



Article



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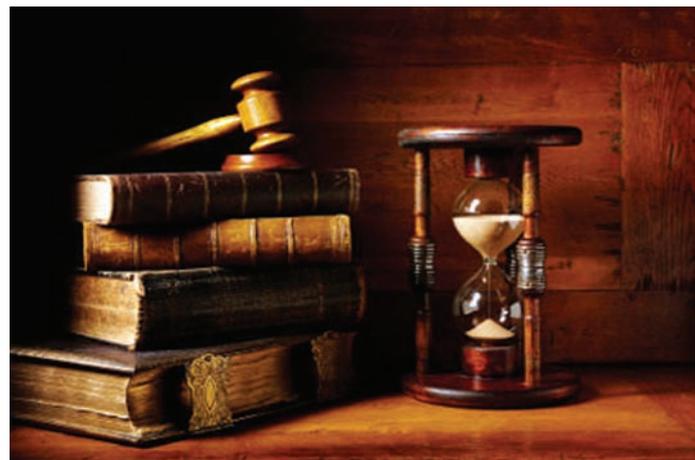
Transfer of Legal Proceedings to National Company Law Tribunal

- The National Company Law Tribunal is going to be a powerful quasi-judicial tribunal and with its establishment there will be substantial and dimensional change in the legal scenario with respect to company law matters. Therefore it is essential to note the powers that are going to be transferred to NCLT and the Appellate Tribunal and also the transitional provisions relating thereto.

The Ministry of Corporate Affairs is swiftly acting towards implementing the Companies Act, 2013 [the Act]. Very soon, the Companies Act, 1956 [the 1956 Act] will stand repealed in full. Already 98 sections of the Act have been brought into force w.e.f 12th September, 2013. With the 1956 Act getting repealed as a result of the coming into force of the Act, the jurisdiction and powers of High Courts under that Act to the extent explained in this article and that of the quasi-judicial forums, the Company Law Board [CLB] under that Act as well as that of the Board for Industrial and Financial Reconstruction [BIFR] and the Appellate Authority for Industrial and Financial Reconstruction [AAIFR] under the Sick Industrial Companies (Special Provisions) Act, 1985 are going to end.

Company Law Board [CLB]

Presently the CLB is empowered under Section 10E (1A) of the 1956 Act to exercise such powers and functions with respect to various matters requiring adjudication. Significant amongst the disputes that are adjudicated by the CLB are those matters relating to rectification of register of members and prevention of oppression and mismanagement, besides other powers exercised in relation to compounding of offences. When the relevant provisions of



the new Act are brought into force, most of these powers will stand transferred to and vested in and exercised by the National Company Law Tribunal (NCLT). Presently under Section 10F of the 1956 Act, the appeals arising from the orders of the CLB are decided by a Single Judge of the High Court having jurisdiction

400

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➤ A close look at Section 434 of the Act suggests that any appeal relating to any matter arising from any order of the CLB under Section 10F of the 1956 Act and other appeals arising from orders of High Courts which are pending disposal before High Courts/Supreme Court of India will continue to be considered, adjudicated and disposed by the respective Court. Powers of High Courts to grant relief in matters relating to apprehended prosecution for offences under the Act will continue to be vested and exercised by High Courts by virtue of section 463 of the Act.

over the registered office of the company in relation to which the CLB had passed the order. Under the Act, the appeals against the orders of the NCLT will lie before the National Company Law Appellate Tribunal (NCLAT).

BIFR and AAIFR

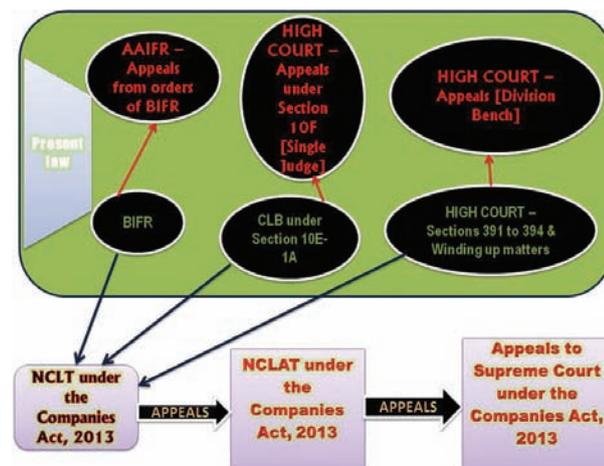
Under the Sick Industrial Companies (Special Provisions) Act, 1985, the BIFR has powers to declare a company having one or more industrial undertakings as a sick industrial company and consider and sanction a scheme for revival and rehabilitation of the sick industrial company. In case, the BIFR finds that it is not possible for the revival and rehabilitation of the sick industrial company, it has powers to order winding up of the sick industrial company. Appeals against orders of the BIFR lie before the AAIFR. No provision for further challenge by way of a statutory appeal against any order of AAIFR is available. However the writ jurisdiction of High Courts could be invoked in deserving cases on the ground that there is no other alternative remedy. When the relevant provisions of the Act are brought into force, the powers, substantially, similar to those of the BIFR will stand transferred to and vested in and exercised by the NCLT and appeals arising from orders of the NCLT will lie before the NCLAT. The Act has introduced substantial changes in the law relating to revival and rehabilitation of sick companies.

