors Under Companies Act, 2013**

Companies that trigger the conditions of Corporate Social Responsibility Committee of the Board to formulate and monitor the CSR policy of a Company, The Companies Act, 2013 requires the CSR Committee to consist of at least three directors including at least one independent director.

Where a company is not required to appoint an independent director, it shall have in its Corporate Social Responsibility Committee two or more directors.



The Independent director's appointment process must be independent of the company's management. Databank may be used to appoint an independent director

Every independent director shall give a declaration that he meets the criteria of independence when:

- He or she attends the first board meeting as a director.
- In every financial year, at the first meeting of the board of directors.
- When a situation arises which affects his or her status of independence being an independent director.
- The independent director shall be appointed for a maximum term of 5 years. The term shall not be more than 2 consecutive terms. He shall be re-appointed only by special resolution by the company. (Section 149(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. **(Sec 149(11))**
- Any vacancy in the office of independent director shall be filled in the very next Board Meeting or within 3 months of such vacancy, whichever is earlier. *(Second Proviso to Rule 4 of Companies (Appointment & Qualification of Directors) Rules 2014.*
- A person must be an independent director in not more than seven listed companies at a time.
- An independent director shall not retire by rotation and shall not be included in the 'total number of directors' for the purpose of computation of rotational directors.
- A person can be appointed as an alternate director. But he or she must be qualified to be appointed as an independent director.
- A small shareholder director shall be considered as an independent director, if:
  - i. He or she is eligible for appointment as independent director u/s 149 (6).
  - ii. He or she gives a declaration that he or she meets the criteria of Independence as specified u/s 149(7).
- The Nomination committee and Remuneration Committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors.
- The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.



- An independent director shall not be entitled to any stock option. An independent director may receive remuneration by way of sitting fees. Sitting fees to be paid to Independent Directors for attending the Board Meetings pursuant to Section 197(5) which is maximum of Rs.1,00,000/- per meeting is to be decided by the Board. The independent director shall be entitled to the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
- Ensure the individual proposed to be appointed as Independent Director has furnished his DIN to the company and a declaration in Form DIR-8 stating he is not disqualified to become director under the provisions of this Act. (Sec 152(4) and Rule 14 of Companies (appointment and qualification of Directors) Rules, 2014.

- Before appointment of individual as Independent Director obtain consent to act as Director in Form DIR-2.
- Obtain the declaration of the appointed Director regarding his interest in other entities in Form MBP-1 within 30 days of appointment or at the first Board meeting in which he participates as a director, whichever is earlier. [Sec 182(1) read with Sec 182(2)]
- File Form DIR-12 containing the particulars of the appointment of Director within 30 days of his appointment. (Sec 170 (2) and Rule 8 and 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014.
- In case of resolution passed as Special resolution for re-appointment of Independent Director, file a certified copy of special resolution in Form MGT-14 within 30 days of the date of general meeting.

If the Board meeting is called at shorter notice so as to transact some urgent business, then the presence of at least 1 independent director is mandatory. In absence of any independent director, a decision shall be circulated to all the directors and later approved by at least 1 independent director.

## Resignation of independent director

- An Independent Director may resign from his/her office by giving a notice in writing to the Company.
- Within 30 days from the date of receipt of such notice the Board shall file same with Registrar of Companies in Form DIR- 12.
- The director shall also forward a copy of resignation along with detailed reasons for the resignation to the Registrar of Companies within 30 days of resignation.

## Applicability for databank registration for an independent director

As per the new norms, the Government has introduced the new facility with the help of India Institute of Corporate Affairs (IICA) for creating and operating an online databank for existing and aspiring Independent Directors.



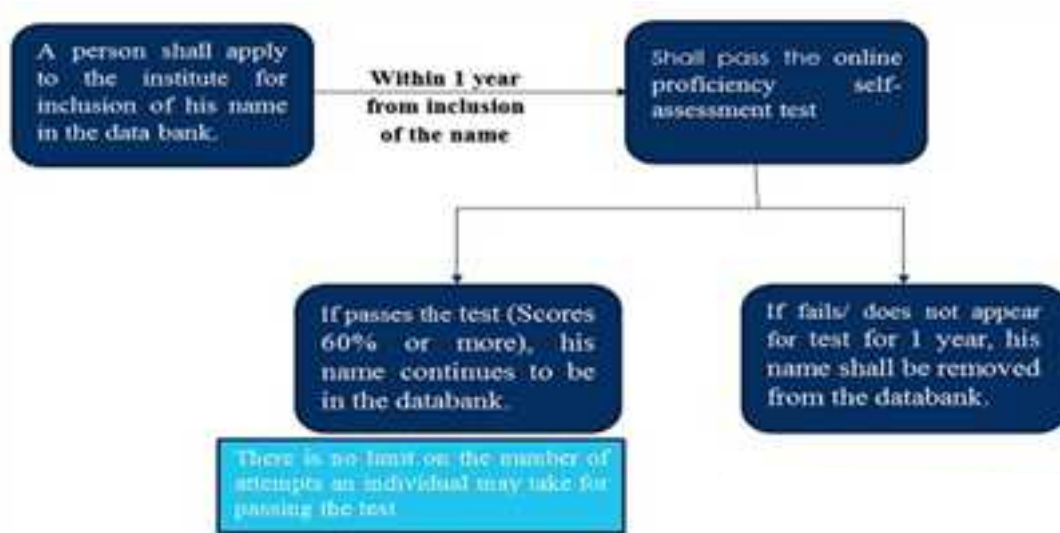
- This databank registration is applicable for the following:
  1. Existing Independent Director
  2. Individuals who want to get appointed in any company as an independent director.

## Procedure for Databank Registration

1. Log in to MCA website [mca.gov.in](http://mca.gov.in) and log in using the MCA credentials;
2. Go to MCA services and click on ID databank service- Individual registration;
3. Enter DIN/Pan number;

4. Send OTP to mobile number;
5. After entering OTP, you will receive your ID and password;
6. Go to <http://www.independentdirectorsdatabank.in> and login with the id and password received in your mobile number;
7. Fill up all the mandatory details and click on submit;
8. Pay the prescribed fees.

### Online proficiency test for independent director



Any person who wanted to be an Independent Director must give an online exam i.e., 'online proficiency self-assessment test' conducted by the institute IICA within a period of one year from the date of inclusion of names. The individual should obtain 60% in aggregate in order to pass the examination. Individuals can give multiple attempts to clear the examination. It covers subjects like Company law, Securities law, basic accounts etc.

### Conclusion

Thus, Independent Director help in bringing independent judgement and act as a bridge between management and shareholders by encouraging the principles of Corporate Governance through providing transparency, accountability and disclosures in the working of the company and assist the company in implementing the best corporate governance practices.

The Act empowers independent directors to exercise strategic oversight over business operations and they must ensure that such extensive powers are not exercised in an unbridled manner but in a rational and accountable way.

The Independent Director will have to suggest remedial steps to be taken and also see that they are promptly implemented. In other words, the Role of an Independent Director under the Act will be that of a "SUPER WATCHDOG" who has to ensure that those in the day to day management (including all Directors on the Board) are functioning in the best interest of the stakeholders, minority shareholders, regulators, workers, customers and public at large. The new Act empowers the independent Directors to manage the company in order to strengthen Corporate Governance.

In short, the role of a director is to make sure the company is operating at its best. A director must take responsibility for their company and take the initiative to actively be involved within the company with care and diligence.

There are a lot of similarities between the roles of a company director and secretary. However, the fundamental difference is that a director is ultimately responsible for the company complying with all relevant laws. A secretary is in charge of helping the director do this by assisting in administrative roles. It is highly advised for a large proprietary or public company to have a company secretary. If not, there is a high risk that a company will breach corporation laws.



**CS Ashok Kumar\*, ACS**  
ashok.kudal@gamil.com

# COMPANY SECRETARY AS INDEPENDENT DIRECTOR

Independent Directors serve as an important Institution of corporate governance contributing significantly at the boards by bringing a diverse set of skills with an independent judgment on the significant issues. Independent Directors need to act as the custodians of good governance by discharging monitoring and advisory role effectively. They need to act in the interest of the company and the interest of all stakeholders.

Schedule IV to the Companies Act, 2013 provides for the 'Code for Independent Directors'. The appointment process of Independent Directors is independent of the company management. The appointment of Independent Director(s) of the Company is approved at the meeting of the shareholders. The Board always ensures that the Independent Director proposed to be appointed fulfils the conditions specified in the Act and the Rules made there under and that the proposed director is independent of the management and a statement to that effect is included in the explanatory statement attached to the notice of the meeting.

For appointment as independent directors, the candidates have to get their names included in a database of willing and eligible persons, maintained by the Indian Institute of Corporate Affairs (IICA), a government institution. DIN is not mandatory for impanelment of any person for Data Bank of Independent Director. If a person not having DIN he can get impaneled on the basis PAN. But to get appointment in any Company DIN is mandatory to obtain by Independent Director

As per the Companies (appointment and qualification of directors) Amendment Rules, 2021 notified by the ministry of corporate affairs, experienced advocates, chartered accountants, cost accountants and company secretaries are exempt from the requirement of a proficiency test if they have been practicing for ten years in the field in order to qualify for appointment as independent directors on the board of companies,.

Independent Director is Non-executive Director and a Practicing Company Secretary can be appointing as Independent Director. And an employee company Secretary even can appoint as Independent Director in any other Company. A Company Secretary is whole time employee of the Company and Independent Director is not an employee of the Company. Therefore, one can opine that CS of the Company can't appoint as Independent Director of same Company.

Independent Director are non executive directors of the Company and not eligible to get remuneration from Company. He can only get sitting fees from the Company.

An Independent 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.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI



CS Kartik Arora\* ACS  
 cskartikarora@gmail.com

# PRACTICING COMPANY SECRETARY – ROLE AS INDEPENDENT DIRECTOR ON BOARDS OF COMPANIES

A company is a legal entity having an existence of its own other than its members. It has the power to enter into contracts, undertake financial liabilities and own assets in its name. The laws confers a bundle of rights on a company and with rights come responsibilities.

Companies are managed by their Board of Directors who are responsible for ensuring smooth functioning of the affairs of the company as well as ensuring compliance with the laws of the land.

The Board of Directors however might not always be aware of the responsibilities bestowed upon them by the law and the need for independent professional directors like Company Secretaries comes into picture.

## Who are Independent Directors and why are they required?

Independent Directors are directors who do not have any material pecuniary relationship with the Company. They bring a balance to the Board and ensure that the decisions taken by the directors are in the interests of the company and are not influenced by their individual interests. Further, as the interests of a lot of stakeholders are vested in a company, it becomes a lot more important to ensure that the decisions of the board are in the interest of the company. Thus, to safeguard the interests of the various stakeholders, the role of the independent directors become inevitable.

## Practicing Company Secretaries as Independent Directors:

Company Secretaries being governance professionals are in touch with the Board of Directors of the companies from a very early stage of their careers. They play a major role in ensuring that the companies are compliant with the laws of the land and the board of the companies functions smoothly. They are well versed with the working procedure of the Board and therefore form a great resource for the companies as independent directors.

The role and importance of Practicing Company Secretaries as independent directors can be understood by the value they bring to the board which is detailed below:

- 1) **Impartiality:** Company Secretaries as independent professionals do not have any material pecuniary interest in the company and therefore their decisions are impartial and in the best interests of the company. Further, with their vast knowledge of the laws of the land, they guide the board in making impartial decisions at all times.
- 2) **Expertise:** Company Secretaries being expert governance professionals have good knowledge of the working of the board. As the majority of the Board of a Company includes directors having good sectoral/industrial knowledge and experience, Practicing Company Secretaries as independent directors bring in additional expertise of various other sectors which helps the board to do a macro analysis of the affairs of the company.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI



3) **Focus:** With Practicing Company Secretaries on the Board of the Company, the directors and the management can focus on the operational aspects without any fear of non-compliance of the laws of the land which gives a sense of satisfaction to the board and accordingly adds to the performance of the company in the long run.

4) **Networking:** As Practicing Company Secretaries work with companies operating in different sectors, they help the companies to collaborate with each other for mutual benefit. Further, in such scenarios the collaboration takes place with minimal risk and maximum benefits.

5) **Policy making:** Company Secretaries as the members of the board help the companies in formulating and amending various policies which govern the day to day functioning of the company. With their strong legal and financial understanding, their advice proves beneficial to the company at all times.