High Courts

Presently schemes of compromises, arrangements, mergers, demergers are subject to sanction of High Court. Further all matters

relating to winding up of companies come under the jurisdiction of the High Courts. Appeals arising from the orders of the High Courts in the above matters lie before a Division Bench of the High Courts. Further appeals may be made before the Supreme Court of India by special leave. Similarly any order or decision of a Single Judge of the High Court under section 10F also goes to Supreme Court of India subject to special leave. When the relevant provisions of the Act are brought into force, powers of the High Courts with respect to such schemes of arrangement and those relating to winding up of companies will stand transferred to and vested in and exercised by NCLT and appeals arising from orders of NCLT will lie before the NCLAT. A close look at Section 434 of the Act suggests that any appeal relating to any matter arising from any order of the CLB under Section 10F of the 1956 Act and other appeals arising from orders of High Courts which are pending disposal before High Courts/Supreme Court of India will continue to be considered, adjudicated and disposed by the respective Court. Powers of High Courts to grant relief in matters relating to apprehended prosecution for offences under the Act will continue to be vested and exercised by High Courts by virtue of section 463 of the Act.

Pictorial Presentation of Transfer of Legal Proceedings



Constitution of NCLT / NCLAT and Effective Date of Transfer of Legal Proceedings

At any time the relevant provisions of the Act will be brought into force by the Central Government giving a go by to the jurisdiction and powers of CLB/BIFR/AAIFR/High Court in the above matters. In fact, as per the Act the CLB/BIFR/AAIFR will stand dissolved.

Section 434 of the Act states that all matters, proceedings and cases pending before CLB will stand transferred to the NCLT.



Article

Transfer of Legal Proceedings: to National Company Law Tribunal

➤ Under section 434 of the Act transfer of proceedings to Tribunal will take effect only from a date notified for that purpose by the Central Government which date cannot certainly precede the date of constitution of the Tribunal. Until that date, the second proviso of sub-section (1) of section 465 of the Act will apply and CLB will continue to function. But notwithstanding that, section 466 states that CLB will stand dissolved upon constitution of the Tribunal.

However in respect of any order issued before the date notified by the Central Government for such transfer, appeal will lie before the High Court only.

All proceedings with respect to schemes of compromises, arrangements, mergers, demergers, winding up of companies pending for disposal before any High Court under the relevant provisions of the 1956 Act will also stand transferred to the NCLT. NCLT should deal with such proceedings from the stage at which they were before such court immediately prior to the transfer of such proceedings to the NCLT.

An interesting aspect of section 434 of the Act is that any proceeding, reference, enquiry, appeal before the BIFR or as the case may be the AAIFR will stand abated from the date notified by the Central Government under this section. However a company in respect of which such proceedings have got abated may make a reference to the Tribunal in accordance with the Act.

Section 465 of the Act states that the present Act i.e., the Companies Act 1956 shall stand repealed. The second proviso under section 465 states that until a date is notified by the Central Government under section 434 of the Act for transfer of proceedings to NCLT as aforesaid, the provisions of the 1956 Act will continue to be applied by the CLB / Courts as if no repeal of the Companies Act 1956 had taken place.

Thus effectively only upon the constitution of NCLT and NCLAT, the Central Government can notify a date for the coming into force of section 434 of the Act and for the repeal of the 1956 Act.

Repeals and Savings

The Companies Act 2013 will come into force on a date notified for the said purpose by the Central Government. Section 1 of the Companies Act 2013 states that this Section comes into force at

once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The Central Government may appoint different dates for the coming into force of different provisions of this Act. However until section 465 of the Companies Act 2013 is notified, the repeal of the 1956 Act and the Registration of Companies (Sikkim Act) 1961 will not take effect.

Even after the repeal of the 1956 Act takes effect in the manner aforesaid on a date appointed by the Central Government as aforesaid, certain provisions of the 1956 Act will continue to be in force as if the 1956 Act has not been repealed. Such effect in respect of specified provisions will continue not forever but only up to such further time as may be specified.

The First Proviso under sub-section (1) of section 465 extends the life of the provisions of the 1956 Act as is applicable to producer companies until the Parliament enacts a new special law for producer companies.

The Second Proviso under sub-section (1) of this section extends the life of Company Law Board (CLB) constituted under Section 10E of the 1956 Act until the Central Government notifies a date under sub-section (1) of Section 434 for transfer of all matter, proceedings or cases to the Tribunal, and states that the provisions of the 1956 Act in regard to CLB and court shall continue to apply as if the 1956 Act has not been repealed.

The Third Proviso under sub-section (1) of this section is with respect to limited liability partnerships (LLP). Section 67 of the LLP Act empowers the Central Government to apply the provisions of the Companies Act 1956 to LLPs. Section 67 of the LLP Act would continue to be in force despite the repeal of 1956 Act until the Central Government notifies relevant corresponding provisions of this Act.

Sub-section (2) of section 465 continues certain important transitional provisions notwithstanding repeal of 1956 Act. The important matters that are saved by this sub-section despite the repeal of 1956 Act are given below:

- The repeal does not affect any rule, notification, order and any proceeding taken or any fine or any penalty imposed under 1956 Act would be construed as having been taken under the corresponding provisions of this Act in so far as it is not inconsistent with the provisions of this Act.
- Any order, rule notification or direction issued under 1956 Act will remain in force as if it has been issued under this Act.
- Any prosecution instituted under the 1956 Act and pending disposal at the commencement of this Act should be continued to be heard and disposed of by the same Court before which the said prosecution is pending.
- Any inspection, investigation or enquiry commenced under 1956 Act will have to continue as if the inspection or investigation or enquiry had been ordered under the corresponding provision of this Act.



- Any application or representation filed / made to the Registrar of Companies, Regional Director or the Central Government under 1956 Act shall be dealt with in terms of the 1956 Act despite its repeal.

Thus the repealed enactment continues to be in force in so many ways for so many purposes as above discussed. This provision is in *pari materia* with sections 644 to 658 of the 1956 Act. Sub-section (3) of section 465 of the Act saves the general application of section 6 of the General Clauses Act, 1897 much similar to section 658 of the 1956 Act.

An Analysis

An inspection or investigation initiated under the 1956 Act may result in the inspection or investigation going in a different direction consistent with the provisions of this Act. For instance, an offence under section 297 of the 1956 Act may not be an offence at all under section 188 of this Act. An inspection or investigation though continued under this Act even though initiated under the 1956 Act must construe the acts of omissions and commissions in relation to a company and its officers only to the extent such Acts could be construed as offences against the provisions of this Act.

Section 6 of the General Clauses Act, 1897 states, *inter alia*, that any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Therefore it seems to be possible for the Registrar of Companies to initiate fresh prosecution for anything that had happened under the 1956 Act which cannot be construed as an offence under the new Act despite the repeal of the 1956 Act.

Constitution of Tribunal and Appellate Tribunal and Interim Arrangement thereof

Only under the Second Proviso to sub-section (1) of section 465 of the Act, it is mentioned that notwithstanding the repeal of the 1956 Act, CLB will continue to exercise its powers until the Central Government notifies a date under Section 434 of the Act for transfer of legal proceedings to Tribunal. However Section 466 of the Act states that notwithstanding the provisions relating to repeal and savings contained in Section 465 of the Act, CLB will stand dissolved upon the constitution of the Tribunal. It is very absurd to view this provision independent of sections 434 and 465 of the Act. Under section 434 of the Act transfer of proceedings to Tribunal will take effect only from a date notified for that purpose by the Central Government which date cannot certainly precede the date of constitution of the Tribunal. Until that date, the second proviso of sub-section (1) of section 465 of the Act will apply and CLB will continue to function. But notwithstanding that, section 466 states that CLB will stand dissolved upon constitution of the

Tribunal. Actually the constitution of the Tribunal must take place first. Simultaneously CLB will stand dissolved. But until a date is notified under section 434, CLB will continue to exercise its powers. Therefore the proper way to construe these provisions is to think that all the three things will take place on the same day.

The Proviso under sub-section (1) of section 466 of the Act states that the Chairman, Vice-chairman and members of the CLB, subject to requisite qualifications, will function as President, Chairperson or Member of the Tribunal or the Appellate Tribunal, until the constitution of the Tribunal and the Appellate Tribunal. If that be so, Tribunal gets constituted in that manner. Upon constitution of the Tribunal, CLB shall stand dissolved as stated in sub-section (1) of section 466 of the Act.