6) **Dispute resolution:** As independent directors, Company Secretaries help in resolving the management disputes which may hamper the operations of the Company. An independent approach in the best interest of the company for dispute resolution saves a lot of time and money thus benefiting the company as a whole.

## **Conclusion:**

It can easily be concluded that Practicing Company Secretaries add a lot of value to the Board of the companies in which they are appointed. Their knowledge, expertise and professionalism bridges the gap and brings balance to the Board. With a lot to offer, Practicing Company Secretaries definitely are the first choice of the companies while choosing independent directors for their board.





# PRACTICING COMPANY SECRETARY – ROLE AS INDEPENDENT DIRECTOR ON BOARDS OF COMPANIES

CS Deeksha Dugar,\*ACS  
csddugar@gmail.com

A Board with blend of business-minded people and a maestro of legal adherence is most likely to build up a Synergy that has an Extra-Ordinary impact on Business results.

## A. What does a Company Secretary in Practice do?

To begin with, this maestro is a Practicing Company Secretary (PCS), who is not in any employment and is entitled to practice after obtaining a respective Certificate from the Institute and generally expertise in but not limited to:

1. Promoting, forming and incorporating Companies and other related matters.
2. Administer in compliance with regard to various regulatory bodies like MCA, SEBI, RBI, TRAI, CBIC, CBDT, FSSAI, etc. depending on the applicability.
3. Secretarial Audit, Certifications, e-filings, Legal Drafting, and related works.
4. Representing and handling the working of Company in the matters of Corporate Restructuring, Takeovers, Rehabilitation and Revival of Sick Companies, Liquidation, etc.
5. Legal representative in the matter of Companies before NCLT.
6. Most importantly, providing deliberately, prominent pieces of legal advices to the clients.

However, this profession has no boundaries to work into and on that account there are enormous Doors and Windows of opportunities available.

## B. Independent Director: Provisions

**Origin:** The formal origin of the regime of independent directors in India can be traced back to the year 2000, under Clause 49 of the SEBI, Listing Obligation and Disclosure Requirements. Subsequently, the Companies Act, 2013 provided statutory recognition to independent directors who are appointed and governed under Section 149 of the Act read with Rule 4 and Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

**Vision:** Massive collapses of major corporations around the world, the Ministry felt a need of an efficient corporate governance model which came up with an idea of appointment of an unrelated and totally independent person to the Boards who shall help the Company in improving Corporate Credibility and Governance Standards ensuring their healthy and profitable working.

**Independent Director** acts as a guide, coach, and mentor to the Company; talking of which, the appointment of Company Secretaries in Practice as an Independent Member in the Board will create a high degree of assurance that the Company will have a keen watchdog to save it from various pecuniary and legal matters and affirm other countless roles, duties and responsibilities as well:

1. Evaluating performance of Board and Management of the Company and to bring an unbiased and target oriented view.
2. Providing independent judgments to bear the board's deliberations on issues such as strategy, performance, risk management, resources, key appointments and standards of conduct.
3. Observing, analyzing, monitoring and reporting management's performance regarding goals and objectives agreed in the meetings of Board.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

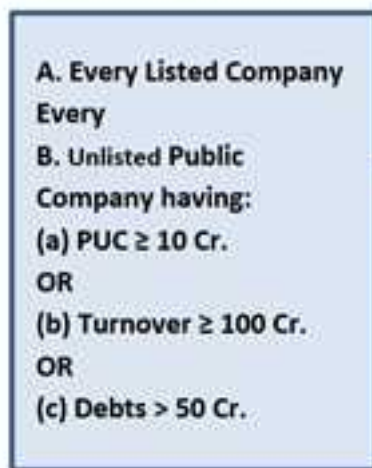
4. Checking and ensuring the integrity of Financial Information, Financial Controls and systems of Risk Management re in proper operation.
5. Deliver a useful role in Progressive Planning with the Board keeping in view all the legal, financial and compliance related aspects.
6. Acting in best interest of the Company while maintaining confidentiality and business ethics.
7. Expedite withstanding and countering pressures from owners with professionalism.
8. Safeguard and balance the interests of all stakeholders, particularly the minority shareholders and to come up with the solutions in the best interest of the Company without compromising with the professional ethics.
9. Ensuring deliberate scrutiny before approving related party transactions and assure themselves that the same are in the interest of the company,
10. Participating constructively and actively in the committees of the Board in which they are chairpersons or members, in the meetings of the Board of Directors as well as of the members.
11. Keeping themselves updated with the Company's working in real time and having knowledge of every criticalities thereof.

... And the duties counting till infinity;

An Independent Director can be named as the Company's Scrutineer who is an explorer of blindfolds which if not so discovered, may result in daunting situations.

Provisions related to Independent Director have been extracted in the diagram below:

### 1. Applicability:



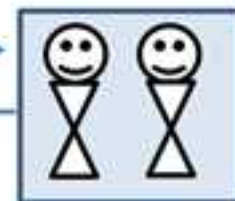
If crossing Limits

As  
Per  
Last  
Audited  
Bal. Sheet

### 2. Appointment:

#### (a) For Unlisted Company:

At Least Two IDs to be appointed in upcoming GM



#### (b) For Listed Company:

At least  $\frac{1}{3}^{\text{rd}}$  of total Directors (fractions to be rounded off as 1)

If Not  
Appointed

### 3. Penalty:

The company and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 5,00,000/-



### C. Conclusive Synergism (The Golden Words)

Now, if a PCS gets an opportunity to act as an Independent Director of a Company, it is a close affirmation to maximum efficiency in the organization.

- **Self-Governance:** It will not be a far-fetched system anymore, as with the complete knowledge of legal applications, ethics and working process of the organization, a PSC can easily create a plan for achieving an autonomous environment in the Company without the requirement of any outside intervention.
- **Compliance:** Keeping a track with the applicability and fulfillment of all the legal compliance and requirements is a pertinent tasks and it is felt that most organizations are in a vague situation with respect to countless laws applicable to them. Here, a PCS-Independent Director can act as a guide in making a personalized compliance calendar indicating all the triggering points.
- **Ethics:** PSC being a member of a statutory body- ISCI, primarily, has a responsibility to strive, promote and encourage development of ethical culture in his profession as well as in the associated organization(s) and ensure the adherence of the company with its Corporate Social Responsibility, Stakeholder Relationships and practice of Business Ethics. This will not only create goodwill of the Company but helps in passing over future contingencies with this respect.
- **Financial Viability:** This aspect is much wider than known. Firstly, a huge costs of late fees, fines, penalties, demands, penal charges, etc. can be ignored and saved by having Mentor-like-Board Members; Secondly, a PCS is well-versed with the knowledge of financial and management planning as well, this may result in avoiding the situations of impulsive financial decisions and bad management conclusions; **And in continuation, roger that, a professional watch-dog has a keen & lid-less eye and a brilliant olfactory sense.**
- **Bigger and Better Business:** With the time, other board members are likely to get dependent on the objectivity and efficiency of the professional director's planning in the areas of law, internal control, and governance which will open their scope to focus on business of the Company which is must be a primary goal. This undoubtedly will take the Company at bigger and better position.





**CS Deepanshi Aggarwal\*, ACS**  
csdeepanshi@gmail.com

- An Independent Director is director on board who helps in bringing the Independent Judgement.

“A successful independent director brings focus, clear perspective and the ability to lead objective board discussions, and, if necessary, drive better decision-making and results. A trusted independent director can make the difference in a board — and by extension — a company. If your board doesn't have an independent director, you're missing an opportunity to leverage someone with experience, knowledge, contacts — someone who's been there, done that — to your company's advantage.”



### Why do company need an ID?

- Independents are the key to conflict resolution.
- Independents bring expertise to bolster where you have room to grow
- Independent director bridges the gap between the management and its shareholders.
- They help the company in inculcating the best corporate governance practices.
- They acts as watch dog.
- Ensure that the companies are not doing any fraud.
- They keeps in mind the best interest of its stakeholders, customers, minority shareholders, workers, its own interest, and the interest of the public at large. Many More.....

Will Herman, serial entrepreneur, explains in Brad Feld's book Startup Boards, “Creating and running a startup can be stressful and time consuming . . . Since the outside director should have loads of operational experience and will often have specific industry knowledge, chances are he/she has experienced almost everything the CEO will go through. Who better to listen, advise and counsel?”

Introduction of the concept of Independent Directors in the Companies Act, 2013 paves the way for smooth corporate governance in the company. As specified in the Section 149(6) the Independent Directors have been conferred many powers. Apart from this many provisions have also been included to ensure that there is no disparity between other directors and Independent Directors. One thing which needs to be noted, that every director, whether independent/non-independent, executive/non-executive has a distinct and pivotal role in the functioning of the company which contributes to its growth and expansion.



\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI



CS Kishan Singh\*, ACS  
singhkrishna817@gmail.com

# PRACTICING COMPANY SECRETARY (PCS) AS INDEPENDENT DIRECTOR- ROLE OF UMPIRE IN THE GAME OF CRICKET

The word “Independent” itself suggests that the person to be appointed on the Board of Companies is independent i.e. not related in any manner whether directly or indirectly with company or its management. Just like in the game of Cricket, we need an Umpire who is not biased and gives the decision only on the basis of facts and circumstances to protect the interests of stakeholders.

The basic essence of 'Corporate governance' is to conduct business ethically, protecting the stakeholder's interest along with shareholders interest, compliance of law in true letter and spirit and creation of wealth in a prudent manner. The concept of **Independent Directors (“IDs”)** is come into force to ensure better corporate governance in the corporate world and protecting the rights and interests of stakeholders including minority shareholders of the Company.

The Companies Act, 2013 and Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI Listing Regulations”) mandates the appointment of Independent Directors on the Board of listed companies and other public companies which falls under the ambit of Companies (Appointment and Qualification of Directors) Rules, 2014. Recently, SEBI has also amended the various provisions related to Independent Directors in SEBI Listing Regulations including it has made it mandatory that special resolution (SR) is required in general meeting for appointment, re-appointment and removal of Independent Director on the Board of listed companies. This step is taken by SEBI as to make appointment and removal of Independent Directors more stringent and not to be influenced by the promoters. The role of Independent Director on the Board is of trust reposed by the stakeholders including minority shareholders and other stakeholders. Independent Directors need to be vigilant in relation to conduct of business activity of the Company and decisions taken in Board and Committee meetings, and raise the flag if any doubt arises and take proper clarification from Board and management especially in case of Audit Committee meetings in which matter relating to approval of financial statements and related party transactions is discussed. The conduct to be followed by Independent directors is also mentioned in Schedule IV (Code for Independent Directors) of the Companies Act, 2013.

As Company Secretary, we are having expertise in corporate laws and well versed with Board processes. Companies Act, 2013 also imposed the duty on Company Secretaries among other things to ensure a good corporate governance practices and compliance of law in true letter and spirit in Corporates.

When Company Secretary in Practice (PCS) is appointed as Independent Director on the Board, apart from other benefits, the following benefits will accrue:

- a. he/she ensures that other Independent Directors on the Board is supplied with sufficient information to take decision in Board and Committee Meetings;
- b. he/she ensures that the decision is taken in company through effective Board process;
- c. he/she ensures that the companies are following good corporate governance practices;
- d. he/she can easily raise the flags in case of concern with Board, Committee(s) members and Regulators.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

The appointment of PCS as Independent Director on the Board of Companies not only benefits the stakeholders but also beneficial for Corporates in the form of:

- a. strong and active Board composition;
- b. increased investor confidence including institutional investors;
- c. chances of non-compliance also minimises ;
- d. better image in the eyes of regulator due to increased Corporate Governance and in result also lead to long term growth due to increased investor confidence
- e. easily discuss with statutory auditors, secretarial auditors and internal auditors matters related to finance, secretarial along with legal matters and can check whether the internal control systems is operating effectively or not in the company;
- f. as a part of various committee(s) on the Board, PCS can ensure that the shareholders complaints redressed on timely basis and entertain vigil mechanism complaints and other investor related concerns and can take clarifications in case of any concern/deficiencies from management.

When appointed on the Board of companies as Independent Director, we Company Secretaries always act like a Umpire in the game of cricket and always be unbiased and take decision in the better interest of stakeholders along with ensuring that good corporate governance practices has been followed by the corporates.





# PRACTICING COMPANY SECRETARY - ROLE AS INDEPENDENT DIRECTOR ON BOARDS OF COMPANIES

CS Yati Mittal\*, ACS

csyatimittal@gmail.com

## Introduction

To comply with Corporate Governance Policy, certain companies are entitled to appoint Independent Directors on its Board of the company. Independent director is non-executive director who helps the company to improve corporate credibility and governance. Independent Director are not in full time employment of the company such as other directors. Thus, Independent director before giving any consent in any of Board Meeting or General Meeting, do proper due diligence of the agenda specified in the notice of the meeting. No company can elect Independent Director as per their convenience. Such director is elected through Independent Data Bank as maintained by MCA.

Company Secretary somehow plays the same role in the company. They help to maintain integrity, looks towards corporate governance of company, compliance of company and guides the directors of the company as per the policy and procedure. Since, Company Secretary (whether in employment or PCS) are well equipped with knowledge and practical experience can get themselves registered under the data bank of Independent Director and can be elected as Independent Director of any company. Such as directors are in full time employment of the company but can get themselves registered to be appointed as Independent Director in any other company, same Company Secretary are free to do so.

## Definition of Independent Director

Independent Director is defined under Section 149(6) of Companies Act, 2013. An independent director is a director other than managing director or whole time director or a nominee director:-

- a. Person of integrity and shall possesses relevant experience and expertise;
- 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;

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI



- 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 may be prescribed 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 may be prescribed 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 his relative: -
- 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.
  - 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—
    - i. A firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
    - ii. 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 nonprofit organization 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.
- f. Who possesses such other qualifications as may be prescribed.

### **Practicing Company Secretary**

As per Section 2(25) of Companies Act, 2013, “company secretary in practice” which means a company secretary who is in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980.

As per Section 2(2) of Company Secretaries Act, 1980, defined company secretary in practice as company secretary who does not work under any agreement, but either works individually or in partnership. Thus, a CS under practice has wider role than CS in employment.

A PCS is free to choose its area of practice. Majorly large companies are required to appoint a PCS for their legal assistance and certification in various e-forms to be filed with MCA.

PCS is generally appointed:

- ❖ In listed companies,
- ❖ Every public company having a paid-up share capital of Rs. 50 crore or more; or
- ❖ Every public company having a turnover of Rs. 250 crore or more; or
- ❖ Every company having outstanding loans or borrowings from banks or public financial institutions of Rs. 100 Cr. or more.
- ❖ Or any other public or private company who wants to outsource their work for compliance.

### Services Rendered By PCS:

- Incorporation of Companies
- Drafting of Memorandum and Article of Association and other documents, stamping and registration with Registrar of Companies.
- Advising on expansion and modernization.
- Issuing Secretarial Audit Report.
- Conducting Due Diligence
- Maintaining records of the companies.
- Drafting of various official documents such as offer Letter, Prospectus.
- Merger and Amalgamation....

And list is never ending. A PCS has wide scope to practice. A PCS can either engage in wide area of services or can choose a particular service. Since, a PCS has authority to practice in all areas starting from Incorporation to Arbitration, thus, they had to gather wide knowledge to render services without any default or faults.

As discussed above in introduction, a Company Secretary can become non-executive director of any company and their discussion with Board of directors of company can be very beneficial because of knowledge and experience they have.

### Role Of Practicing Company Secretary as Independent Director on Boards of Company

As per the definition of Independent Director stated above, an independent director can be person of integrity and shall have desired knowledge. Through the definition, we can say that Practicing Company Secretary totally fit into this definition. Though PCS can become independent director by registering themselves with MCA. If a Practicing Company Secretary are invited in the Board Meeting or is taken advice on the agenda items can be beneficial for a company.

As Independent Director, who are not involve in day-to-day business of the company, and before the meeting for giving ascent or descent to any agenda item, need to do due diligence at their part. Same as Practicing Company Secretary are only concerned with rules and regulation are levied by the company but does not involve themselves in their day to day working. Thus, if Board of Directors seek the guidance from PCS on their agenda items, they will get the same response as of Independent Director.

Seeking advice from PCS, will help in dealing with Independent Director and answering their questions in the meeting as PCS will have the same IQ as of Independent Director.

## Roles and Responsibilities of Independent Director

1. Useful role ins successful planning.
2. Safeguarding the interest of all stakeholders, especially the minority shareholder.
3. In situations of conflict between management and shareholder's interest, aim towards the solutions which are in the best interest of the company
4. Should have adequate knowledge about the company and the external environment in which it operates.
5. Participate in Board committee's and Board Meetings.
6. Shall not disclose the confidential information.
7. 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.

The above-mentioned roles and responsibilities of independent Director are the day-to-day activities of a Practicing Company Secretary. Hence, allowing appointed PCS in their Board Meeting will help in proper understanding of the agenda items and clearing the queries of non-executive director.

Being PCS of a company, they have to maintain integrity and shall not disclose the confidential information of each of client companies. A PCS can advise to their clients, as per their experiences through various projects and client's assignment, but without disclosing the name of clients.





## PRACTICING COMPANY SECRETARY – ROLE AS AN INDEPENDENT DIRECTOR ON BOARDS OF COMPANIES

**CS Gaurav Mahajan\*, ACS**  
gaurav4324@gmail.com

Company secretaries are both employees and officers of companies, furthermore as being gatekeepers tasked with giving freelance recommendation on regulatory and corporate governance matters. Corruption is clearly happening worldwide, and it involves not solely the government institutions however additionally the non-public institutions and civil society. The requirement thus to have an elaborate corporate governance structure particularly public organizations is now more of essence than ever. Several board of directors' hunt to the Company Secretary for steerage within the adoption of those governance structures in their organizations and a lot of therefore on however the adoption of good governance will mitigate fraud and alternative malpractices. The independence of the company secretary is best maintained by a professional code that has negative criteria.

### Practicing Company Secretary – as an Independent Director

A person can be director in one company and employee in other company. There is no provision in Companies Act, 2013 that prohibits the same.

The Council of the Institute, in exercise of its powers under regulation 168 of the Company Secretaries Regulations, 1982 has accorded general permission to its members in practice to become non-executive director/ promoter/ promoter director/ subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

The Council has further allowed members in practice to become non-executive director/ promoter/ promoter director/ subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

So, CS can be non-executive director and not executive director in the company.

A non-executive director means an ordinary director who fulfils the following conditions:

- i. he is required to attend the meetings of the Board or its committees only.
- ii. he is not paid any remuneration except the sitting fees for attending the Board/ Committee meetings and any remuneration to which he is entitled as ordinary director.
- iii. he is devoting his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

A company secretary can also be a permanent employee of a company, unlike an auditor (a contractor) or a company director of a listed company, whose term of office is usually based on a service contract of some limited period. Subjecting company secretaries to similar controls could disrupt the administrative operation of companies, including the strict filing and reporting duties required by the law. If the removal and appointment of a company secretary requires shareholder approval at a general meeting, the board will be unable to quickly suspend a company secretary who is found to be in default of compliance with the law or of his or her contractual or other duties to the company. In an interim period, such a company may need to fulfil its filing duties urgently, and convening a meeting to obtain approval of the company's shareholders can cause missed filing deadlines, with a consequent contravention of the law for which directors would be liable.

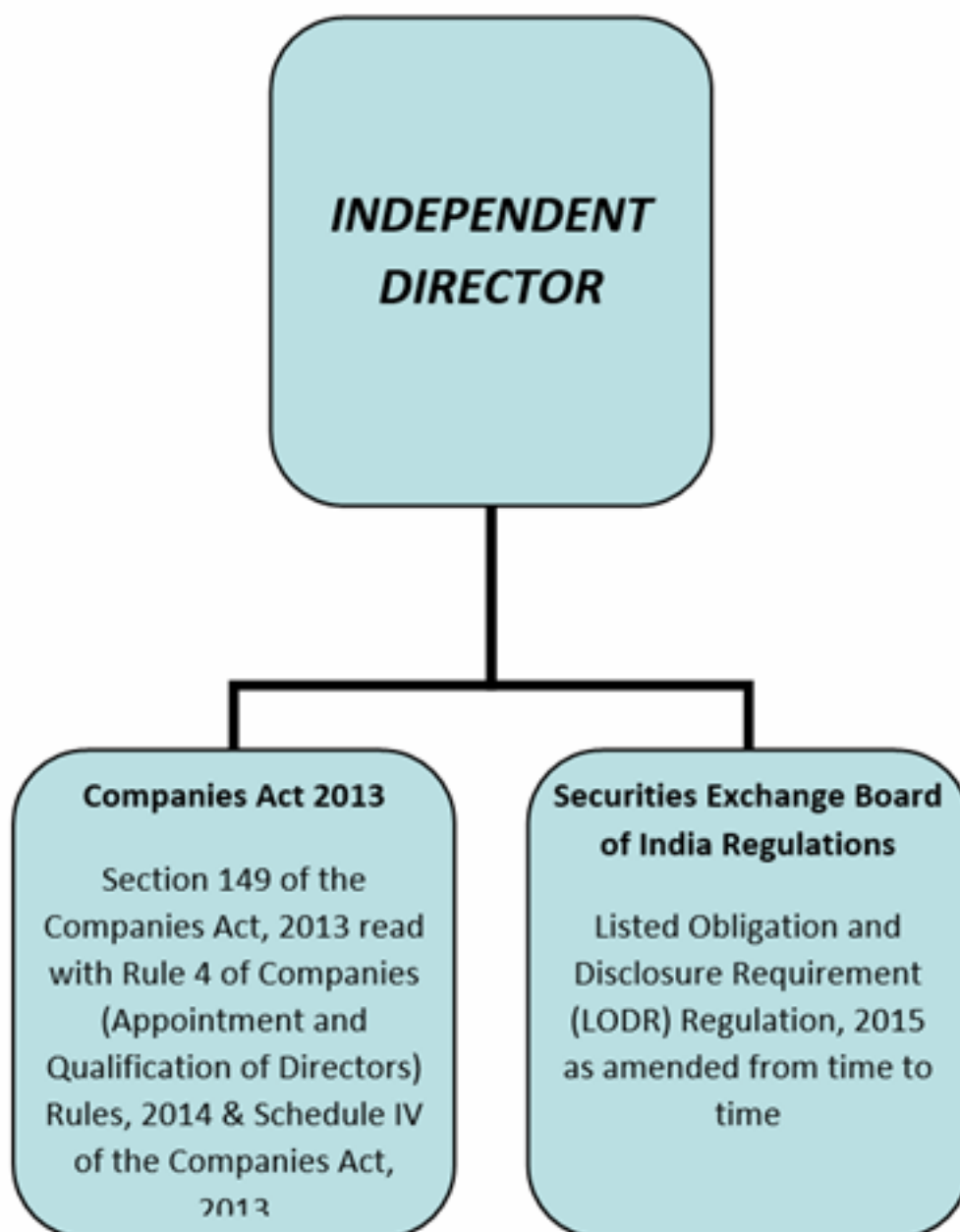
\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

It is debatable whether a permanent employee or a contracting professional firm would better fulfil the role of gatekeeper. An employee company secretary is closer and more integrated with the board and the company than an auditor. The company secretary has closer proximity to the shareholders, hence is in a better position to act as spokesperson for the board in communicating with shareholders. An employee company secretary holds a longer tenure than executive directors and, having experienced both good and bad times, is also a better repository of corporate memory which is invaluable for providing guidance to a board.

### **Regulatory Framework**

The concept of Independent Directors was proposed in the legislation by means of the Companies Bill, 2009 which was finally enacted in the form of the Companies Act, 2013. The Act and the relevant Rules made thereunder contain extensive provisions dealing with independent directors. In fact, a whole schedule, namely Schedule IV has been prescribed under the Act which contains the “Code for Independent Directors”.

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



Section 149(4) of the Companies Act, 2013 read with Rule 4 and Rule 5 of Companies (Appointment and Qualification of Directors) Rules, 2014 lays down provisions with respect to the Independent Directors appointment, it requires the following listed public company shall have at least one-third of the total number of directors as independent director:

- Every Listed Public Company.
- Unlisted Public Company:
  - having paid-up share capital of 10 Crore or more, or
  - having turnover of 100 Crore or more, or
  - having outstanding debentures, loans and deposits, in aggregate, exceeding 50 Crore.

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

Independent Directors are meant to be third party individual that do not have any relations with the company or its holding, subsidiary and associate companies.

Independent Director are required to keep a view over the financial reporting of the company, as well as specification attention to the integrity of transaction between related parties of the company. Independent Directors will also require to exercise independent judgement over the deliberations of the board of directors.

Independent directors are required to provide a declaration of their independence in the following cases:

- 1) The first board meeting they attend as a director,
- 2) The first meeting of the board of directors for every financial year,
- 3) Any situation that affects the independence of their role as a director of the company.

According to the section 150 of Companies Act 2013, Independent directors may also be selected off a data bank. The Indian Institute of Corporate Affairs (IICA) through the Centre maintains this data bank of the independent directors in India, along with details such as names, address, and qualification etc. of the eligible persons.

Providing the responsibility of exercising due diligence before selecting a person from the data bank referred to above, s an independent director shall lie with the company making such appointment. The appointment of the independent director shall be approved by the company in the general meeting.

SEBI has recently released new rules to strengthen the rules governing independent directors. Under the new rules, appointment, re-appointment and removal of independent directors in a listed company will be done through a special resolution of shareholders. In the special resolution, the number of votes in favour of resolution should be at least three times those against the resolution. This will ensure that the independent director are not removed or appointed at the whims and fancies of the promoters.

The listed entity will have to ensure that approval of shareholders for appointment of a person on the board of director is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier; SEBI said in Regulation 25 sub regulation (2A) vides amendment in Obligations with respect to independent directors.

## Duties of independent directors:

1. Undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
2. Seek clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside at the expense of the company.
3. Strive to attend all the meetings of the board of the directors and of the board committees of which is a member:
4. Keep themselves well informed about the company and the external environment in which its operates:
5. Report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct of policy.

## Term of office of an independent director

- 1) An independent director shall hold office for a term up to 5 consecutive years on the board of the company, but shall eligible for reappointment on passing of special resolution by the company and disclosure of such appointment in the board's report.
- 2) No independent director shall hold office for more than 2 consecutive terms, but such independent director shall eligible for reappointment after the expiration of 3 years of ceasing to become an independent director provided that he should not, be appointed in or be associated with the company in any other capacity, either directly or indirectly.
- 3) Retirement of directors by rotation shall not be applicable to appointment of independent directors.

The company secretary, as a corporate governance officer who aims at fulfilling the corporate transparency requirement and facilitating board independence, should retain the critical attribute of independence as do other gatekeepers such as the auditor, the lawyer, and the compliance officer. However, this attribute of independence should be regulated in order to best realise governance goals.

## Rationale of Independent Director

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

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

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

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

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

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

### **CS as Compliance Officer**

As mentioned, transparency is an indispensable element of modern corporate governance, and transparency has been translated into various requirements for filing, reporting of law and policy compliance, and timely announcement.

Company directors and company secretaries, as officers of the company, assume filing duties under various laws. These filing, reporting and announcing requirements require independent judgment to be exercised. For instance, complying with accounting rules, complying with rules specifically designed to protect the shareholders i.e. the pre-emptive rights regime, understanding the operations of nominee companies to identify rightful investors, the application of proxy rules to increase shareholder engagement and proactive development of governance protocol to hedge risks stemming from subsidiary operations, all demand a skilled governance officer.

In future, companies may be required to make disclosures under the freedom of information law if they carry out works that are categorised as public services. Independent judgment would be needed to determine issues concerning disclosure requirements.

The company secretary should assist and guide the directors in their pursuit of the company's aims but should also act with integrity and independence to protect the interests of the company, and through its shareholders, its employees and other stakeholders.

Company secretaries are both employees and officers of companies as well as being gatekeepers tasked with giving independent advice on regulatory and corporate governance matters.

One of the theories of good corporate governance is that a company secretary is a fearless adviser to the board. He or she owes the board an unqualified allegiance and is required to serve it faithfully.

In reality, this theory loses substance because company secretaries are usually hired and fired, not by the board, but by the CEO. This is especially so where they are given additional functions such as that of general counsel or legal manager.

In a skills sense, this type of "add-on" responsibility is a logical addition, but it requires the company secretary to report to line management on a variety of day-to-day matters and be involved in operational activities. In many cases, this dual reporting role can hinder a company secretary's efforts to provide the board with fearless advice.

Company secretarial and other management consulting services are more likely to be among the additional businesses that can be gained from audit 'low-balling' practices. The issue is how to make sure that the secretarial services offered are not 'tagged along' with the audit service.

Potential conflicts can be controlled by the company disclosing such a 'tag-along' relationship. Once the tag-along relationship has been disclosed, shareholder approval can be required to further examine potential conflicts and the value provided to the company.



Furthermore, such approval may only need to be required for services provided by the professional services firms who offer a full range of services.

Compulsory rotation can be introduced to maintain a more arms-length relationship between the company and professional services firms. Rotation can also increase independence since the company secretary will be less attached to the management team, hence fostering a more arms-length relationship.

The position of independent director is the position of responsibility and should be accepted only if the person is confident of the company and management.

Hassle of getting into legal labyrinth arising out of mismanagement or otherwise of the company is not worth the fees received as independent director and also the reputational loss that may come with it. As such the law takes care that the liability of Independent Directors is limited.

Sub-section (5) of Section 149 of Companies Act, 2013 provides that an independent director, can be held liable only in respect of such acts of omission or commission by a company:

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

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

## Conclusion

A balance needs to be struck in terms of how independent the company secretary should be. If company secretaries are too independent they risk losing their ability to bridge the gap between the executive and non-executive elements of the organisation.

Conversely, if they are entirely integrated into the management of the company they risk losing their ability to provide the board with independent advice.

While balancing their roles as in-house gatekeepers will not always be easy, company secretaries are increasingly aware that their unique position in the corporate structure is the foundation of the real value they can bring.





**CS Penny\*, ACS**

ellawadi.penny0112@gmail.com

# CORPORATE GOVERNANCE VERSUS BOARDS OF INDEPENDENT DIRECTORS

An independent director is a non-executive director of a company. Independent directors act as a guide to the company. Their Boards broadly include improving corporate credibility and governance standards functioning as a watchdog and playing a vital Boards in risk management. Independent directors play an active Boards in various committees set up by company to ensure good governance.

Independent Directors should makeup somewhere around 66% of the Directors in the review boards of recorded organizations to regulate the financial reporting process and disclosure of the company's financial information, ensure compliance with listing and other legal requirements, disclosure of related party transactions and qualification in the draft audit report, among other things.

Promoters who value worth understand that a decent board do look for competitors who can challenge them and in this way work on the improvement of general working.

## Understanding the concept of true independence and what it involves

True empowerment of independent directors – developing the ability to proactively assist management make the right decisions. In the long run, such constructive dissent is bound to result in more effective decision making. Corporate India will soon find that this diversity is not only to meet the regulation but to help improve the performance of a company.

## Duties Of Independent Director :

- Aid in offering an autonomous judgment to bear on the Board's deliberations particularly on issues of strategy, performance, risk management and standards of conduct;
- To enable an objective view in the evaluation of the performance related to board and management and examine the performance of management in meeting the decided goals and objectives;
- Assure the reliability of financial information and that financial controls;
- Protect the interests of all stakeholders;
- Decide suitable levels of remuneration of executive directors, key managerial personnel and senior management and have a major Boards in appointing and where essential recommend removal of executive directors, important managerial personnel and senior management;

## Whether Independent Directors are well-positioned to undertake such demanding responsibilities:

In a period of expanded intricacy in deals and vulnerability in the business climate, independent directors are not only required to possess exceptional business expertise, yet they are likewise needed to dedicate generous measure of time and thoughtfulness regarding the undertakings of the loads up on which they sit.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

Right now, Independent Directors are portrayed by business leaders like CEOs and ranking directors of different organizations. These are people with essential 'day occupations' for whom the Independent directorship of an organization is nevertheless one of many undertakings. They give just a specific number of days a year for board liabilities. Preceding board and panel gatherings, they are needed to step through reams of reports and other data, which are regularly specialized just as ample. At the point when an organization is performing admirably, the Independent Directors will in general take on a more open minded methodology towards the board without any 'warnings'.

In any case, when an emergency circumstance arises, they are constrained to be at the cutting edge and assume liability for the issues of the organization. Can Independent Directors be depended upon to turn away emergencies in any case? Apparently not, if their job in the issues of the organization is negligible as it as of now is.

Boards of Professionals as Independent Directors:

MCA vide its Notification dated 19th August 2021 has issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021. These Rules came into effect on 20th August 2021 and provide exemption to Professionals to pass online proficiency test to add name in Independent Director Data Bank:

1. In the pay scale of Director ..... commercial activities.
2. Following individual having qualification for at least 10 years as

**(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.**

Such an individual who is a Professional and possesses the requisite expertise and experience, would commit all his time and energy to being an independent director on various boards.

Benefits: A particular benefit of this alternative is that it permits such people to concentrate only towards playing out their directorship Roles viably in organizations on whose Boards they sit. As they are qualified and know about industry inside out, they can invest more noteworthy measures of energy and attention towards the organizations' undertakings. It empowers more noteworthy communication with administrations of organizations (at different levels) bringing about a smoother stream of data to the board, and all the more explicitly the Independent Directors. Aside from these experts being specialists by their own doing, they might conceivably profit from partaking on Boards of a few organizations. They can advance themselves by gaining from their encounters on one board, and afterward apply that on different Boards, in this way bringing about a cross-treatment of thoughts and best practices. This produces an ideal result for every one of the organizations on which the people are Directors.

It is recommended that the Boards of independent directors consist of two parts: (i) advisory; and (ii) monitoring. Independent Directors need to bring value to the organization terms in of their capacity to give inputs on essential, business, promoting, legitimate, consistence, or other applicable viewpoints, and furthermore complete checking capacities (by going about as watch dogs) to ensure the interests of investors.

These Roles are to be unmistakably laid out with the goal that Independent Directors are not dependent upon any vulnerability on this front. Admittedly, it may be a tall order to require every independent director to perform both advisory and monitoring functions, and that may not be practicable to begin with. However, the board could be comprised of independent directors with different capabilities so that the board as a whole may be in a position to perform both these functions effectively.

### **Professionals as Independent Director and Concept of Women Director**

There has been a wide view that there is a need to specifically mention the word "independent" while mandating gender diversity so that women directors get appointed beyond the promoter family and it does not turn into a tick-box exercise. In May 2018, SEBI said each of the top 1,000 listed companies must have at least one woman independent director by March 2020. As on December 31, 2019, 977 of that top 1,000 companies had a woman director, and 835 of them had a women independent director.

Interestingly, a study shows that a large proportion of women directors (60%) are independent -which is contrary to the popular notion that women directors are only getting appointed from the promoter family to comply with the regulations. A senior woman director who is on multiple boards say some Indian boards often have one or two members who do not take women seriously. These people make their attitude apparent by walking out, looking away or scanning their phones when a woman director starts to speak.

In such a scenario, being a professional becomes useful. Another round of churn is expected on company boards around 2023-2024 as a directors tenure was capped at 10 years in 2013. Veteran independent directors will have to make way for new members. This will also go a long way in virtually dismantling any remaining old-boys clubs in corporate India.





# PRACTICING COMPANY SECRETARY – ROLE AS INDEPENDENT DIRECTOR ON BOARD OF COMPANIES

CS Nikita Surana,\* ACS  
nikitabudhia21@gmail.com

*“I don't believe in taking right decisions. I take decisions and make them right”.*

Well when was the last time we thought that we have taken the perfect decision. It is impossible for even the biggest minds to always be right. Next time don't over think while taking a decision. Believe in yourself and go for it.....well quoted by Ratan Tata..

Company secretary is one who takes decision for betterment of company and its board .

## **Independent Director is Non-executive Director and a Practicing Company Secretary can be appointing as Independent Director.**

Independent Director acts as a guide, coach, and mentor to the Company. The role includes improving corporate credibility and governance standards by working as a watchdog and help in managing risk. ... While evaluating the performance of the board and management of the company, he or she needs to bring an objective view.

An independent director represents neither institutional investors nor the founders but can bring balance to a board.

Following are five reasons why every board needs an independent director.

### ➤ **Independents Are fairness:**

Independent directors are “still beholden to shareholders, but will try to be more objective as far as moving the company in a beneficial direction.” **An independent board member's job is to look out for the well-being of the company and the shareholders' interests first.**

### ➤ **Independents Want to Be There**

If you're a startup and have only investors on your board of directors, you run the risk of having board members whose attention is split between many boards of companies they've invested in. Many variables can impact their level of engagement, e.g., how much money they or their firm has invested, how important the company is to their portfolio. **An independent board member can bring focus and depth of perspective about your industry, company.**

### ➤ **Independents Bring Expertise to Bolster Where You Have Room to Grow**

With an independent, you get the chance to select an expert in a specific area where your company wants to grow (e.g., going public or scaling/growth), or an area that has become more urgent due to market changes, new opportunity or an adverse situation. This can be especially important when you've got a small board and are early in a company's life cycle. By bringing in a specific expertise early through your independent, you can take advantage of growth opportunities and potentially avoid costly mistakes.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

## ➤ Independents are the key to conflict resolution

An independent board member is able to play a pivotal role in neutralizing any conflicts that arise among the board. The BAORD LIST founder Sukhinder Singh Cassidy believes that “an independent director can often **be a bridge builder in difficult conversations.**”

*Will Herman adds, “sometimes there are just some deep, fundamental disagreements between the management team and the company's investors . . . Even if the outside director strongly supports one of the perspectives, since they are close to both sides, they are in a unique position to cut through to the core issues and find agreement much faster.”*

## ➤ Independents act as mentor

While all board members can help to mentor the CEO and executive team of the company, an independent can be specifically recruited for skills or perspective needed by executive team. Through casual or more formal conversations, an independent director can be the key to a more sane management team.





## PRACTISING COMPANY SECRETARY (PCS) - ROLE AS INDEPENDENT DIRECTOR ON BOARDS OF COMPANIES.

**CS Nirbhay Goel,\* ACS**  
c.s.nirbhaygoel@gmail.com

In 2005 as per power conferred by the Regulation 168 of Company Secretaries Regulations, 1982 the council has accorded general consent to its members in practice to become non-executive directors. Accordingly, the members in practice can be appointed as Independent Directors on the Board of Companies.

The term Independent Director is defined under the Companies Act, 2013 and SEBI (LODR) Regulations, 2015. As per Section 2(47) "independent director" means an independent director referred to in sub-section (6) of Section 149 of the Companies Act, 2013.

Section 149(6) and definition as provided under the SEBI (LODR) Regulations, 2015 has referred the various aspects to be checked before consideration or appointment as Independent Director. SEBI (LODR) Regulations, 2015 additionally referred some aspects in addition to Section 149 (6).

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 may be prescribed during the two immediately preceding financial years or during the current financial year;

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

(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 may be prescribed 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 may be prescribed.

Apart from above SEBI (LODR) Regulations, 2015 provides some addition in the term Independent Director while defining the same i.e.:

i) is a material supplier, service provider or customer or a lessor or lessee of the listed entity;

ii) who is not less than 21 years of age;

iii) 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:]

Further, Schedule IV of the Companies Act, 2013 i.e. Code for Independent Directors provides various roles, functions, duties and responsibility of Independent Directors.

Induction of Independent Directors in the Board of Companies is to protect the interest of the various stakeholders of the Company and to avoid the lapses or divergence on the part of the Company from the concept of Corporate Governance and to the extent possible apply the Corporate Governance in the Company and the Board decisions in true spirit.





**The role and functions of independent directors as per companies act, 2013 is as follows:**

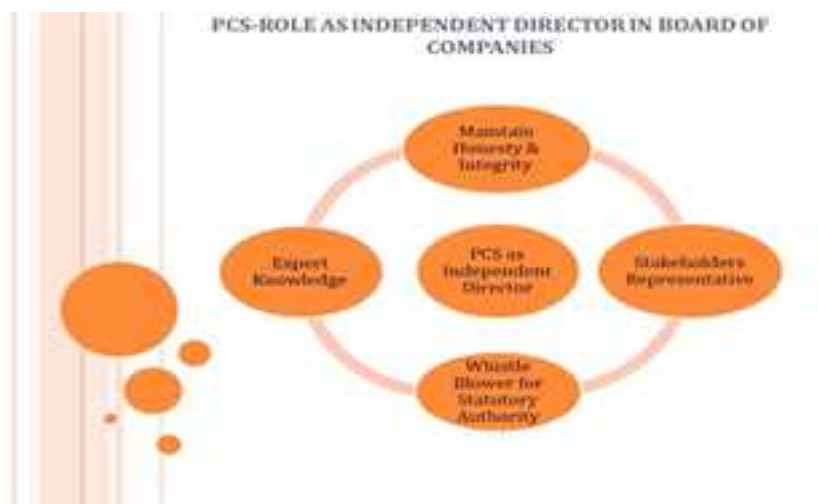
The independent directors shall:

- 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.

Above role of Independent Directors are to be abide by the Independent Directors and it is noteworthy to say that when the position of Independent Director is handled by the Practising Company Secretaries (PCS), who are the flag bearers of the Corporate Governance being the Governance Professionals they can abide the same in true spirit being they are aware of the laws and the intentions behind the same.

Further they also have the diversified knowledge in the various statute which are applicable to the Companies, also their dealing with different companies and involvement in various policy matters and decisions as a service provider or consultant has also enrich them with the different types of experiences over the period of time. This type of experience not only enrich their professional capabilities but also make them the right candidate for the consideration of various management as Independent Director on the Board of Company.

The role of PCS as Independent Director on the Board of Companies is in many folds and some them are listed below:



1. To maintain the highest standard of Integrity and Honesty;
2. To act as representative of various stakeholders;
3. To act as a whistle blower if the fraud or financial irregularities were found in the Company or in the decision making of the Management;
4. To provide the benefit of expert knowledge to the Management while making decisions;
5. To raise the concerns if any, received from the stakeholders of the Company appropriately;
6. To record the dissent on the matters where the Management is acting against the interest of shareholders and stakeholders;
7. To ensure the appointment at Management level and one level below the Key Management has been done by the Management with bona fide intentions and as per the procedure prescribed;
8. To ensure the Directors are not interested/ or if interested, than Directors did not participated in the decision making in the matter referred to the Board for approval.
9. To interact with the Auditors and other agencies involved in the Company to create the value addition in the Company;
10. To scrutinize/evaluate the performance of the Management and Board as a whole;
11. To see the policies as approved by the Board followed in true sense;
12. To act as a mediator when there is a conflict of interest between the management and other stakeholders;
13. To ensure the Related Party Transactions are done in a transparent manner;

A Practising Company Secretary has gamut of experience to offer to the Company's Board as Independent Director being the Governance professional. Further the Knowledge of the PCS has also differentiated the candidature from the others and it would be beneficial in all the aspects for the Companies whether they are listed or unlisted companies who will engage the PCS as the Independent Director.

The Government had also understood this fact of recognition of professionals and thereby launched the portal for the Independent Directors in 2019 where Individuals can be registered themselves as Independent Director and the Companies can have the access of the data too.

Though the qualification of the Independent Directors was not referred except in terms of Audit Committee where the tem financial literate was referred for the Independent Director. We can sum up that PCS as an Independent Director has lot to offer to the Company and to the society in large and their role as Independent Director can be lead to a change which strive the growth.



**CS Yogita\*, FCS**

yogita84.cs@gmail.com

## ROLE AS INDEPENDENT DIRECTOR ON BOARD OF COMPANIES – AN INDIAN ERA

### Background:

An independent board of directors in public listed companies is seen as an integral element of a country's corporate governance norms. Board independence has taken on a pivotal status in corporate governance that it has become almost indispensable. Consequently, governance reform in recent years has increasingly pinned hope as well as responsibility on independent directors to enable higher standards of governance. Cadbury Committee Report has led the development of corporate governance norms in various countries such as Canada, Hong Kong, South Africa, Australia, France, Japan, Malaysia, and India, just to name a few. Similarly, the U.S. requirement of independent directors has also resulted in readjustment of corporate governance norms in various countries.

The section 149(4) of the Companies Act, 2013 states that every listed public company must have at least one-third of the total number of directors as Independent Directors.

The increase in the number of minority shareholders has increased the need for the independent directors. The corporate governance has gone over many changes in the recent years and the concept of Independent Directors is one of the most important changes among those. In 2009, the role of Independent Directors took a huge dent both in India and overseas after the Satyam scam. Large number of Independent Directors resigned the post which highlighted the powerless state of the independent directors in the Indian Corporate Governance. The position of Independent Directors in a corporate governance dominated by promoters and controllers was very weak. According to the definition by International Finance Corporation Independent directors must fulfil certain minimum requirements. The standard must be maintained in appointing the independent directors to ensure integrity of decision making. The Independent directors must be unhampered by the circumstances to ensure their decision making is neutral.

The board Independence is thought to be an important step in ensuring the better functioning of the Independent Directors in Corporate Governance. The Liberalisation Privatisation and Globalisation of 1991 played a vital role in the emergence of Independent directors in India. The presence of Independent directors improves the quality of Corporate Governance. The independent director has to make the declaration of his independence at first meeting of the board and subsequently during every financial year the company and the independent director must abide by the provisions of Schedule IV. Thus, the Independent Director cannot be held accountable for matters outside his purview and knowledge. Clause 49 provides that the Independent Director of a Company shall hold a meeting by only inviting independent directors. The recent exposure of high-profile cases of fraud in India shows that the Independent Directors are taking interest in reviewing fraud risk management framework which was drafted to mitigate the risk of fraud. Companies may bear the fruit of independent directors by having a same person as an Independent directors of all those companies, it may help in smooth functioning of all those companies without conflicts. Independent Directors are the first line of defence for the minority shareholders. They are an integral part of Corporate Governance. They build a crucial interface between promoters/ management on the one hand and Shareholders / stakeholders on the other.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

## Legal Framework of Independent Directors Under the Companies Act, 2013

The provisions relating to appointment of Independent directors are contained in Section 149 of the Companies Act, 2013 which should be read along with Rule 4 and Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014. According to sub-section (6) of section 149 of the Companies Act, 2013 an independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director and According to SEBI (Regulation 16), an Independent director" means a non-executive director, other than a nominee director of the listed entity:

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) who is or was not a promoter of the company or its holding, subsidiary or associate company;
- (i) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) who apart from receiving director's remuneration, has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (e) who, neither himself nor any of his relatives—
  - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
  - (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 firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
    - 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 inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, w.e.f. 1.10.2018.
  - (v) is a material supplier, service provider or customer or a lessor or lessee of the Company who is not less than 21 years of age.
- (ii) 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:
- (f) who possesses such other qualifications as may be prescribed i.e possesses appropriate skills, experience and knowledge in one or more fields of finance / law / management / sales / marketing / administration / research / corporate governance / technical operations/other disciplines related to company's business.

## Independent Director and His Position

The number of independent directors has been fixed as one third of the total strength of the directors in the company. SEBI has mandated that the Board of Directors of the top 500 listed entities shall have at least one independent woman director by 1-4-2019 and the Board of Directors of the top 1000 listed entities shall have at least one independent woman director by 1-4-2020. Unlisted Public Companies must appoint at least 2 independent directors if the paid up share capital exceeds Rs 10 Crores; if the turnover exceeds Rs.100 Crores; if the aggregate of all the outstanding loans, debentures and deposits exceeds Rs 50 Crores. The terms and conditions of appointment of independent directors shall also be posted on the company's website.

Again, the independent directors are not permitted to hold office for more than two consecutive terms of five-year periods. Independent directors have to be selected from a data bank containing names, addresses and qualifications of persons eligible and willing to act as directors.

On 2nd Dec 2019, Ministry of Corporate Affairs (MCA) launched the Independent Directors database in accordance with Companies Act 2013. Its objective was to strengthen the institution of independent directors. The database will be developed and maintained by Indian Institute for Corporate Affairs (IICA). Sec 150 of Companies Act 2013 provide that Independent Director should be selected from the Data Bank. Data Bank should contain names, address and qualifications of persons. As per the notification rules, all existing independent directors are required to register themselves in the database by 1st March 2020 and pass the online proficiency self- assessment test within 12 months thereafter. To register they must login into the website of the Ministry. The Indian Institute of Corporate Affairs (IICA) under the MCA will hold the exam and to make the process stringent, a score of 60 per cent marks will be mandatory criteria for qualification.

## Exemption Provisions Under the Companies Act, 2013

As per Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014, an individual shall not be required to pass the online proficiency self assessment test when he has served a total period of not less than three years as on the date of inclusion of his name in the data bank—

- (A) As 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:
- (i) Listed public company; or
  - (ii) Unlisted public company having a paid-up share capital of rupees ten crore or more; or
  - (iii) Body corporate listed on any recognised stock exchange
  - (iv) Bodies corporate incorporated outside India having a paid-up share capital of US \$ 2 million or more or
  - (v) Statutory corporations set up under the Act of Parliament or any State legislature carrying on commercial activities; or

MCA vide its Notification dated 19th August 2021 has issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021. These Rules came into effect on 20th August 2021.

Now, after this amendment following also are exempt to pass online proficiency test to add his name in Independent Director Data Bank:

1. 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.'

2. Following individual having qualification for at least 10 years as

(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.

## **Independent Directors and the Company Performance**

The Board has two types of directors namely executive and non-executive. Executive directors are responsible for the day-to-day management of the company. They have the direct responsibility for the aspects such as finance and marketing. They help to formulate and implement the corporate strategy. The key strength is the specialized, expertise and wealth of knowledge that they bring to the business. They are full-time employees of the company and should have defined roles and responsibilities. Executive directors are the subordinates or the CEO; they are not in a strong position to monitor or discipline the CEO. It is important to have a mechanism to monitor the actions of the CEO and the executive director to ensure that they pursue shareholder interest.

Effective monitoring requires that the non-executive directors are independent of the executive director who is a retired ex-director or who works for a firm that provides services to the company, and may be perceived as less than wholly independent, A non-executive director's independence may increase with the passage of time. But this is subject to the independent directors making conscious efforts to contribute to the board process. Duality and performance: This occur when one individual hold both the positions, namely, CEO & chairman, The CEO is the full-time post and has the responsibility for day-to-day running of the company obliging implementing the strategy, and is responsible for the company's performance. The post of the chairman is part-time. The Chairman's main responsibility is to ensure that the board works effectively; hence the role involves the monitoring and evaluating the performance of the executive directors involving the CEO. Independent non-executive directors are likely to provide sound opinions on proposals and to become more effective decision monitors and likely to promote the interest of the shareholder.

## **Liabilities of Independent Directors**

Wrongful disclosure by the chairman and members of the audit committee or the board in company's annual report should attract: disqualification and penalties. If the non-executive director had the knowledge of unlawful acts by the management or the board and fails to act according to the law, then the said director should be made legally liable for such ignorance.

The different liabilities of the executive directors and non-executive or independent counterpart should be considered. The persons considered responsible for the contravention committed by the company are: (i) The managing director; (ii) Executive or whole - time director; (iii) Managers; (iv) The company secretary;

(v) Any person in accordance with whose instructions the board is accustomed to act; (vi) any person who has been entrusted and charged by the board to be an officer in default subject to his or her consent. Nonexecutive directors are far less liable for the ignorance of the provisions in the Companies Act than their executive counterparts. The liability of the Independent Directors is limited only in respect of acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes and with his consent or connivance or where he had not acted diligently.

### **Conclusion:**

Instances of financial frauds and lack of corporate governance are increasing but tightening the norms for selection and functioning of Independent Director are not the only solution to this. Independent Directors need to set clear ground rules about their independence. They aren't going to change everything all at once. Instead, they will need to take things step-by-step, address some key issues today and then, at the next meeting, they can focus on moving something else forward. Increasing the effectiveness of their role is significant to achieving high governance standards as independent directors are the backbone of corporate governance. Now the Government needs to balance the interests of the company and the independent directors.





**CS Bhavana Tikekar,\* ACS**  
bhavana0401@gmail.com



**CS Lalit Rajput,\* ACS**  
lalitrajput537@gmail.com

## THE RIDER OF THE BOARD – COMPANY SECRETARY IN A ROLE OF INDEPENDENT DIRECTORS

### Introduction

The responsibilities of the modern-day company secretary have evolved from that of a “note taker” at board meetings or “administrative servant of the Board” to one which encompasses a much broader role of acting as “Board advisor” and having responsibility for the organisation's corporate governance.

The Board, particularly the chairman, relies on the company secretary to advise them not only on directors' statutory duties under the law, disclosure obligations and listing rule requirements but also in respect of corporate governance requirements and practices and effective board processes. This specialised role of the modern company secretary has emerged to position them as one of the key governance professionals within the organisation.

Although the role of the Company Secretary varies significantly according to the peculiarities of each organisation, there is one thing that all company secretaries share. This is being positioned at the centre of an often-complex web of overlapping and sometimes conflicting priorities. The role of Company Secretary is somewhere similar to the role of Independent Director as both has to be unbiased while taking decisions to run the business of the Company in a most effective and ethical manner.

An independent director is statutorily required under the Companies Act, 2013 (hereinafter “Act”) and the Securities and Exchange Board of India (hereinafter “SEBI”) (Listing and Disclosure Obligation) Regulations, 2015 for public listed and unlisted companies. After the Satyam Scandal, the authorities realized the importance and need to have a director acting as a watchdog in the company. These directors have various functions and duties mentioned under Schedule IV of the Act such as protection of the minority shareholders, but also have to perform other duties like the rest of the board, like complying with the Articles of Association and fulfilling a fiduciary duty towards the company under Section 166 of the Act.

It is a well-established fact that an independent director should be independent, in the sense that they should not be related to the promoter, company, subsidiary, etc. These directors are not permitted to take part in the day-to-day functions of the company but can check financial reports or advise on important related party transactions as and when required. However, what raises eyebrows, is often, the promoter or the directors providing relevant information to the independent director. This is dangerous as it misleads not only the independent directors but also the company's stakeholders. The case of IL&FS is a prime example, as the independent directors were shown squeaky clean reports and are now under the radar for the misdoings in the company. The ramifications of this have resulted in an increase in independent directors resigning. This has also resulted in the scope of practising company secretaries becoming the Independent Director of companies.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI



A company secretary in order to establish and retain their independence requires a very particular mix of aptitudes and attributes. From maintaining a three sixty view of the totality of an organisation's governance requirements, to the diplomatic management of relationships with the board and executive, to developing deep technical knowledge, the successful company secretary needs a combination of wisdom, initiative and strong influencing skills in equal measure.

As veterans of the boardroom (and often battle-scarred ones at that), experienced company secretaries are able to transition seamlessly into these roles and continue to develop their competencies in new directions. As always, with independence at their core.

It is therefore important for a corporate secretary to try to look at board governance through the eyes of each of these positions and to provide advice and assistance specific to each. These attributes helps the company secretaries to become an Independent Directors and provide unbiased advice to the Board of Directors of companies and protect the interest of stakeholders.

For example, the combination of governance regulations and rising expectations of shareholders, the media, and other stakeholders is making the position of independent director much more important and difficult to carry out. Independent directors need to be kept more informed about the company and corporate secretaries are well acquainted with this.

The following skills which are required to be possessed by the Independent Directors are already possessed by the Company Secretaries

### **Judgement, tact and diplomacy**

There are several strands of independence the company secretary must bring together and managing these requires not just technical skills, developed over years of experiential learning, but also exceptional judgement, tact and diplomacy.

### **Trusted advisor**

The Independent Directors are considered as a trusted advisor on governance matters to all board members, and should always do whatever necessary to ensure that the independent status of the Non-Executive Directors is guarded to provide 'constructive challenge' and to 'hold management to account'.

### **Focus on governance**

As the importance of effective corporate governance continues to be critical in today's environment. The independent directors are required to ensure the Corporate Governance exist in the organisation and regular check should be undertaken to avoid any frauds in the organisation.

### **Applicability of appointment of Independent Directors**

Section 149 (4) read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, prescribes applicability criteria for appointment of Independent Directors under the Companies Act, 2013. Listed companies are also required to follow the provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 in addition to the provisions of the Companies Act, 2013. The detailed bifurcation requirement of Independent Directors on Board of on various committees of the Board related to is as under:

Section/Regulation	Class or classes of Companies	Number of independent directors
<b>For Listed Companies</b>		
149(4) read with Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014	All Listed public companies	At least 1/3rd of the total number of directors shall be the independent directors
Regulation 17 of SEBI (LORD) Regulations, 2015	<p>(i) The Board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising non-executive directors.</p> <p>(ii) Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise independent directors and in case he is an executive director, at least half of the Board should comprise independent directors.</p> <p>(iii) For Top 500 and 1000 listed entities</p>	<p>If the Chairperson of the Board is Non-Executive Director – at least 1/3rd should be Independent Directors</p> <p>If the Chairperson of the Board is Executive Directors – at least 1/2 should be Independent Directors</p> <p>If the regular non-executive Chairperson is a promoter or related to any promoter or person occupying management positions at the board level or one level below the board – at least 1/2 should be independent directors</p> <p>Board shall comprise of At least 1 Independent Woman Director</p>
<b>For other Public Companies</b>		
149(4) read with Rule 4 (1) of Companies (Appointment and Qualification of Directors) Rules, 2014	<p>i) the Public Companies having paid up share capital of ten crore rupees or more; or</p> <p>(ii) the Public Companies having turnover of one hundred crore rupees or more; or</p> <p>(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:</p>	At least 2 independent directors

Importance of Independency of Independent Directors Director's role in Company's board is to ensure safeguarding of interests of shareholders and to mentor the management's actions to maximize shareholders' wealth. To ensure fulfilment of such objectives, critical factor is board composition in underlying independent and objective performance of board. However, the literature review revealed that Board of directors are unable to protect the shareholders' interests due to poor transparency and disclosure in board practices, majority shareholding of promoters, etc.

Board composition should consist of independent members to ensure smooth and proper functioning of running of board. It is further proved that board independence and firm performance are related in the sense that independent board with improved corporate disclosure practices adds to increased interest of investors in company, improved corporate image, thereby enhancing value to shareholders.

The high-profile scandals being Enron, WorldCom has brought into focus the lack of commitment of board towards shareholders and expressed greater concern over the role of independent directors towards monitoring the policies undertaken by management is in sync with long-term strategic objectives of company. Independence of independent directors will assist in connecting the management's interests with that of shareholders' and improve the quality of judgement in decision-making. Also, since independent directors will be individual's unknown to the management, an objective analysis of firm's performance will ensure good corporate conduct and governance practices across the globe.

### **Perks of having Independent Directors on the Board**

Relationship between Independent Director and Corporate Governance Ensuring corporate governance can attract huge capital for doing business and that every transaction in a company is fair and transparent to its stakeholders and thereby, attract investors and ensure investment in the company having an effective board of directors. Independence of Board is critical to ensuring that board fulfils its role and objectivity and holds the management accountable to the company. The practice across jurisdictions indicates that presence of independent directors is an answer to that. The Impact of presence of Independent Director on corporate Board and their independence in discharge of duties have been examined for Infosys taking into account their Qualification, experience, remuneration received, no. of other companies in which independent directors holds position, disclosure by company, etc.

Experience and independent directors' qualification can get correlated to company's performance since company's having skilled directors will easily undertake challenging tasks and objectives, thereby increasing shareholders' wealth and increased investor confidence. They actually bring necessary perspective that is independent and objective leading to sustained business growth. ii. The increase in remuneration can be linked to directors' interests and motivation to serve the board of company. They also have actively participated as chairman in various board committee meetings which proved their serious involvement in business deliberations. Is directly proportional to involvement of an individual in business employment. iii. The Board committees wherein independent directors had served as chairman, had better disclosure in terms of risk factor and other ancillary matters like related party transactions, whistle blower policy, environmental policy, employee welfare scheme, business human rights policy and legal compliance, thereby ensuring good corporate disclosure norms. iv. Independent directors were present in almost all Board Meetings ensuring better performance of companies through their independent deliberations and judgements. The analysis above is apt in saying that presence of independent director in corporate board makes significant difference to corporate governance practices.

## Conclusion

A Company Secretary is imperative for the growth and development of a company and is the link between inside and outside of the organisation. Therefore, there must be some changes or alterations in the scope and role of his duties in order to enhance the governance of the company and for better outcomes in future. To carry out a wide variety of tasks on which the success of a company is dependent it is important that a Company Secretary is an organised, disciplined, highly qualified, knowledgeable and an expert in the concerned business for the upliftment of the company, to increase the profits of its investors, benefit the shareholders and a leader in the industry.

Also, the Board's responsibilities inherently demand the exercise of judgment. The role of Board of Directors, in recent years, has been in public debate due to their failure in ensuring corporate governance. The study analysed that the more independent a board is, the better it is in bringing efficiency within the company. They help in proper functioning of corporate, due to the fact they do not have a material interest with company and they will really represent interest of all investors and small shareholders. In many of cases, it is evident that CEO of company hides the real picture of company from potential investors and its stakeholders. So, the person who is knowledgeable in similar kind of business, who don't possess any relation with internal management of company will act independently for benefit of its shareholders and stakeholders.

Lastly both the roles are important at their respective places and are equally vital for the smooth functioning of the organisation.

**Disclaimer:** Every effort has been made to avoid errors or omissions in this material. In spite of this, errors may creep in. Any mistake, error or discrepancy noted may be brought to our notice which shall be taken care of in the next edition. In no event the author shall be liable for any direct, indirect, special or incidental damage resulting from or arising out of or in connection with the use of this information





## PRACTICING COMPANY SECRETARY - ROLE AS INDEPENDENT DIRECTOR ON BOARDS OF COMPANIES

**CS Ekta Sharma\*, ACS**

csektasharma@gmail.com

As per Section 149 (6)(a) of the Companies Act, 2013, an independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director, who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

As the name suggests, an Independent Director is the one who is independent and does not have any interest in the Company. He brings an objective view, an unbiased opinion and a different perspective to overview the business situation.

Apart from Schedule 4 which talks in detail about the professional conduct of Independent Director, Section 149(6)(a) specifically mention 3 qualities which should be possessed by an Independent Director:

- a) Integrity
- b) Relevant Expertise, and
- c) Experience

### **Analysing practising company secretary being appointed as independent director:**

Let's analyse Practising Company Secretary ("PCS") on the basis of 3 qualities mentioned above:

#### **a) Integrity:**

The dictionary meaning of integrity is the quality of being honest and having strong moral principles. PCS is a professional who facilitates good corporate governance amongst the business units. For promoting good corporate governance, integrity is pre requisite quality to be possessed by any PCS.

#### **b) Relevant expertise:**

The wider the area of knowledge, the better will be the contribution towards the success of any corporate. Since, PCS offers services in the fields of laws, finance, taxation, management, corporate governance, etc. Therefore, they will definitely have expertise in the area in which they are practising.

#### **c) Experience:**

It is rightly said that the rich work experience can teach you more than a book. Recently, Ministry of Corporate Affairs has exempted the Practising Company Secretary having an experience of more than 10 years to pass the Independent Director proficiency exam.

Practising Company Secretary can definitely be an apt choice for being an independent director.

### **Contribution of Practising Company Secretary in A Board Room**

PCS after being appointed as Independent Director should follow Schedule 4 of the Companies Act, 2013. They can contribute in the Board Room through following ways:

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

**a) Protecting the interest of stakeholders:**

Independent Director can help in minimizing the conflict of interest of promoter and management. They promote the interest of stakeholders including the minority shareholders.

**b) Promoting Good Corporate Governance:**

PCS is a facilitator to provide good corporate governance. They can enhance the practise of good corporate governance amongst business units.

**c) Devising and Analysing Strategies**

Independent Director through their expertise can devise, formulate, critically analyse and examine the strategies to enhance Company's growth, profits and revenues.

**d) Mitigation of Risk**

Independent Director can help to mitigate the risk of business enterprises by evaluating the financial control process adopted in the Company.

**e) Evaluation of performance of Board and management**

The Nomination and Remuneration Committee comprises of 2 Independent Director. They are required to evaluate the performance and decide the remuneration of board and management. They can independently review the performance of the Company.

Independent Director brings transparency in the Company whereby stakeholders can trust the business operations. In future, Company appointing PCS as Independent Directors will be more attractive to the investors and the stakeholders.

**Disclaimer:** The contents of this article are for information purposes only and do not constitute an advice or a legal opinion and are personal views of the author. Readers are requested to check and refer relevant provisions of statute, circulars etc. before acting on the basis of the above write up.

## CHAPTERS OF NIRC OF ICSI

- Agra
- Ajmer
- Alwar
- Amritsar
- Bareilly
- Bhilwara
- Bikaner
- Chandigarh
- Dehradun
- Faridabad
- Ghaziabad
- Gorakhpur
- Gurugram
- Jaipur
- Jalandhar
- Jammu
- Jodhpur
- Kanpur
- Karnal
- Kota
- Lucknow
- Ludhiana
- Meerut
- Modinagar
- Noida
- Panipat
- Patiala
- Prayagraj
- Shimla
- Srinagar
- Udaipur
- Varanasi



## PRACTICING COMPANY SECRETARY - ROLE AS INDEPENDENT DIRECTOR ON BOARDS OF COMPANIES

**CS Jaspreet Kaur Dhanjal,\* ACS**  
jaspreetkhanjal@yahoo.com

The Companies Act, 1956 does not provide us with the specific definition of an Independent Director. But Independent Directors are in the limelight as per the Companies Act, 2013. A separate criterion has been established for the companies to have an Independent Director.

### Independent Director

Independent Director is Non-executive Director and a Practicing Company Secretary can be appointing as Independent Director. An independent director (also sometimes known as an outside director) is a director (member) of a board of directors who does not have a material or pecuniary relationship with company or related persons, except sitting fees. An independent director is a non-executive director of a company who helps the company in improving corporate credibility and governance standards.

He or she does not have any kind of relationship with the company that may affect the independence of his/ her judgment. The term "Independent Director" has been defined in the Act, along with several new requirements relating to their appointment, duties, role, and responsibilities. The provisions relating to the appointment of independent directors are contained in Section 149 of the Companies Act, 2013 should be read along with Rule 4 and Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Independent Director acts as a guide, coach, and mentor to the Company. The role includes improving corporate credibility and governance standards by working as a watchdog and help in managing risk. Independent directors are responsible for ensuring better governance by actively involving in various committees set up by the company.

In India, the idea, or rather need of having Independent Directors on the board of companies (especially those involving public interest) was acknowledged even before the early 2000s. Therefrom, the concept finally found legislative recognition in late 2013 as the Companies Act, 2013 took shape and character.

### Meaning of Independent Directors and their Meeting thereof as per Companies Act, 2013

Independent Director help in bringing Independent judgement and act as a bridge between management and shareholders by encouraging the principles of Corporate Governance through providing transparency, accountability and disclosures in the working of the Company and assist the Company in implementing the best corporate governance practices.

### Amendment in Companies (Appointment and Qualification of Directors) Rules, 2014

There is a recent amendment in Companies (Appointment and Qualification of Directors) Rules, 2014 because of which a Company Secretary in practice for at least 10 years is not required to clear online proficiency test to become Independent Director. Accordingly, now the Company Secretary who are or have been, in practice for at least ten years are not required to pass the online proficiency self-assessment test to become Independent Director.

\*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

This is a welcome change not just for practicing Company Secretary but for other professionals also. This amendment is applicable w.e.f. from 19<sup>th</sup> August, 2021.

In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (4),—

(i) in the first proviso, for clause (B), the following clause shall be substituted, namely:—

“(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.”.

(ii) after the second proviso, the following proviso shall be inserted, namely:—

“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.”

This change is a reward for the professionals who have been working in their fields whether they are advocates, Chartered Accountant, Company Secretary, Cost Accountant in Practice for such a long time. They don't require to pass the online proficiency self-assessment test.

## **Databank of Independent Directors & the Online Proficiency Test**

One of the prerequisites to become an Independent Director in India is the inclusion of their name in the Databank of Independent Directors ('Databank') and passing an Online Proficiency Test ('Test') within a period of two years from the date of inclusion of name in the databank as per Section 150 of the Act, read with Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014. However, certain categories of persons have been exempted from the requirement of passing the Test who possess requisite experience and expertise as prescribed;

The question, however, is whether such arduous and tedious criteria required for appointment really ensure board independence and good governance practices. It is understood that the tenet behind such steps was quality control – it was to ensure that only persons with a certain minimum level of expertise & experience are appointed as Independent Directors.

Further, some previous instances of celebrity directorships were also to be discouraged since the role of IDs is to ensure good governance practices and upholding the interest of all the stakeholders as a whole including minority stakeholders. Therefore, it should not merely be used as a tool of publicity.

However, keeping in mind the seniority of the position of directors in companies as well as lack of precedent, the requirement of passing the test seems rather odd and brings anomalies in the IDs' regulatory regime in India *vis-à-vis* the rest of the world.



## Potential Benefits of Appointing Independent Directors

Independent directors are generally desirable to be appointed to the board of directors and are key to good corporate governance. The appointment of independent director results in appointment of third party advices and add on expertise as well. They should not have any material interest in the company so that there should be no undue influence on the director.

## Potential Drawbacks of Appointing Independent Directors

Alongside benefits, there are drawbacks also. They could create problems for the management and leading the company in trouble. It is not always necessary that they are independent so they are well skilled or really an expert. Sometimes they get influenced and start putting undue influence in their decisions. The appointment of independent directors is a very important decision for any company.

## Duties of an Independent Directors

The guidelines, role, functions and duties of an Independent Director is defined in the Code of conduct under Schedule IV related to the Companies Act, 2013. The key role and functions of an Independent Director as listed under Schedule IV of the Companies Act, 2013 are described as follows:

1. Aid in bringing an independent judgment to bear on the Board's deliberations particularly on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
2. Enable an objective view in the evaluation of the performance related to board and management;
3. Examine the performance of management in meeting the decided goals and objectives and examine the reporting of performance;
4. Satisfy themselves on the reliability of financial information and that financial controls and the systems of risk management are considered robust and defensible;
5. Protect the interests of all stakeholders, mainly the minority shareholders;
6. Balance the conflict of interest of the stakeholders;
7. Decide suitable levels of remuneration of executive directors, key managerial personnel and senior management and have a major role in appointing and where essential recommend removal of executive directors, important managerial personnel and senior management;
8. Moderate and adjudicate in the interest of the company as a whole, in the situations of conflict between the management as well as shareholder's interest.

## Qualities of Independent Director

An independent director should preferably possess appropriate skills, experience and knowledge in one or more domains of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines that are related to the company's business. Generally one who wishes to qualify as an Independent Director has to possess the following qualities:

- Impartiality
- Loyalty
- Decision- making (judgment)
- Professional repute

## Guidelines of professional conduct:

An independent director shall:

- ✓ Uphold ethical standards of integrity and probity;
- ✓ Act objectively and constructively while exercising his duties;
- ✓ Exercise his responsibilities in a bona fide manner in the interest of the company;
- ✓ Devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- ✓ 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;
- ✓ 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;
- ✓ Refrain from any action that would lead to loss of his independence;
- ✓ Where circumstances arise, which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- ✓ Assist the company in implementing the best corporate governance practices

## Separate meetings:

- 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:
  - Review the performance of non-independent directors and the Board as a whole;
  - Review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
  - Assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

## Evaluation mechanism:

- The performance evaluation of independent directors shall 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.

## Roles of Company Secretary as an Independent Director:

- I. Help in bringing an independent judgement to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- II. The interests of all stakeholders including the minority shareholders ;

- III. They should balance the conflicting interest of stakeholders;
- IV. The performance of the management in meeting in terms of goals and objectives is scrutinized;
- V. They should report the performance of the management;
- VI. They should evaluate the performance of board and management;
- VII. They should moderate and arbitrate in the interest of the company as a whole in case of conflict between management and shareholder;
- VIII. They should keep check that all required filing is done;
- IX. They should contribute their knowledge towards the company related matters.

## Conclusion

The Practicing Company Secretary can act as an independent Director, with or without the online proficiency test. Its their duty to be independent and take all decisions in the interest of the company as well as the shareholders. The Independent director should have an unbiased approach. The experienced professionals should act like a balancing person between management and shareholders.

A number of provisions and rules to Independent Director and Practicing Company Secretary. The additional responsibility of being an independent director adds to the other responsibilities of the Practicing Company Secretary.

Independent directors act as a mentor to the company. Their roles vastly include enhancing corporate credibility and governance standards, functioning as a watchdog and playing a significant role in risk management. Independent directors play an active role in various committees set up by the company to ensure good governance.

Independent directors should make up at least two-thirds of the directors in the audit committees of listed companies to oversee the financial reporting process and disclosure of the company's financial information, ensure compliance with listing and other legal requirements, disclosure of related party transactions and qualification in the draft audit report, among other things.





## Initiatives of Chapters\*

### Agra

- Agra Chapter of NIRC of ICSI had organised webinar on theme 'Expectation From The Investor-Investor Protection and Its Concepts" on 1st August 2021 and Decriminalization Of Offences Under Companies Act, 2013 on 5th August 2021.

### Bareilly

- Bareilly Chapter of NIRC of ICSI organized a session on "Career as Company Secretary" on 5th August, 2021 at Delhi Public School, Bareilly.
- On 15th August, 2021, 75th Independence Day was celebrated at Bareilly Chapter by hoisting the National Flag.

### Chandigarh

- Chandigarh Chapter has conducted webinar on "TESTAMENT - CONCEPT AND FORMALITIES" on 28th August , 2021. Chandigarh Chapter Conducted Career Awareness Programme at Kendriya Vidyalaya , Zirakpur on 6th August, 2021 and 7th August, 2021 . The total number of participants is around 180 alongwith 10 PGTs of School and Principal of KV Zirakpur.

### Faridabad

- 24th One Day Orientation Program for CS Executive Students - 6th August, 2021
- 25th One Day Orientation Program for CS Executive Students - 24th August, 2021
- MoU Signing Ceremony of ICSI and Manav Rachna International Institute of Business Studies , Faridabad on 23.08.2021- in gracious presence of CS Nagendra D Rao - President , The ICSI, CS Suresh Pandey, Immediate past Chairman, NIRC.
- 5th Batch of CSEET OT classes started wef 27.08.2021

### Gorakhpur

- Gorakhpur Chapter celebrated it's 2nd Foundation Day on 08th August 2021.
- Gorakhpur Chapter also celebrated 75th Independence Day on 15th August 2021.
- Gorakhpur Chapter published it's 3rd edition of E-Newsletter.
- Gorakhpur Chapter conducted Study Circle Meeting on the topic "Compliances of Producer Company" on 24th August 2021.
- Gorakhpur Chapter conducted "One Day Orientation Programme" for Executive Students on 31st August 2021.

\* Based on the information provided by Chapters

## Ghaziabad

- Ghaziabad Chapter of NIRC of ICSI celebrated Capital Markets Week and organized Webinar on "ICDR: A Facilitator for reaching the mile stone of \$5tn economy" on July 31, 2021.
- Ghaziabad Chapter of NIRC of ICSI organizing a 04-week series started from July 26, 2021 on every Monday with the theme "MONDAY BLUES AT BAY" on the topic "Micro, Small and Medium Enterprises":
- Ghaziabad Chapter of NIRC of ICSI organized a Joint Webinar with Lucknow Chapter of NIRC of ICSI on the theme "DECODING LABOUR CODE- LAW & PRACTICAL IMPLICATIONS" on August 07, 2021. CS Vimal Kumar Gupta, Chairman, NIRC of the ICSI graced the occasion as Guest of Honour.
- Ghaziabad Chapter of NIRC of ICSI organized Webinar on "Digital Branding: Doing it Right" on August 28, 2021.
- Ghaziabad Chapter released its 24th Monthly Newsletter for members and students and also invited Articles and Write-ups for our Chapters forthcoming monthly e-Newsletter.
- Ghaziabad Chapter successfully running OT Classes.

## Jaipur

- Jaipur Chapter celebrated 75th Independence Day at the Chapter.
- Jaipur Chapter also Commenced (3rd) 15 Days Class Room EDP Batch (Virtual Mode) and conducted ODOP on 27th August 2021.

## Jodhpur

- Jodhpur Chapter conducted following programs :-
- One Day Orientation Program on 5th August 2021.
- Career Awareness Program on 7th August 2021.
- Independence Day celebrations on 15th August 2021.
- 15 Days Classroom EDP from 23rd August 2021.
- Webinar on NBFC (Registration & Compliances) on 31st August 2021.

## Karnal

- Karnal Chapter conducted 2 PDPs for Students through online mode dated 27th July & 24 August, 2021. One Webinar was conducted for Members on 7th August, 2021. To celebrate Capital Markets Week 2021, Karnal Chapter conducted a Webinar on 31st July, 2021. Independence Day was celebrated with Flag hoisting on 15th August, 2021 at Chapter office premises. 4th Batch of One Day Orientation Programme (ODOP) has also been announced for students of Executive programme in first week of September, 2021.

**Lucknow**

- Lucknow Chapter conducted Orientation Programme for Students. Lucknow Chapter also conducted Placement / Trainee Drive for Students / Members. The Chapter also organised Programme for Members.

**Noida**

- Noida Chapter of NIRC of ICSI Celebrated 75th Independence Day of India on 15th August, 2021 with respectful presence of Chief Guest CS O P Dani, Past President, The ICSI, Guest of Honour CS Vineet K. Chaudhary Council Member, The ICSI.
- Noida Chapter conducted Webinar on the Topic "Professional Opportunities in Formation and Management of Trust" on 07th August, 2021.
- Noida Chapter organised Vaccination Drive for second dose of Covishield for CS members and their respective family members in association with Fortis Hospital, Noida on 20th August, 2021.
- Noida Chapter conducted webinar on the Topic "Investigation Into the Affairs of a Company" on 28th August 2021.
- Noida Chapter of NIRC of The ICSI is organizing ONLINE (EDP) Executive Development Programme (15 Days) in Class Room Mode (Under the New Training Structure) from 26th August, 2021.

**COMPANY SECRETARIES BENEVOLENT FUND MEMBERS ENROLLED REGIONWISE AS  
LIFE MEMBERS OF THE COMPANY SECRETARIES BENEVOLENT FUND DURING THE  
PERIOD 01/08/2021 TO 31/08/2021**

REGION	LM NO.	NAME	MEMB NUMBER
<b>NIRC</b>			
1.	15306	MR. ARUN KUMAR	ACS - 46117
2.	15307	SH. SAKET GUPTA	ACS - 20687
3.	15314	MS. NAVJYOT KAUR	ACS - 44629
4.	15316	MS. SANGEETA CHOUDHARY	ACS - 34310
5.	15317	SH. SANDEEP KUMAR	FCS - 11256
6.	15319	MR. DILIP KUMAR CHOUDHARY	ACS - 47140
7.	15320	MR. ROHIT BOORA	ACS - 58453
8.	15322	MS. SURBHI GARG	ACS - 32300
9.	15330	MR. AAYAN SHARMA	ACS - 66268



**THE INSTITUTE OF  
Company Secretaries of India**  
भारतीय कम्पनी सचिव संस्थान  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)



**Vision**  
"To be a global leader in promoting  
good corporate governance"

**Motto**  
अर्थोऽपि नोऽर्थः अर्थोऽपि नोऽर्थः  
अर्थोऽपि नोऽर्थः अर्थोऽपि नोऽर्थः

**Mission**  
"To develop high calibre professionals  
fostering good corporate governance"

## ICSI NATIONAL AWARDS FOR EXCELLENCE IN CORPORATE GOVERNANCE, 2021

**21<sup>st</sup> ICSI  
NATIONAL AWARDS FOR EXCELLENCE  
IN CORPORATE GOVERNANCE**



e-form INC 22A  
(ACTIVE) compliant  
companies

**6<sup>th</sup> ICSI  
CSR EXCELLENCE AWARDS**



Companies with  
prescribed CSR  
spending of Rs. 1  
crore and above

**3<sup>rd</sup> ICSI  
BEST SECRETARIAL AUDIT REPORT AWARD**



- All Secretarial Audit reports related to Financial Year 2021 are eligible.
- 5 Secretarial Audit Reports can be nominated for Audits conducted under section 204 of Companies Act, 2013 and SEBI (LODR) Regulations, 2015.

**1<sup>st</sup> ICSI  
BEST PCS FIRM AWARD**



Proprietary Firm/  
Partnership Firm/  
LLP Registered  
with the ICSI

### ELIGIBILITY

### AWARD CATEGORIES

#### LISTED AND UNLISTED SEGMENT

Category	Turnover
Large	≥ 10000 Crore
Medium	< Rs. 10000 Crore and > Rs. 1000 Crore
Emerging	≤ Rs. 1000 Crore

One award each to Best Corporate  
in the following categories

Category	CSR Spending
Large	≥ Rs. 25 Crores
Medium	< Rs. 25 Crores and > Rs. 10 Crores
Emerging	≤ Rs. 10 Crores and ≥ Rs. 1 Crore

- One award to the Best Secretarial Audit Report.

- One award to the Best PCS Firm.

**GOVERNANCE  
PROFESSIONAL  
OF THE YEAR,  
2021**

Acknowledging CS of  
Award winning  
companies  
in all the above  
categories

For further details, visit <https://www.icsi.edu/icsiexcellenceawards/>

Connect with ICSI

[www.icsi.edu](http://www.icsi.edu)



Last Date  
for  
Submission:  
8<sup>th</sup> October,  
2021



THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

NORTHERN INDIA  
REGIONAL COUNCIL

Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)

ONLINE CSEET CLASSES  
NIRC OF THE ICSI  
FOR

NOVEMBER 2021 CSEET EXAMINATION

Last Date of  
Registration  
30<sup>th</sup> Sep. 2021

25 Lectures  
(Each Subject)

Northern India Regional Council of the Institute of Company Secretaries of India (NIRC-ICSI) organising Online Oral Tuition Classes (OTC) for the students of CSEET Programme for November, 2021 Examination for the following subjects:-

S. No.	Subject
1.	Business Communication
2.	Legal Aptitude and Logical Reasoning
3.	Economic and Business Environment
4.	Current Affairs

**Highlights of Coaching Classes of Delhi - RO :-**

1. One to one Interaction with Best & Experienced Faculties of ICSI with full Coverage of ICSI Syllabus.
2. Test series & Mock Test organized as per ICSI Syllabus.
3. Video bytes of All India Rank holders of Class Room Teaching centre of Delhi-RO will be uploaded on portal.
4. Articles of All India Rank holders of Class Room Teaching centre of Delhi-RO will be published in the Newsletter and Special reward for meritorious students.

**Fee Structure**

- All Subject: Rs 4000/-
- Single Subject: Rs 1000/-

Payment Link: - <https://m.p.v.fm/icsineww>

**Application Process**

In order to get web link of online Classes, students are advised to make payment & send payment confirmation email to [vimalgupta@nicr.edu](mailto:vimalgupta@nicr.edu) mentioning their contact details including mobile number

**For any clarification,  
please contact**

Mr Vinay Kumar Bhatnaga  
NIRC of ICSI, NIRC Building, Plot 04, Institutional Area  
Prasad Nagar, New Delhi 110005 (Nearest Metro  
Station is Rajender Place)

Contact No. 00171055337, 011 49343006  
Email - [vinaybhatnaga@nicr.edu](mailto:vinaybhatnaga@nicr.edu)  
Website - <https://www.icsi.edu/nirc/home/>

WITH BEST REGARDS

CS VIMAL GUPTA  
Chairman, NIRC-ICSI

CS SURESH PANDEY  
Chairman - OTC & Library Committee &  
Immediate Past Chairman NIRC-ICSI

**VISION**

"To be a global leader in promoting  
good corporate governance"

**ICSI Motto**

सत्यं वद। धर्मं चर। इत्येते चेत् सनातेः श्रेयते इति चेत् त्वम्।

**MISSION**

"To develop high calibre professionals  
facilitating good corporate governance"





**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

**CSBF**

**COMPANY SECRETARIES  
BENEVOLENT FUND**

Safeguarding and  
caring for your well being



COMPANY SECRETARIES BENEVOLENT FUND

**Saathi Haath Badhana**  
साथी हाथ बढ़ाना

## What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

**The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000**

### Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

### Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

## Advantages of enrolling into CSBF

**1** To ensure that your immediate family has some financial support in the event of your unfortunate demise

**2** To finance your children's education and other needs

**3** To ensure that you have extra resource during serious illness or accident

**4** Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

Become a proud Member of CSBF by making a one-time online subscription of ₹ 10,000/- through Institute's web portal ([www.icsi.edu](http://www.icsi.edu)) along with Form 'A' available at link <https://www.icsi.edu/csbf/home> duly filled and signed.

*Decide Now! Decide Wise!*

Connect with ICSI

[www.icsi.edu](http://www.icsi.edu) | [f](#) [t](#) [in](#) [v](#) [@](#) | Online Helpdesk : <http://support.icsi.edu>