In terms of section 408 of the Act, the Central Government shall, by notification constitute the Tribunal with effect from such date as it may notify in that notification. Similarly under section 410 of the Act, it may notify the constitution of the Appellate Tribunal. Under section 419 of the Act, Tribunal may be constituted with such number of benches as may be notified by the Central Government. Therefore from the words "constituting the Tribunal, or as the case may be, the Appellate Tribunal", it should be understood to be the date on which the Central Government announces the constitution thereof under section 408 or 410 of the Act. Simultaneous with the said notifications, the date under section 434 would also be announced.

If until constitution of the Tribunal, subject to qualifications, the Chairman, Vice-chairman and members of the CLB will function as President, Chairperson or Member of the Tribunal or the Appellate Tribunal, it implies that the Tribunal or as the case may be the Appellate Tribunal is getting constituted in that manner. And sub-section (2) of section 466 of the Act states that any the Chairman, Vice-chairman and members of the CLB who did not so become the Chairman, Vice-chairman and members of the CLB as per the Proviso under sub-section (1) of section 466 of the Act will vacate their offices immediately upon constitution of the Tribunal and the Appellate Tribunal. Therefore even such constitution of the Tribunal or as the case may be the Appellate Tribunal by invoking the Proviso under sub-section (1) of section 466 of the Act must be by virtue of notifications referred to in sections 408 and 410 of the Act.

Conclusion

From a conspectus of the above provisions, it becomes clear that only upon the constitution of the Tribunal and Appellate Tribunal, things will become clear. Even though the 1956 Act has not been repealed by bringing into force sub-section (1) of section 465 of the Act, several provisions of the Act have been brought into force. This itself has created enough issues. It would be advisable to put on hold the powers of the Central Government under section 466 of the Act until the Tribunal and the Appellate Tribunal are properly established with a reasonable strength and support staff rather than taking interim measures. CS





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Composition of Board of Indian Companies and its effect on Corporate Governance

➤ In recent years, Corporate Governance and Board structure has generated a lot of curiosity among the academic and Industry alike. It is assumed that a healthy board composition indicates healthy Corporate Governance practices. This article attempts to compare and contrast various board structures and composition in various companies and analyses the impact of various board compositions on ideal corporate governance practices.

Introduction

As a company grows in size, its ownership is separated from the control. Ownership remains with the shareholders but the control moves towards the Directors. All companies private or public, listed or unlisted are required to constitute a Board of Director. Shareholders of the company at its meeting appoint the Directors, who guides and steers the business on behalf of the shareholders. Directors run the business in the interest of all the stakeholders including the shareholders.

Responsibilities cast on the Directors are quiet onerous and multifarious. The duties of directors are partly statutory, partly regulatory and partly fiduciary. Directors are in a fiduciary position and must exercise their powers for the benefit of the company. Board is responsible for direction, control, conduct management and supervision of the company's affairs. They have to establish effective corporate governance procedures and best practices.





The board functions on the principle of majority or unanimity. A decision is taken, if it is accepted by the majority or all of the directors. A single director cannot take a decision. It is the board as a whole which takes the decisions. This is the purpose of the constitution of the Board by the shareholders. If the decision making power is given to one particular director, he may abuse the power and take biased decisions. He may take decisions which benefit him or his relatives or his friends. The scope for bias, partiality and favouritisms is eliminated with the concept of the Board. Management involves an organisational hierarchy (Fig.1).

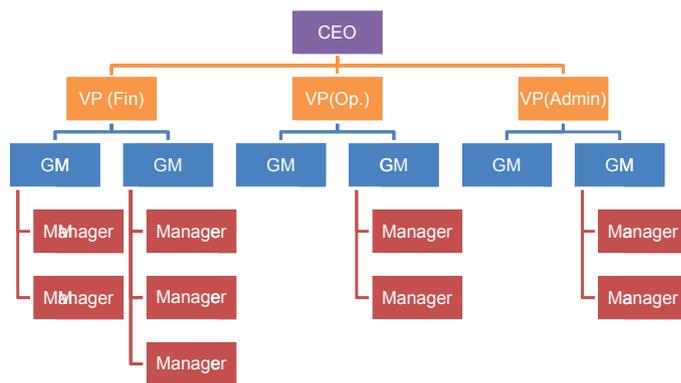


Fig 1

In a Board, there is no hierarchy (Fig 2). Board has no boss and all the Directors are equal in terms of power, duties, responsibilities and liabilities.

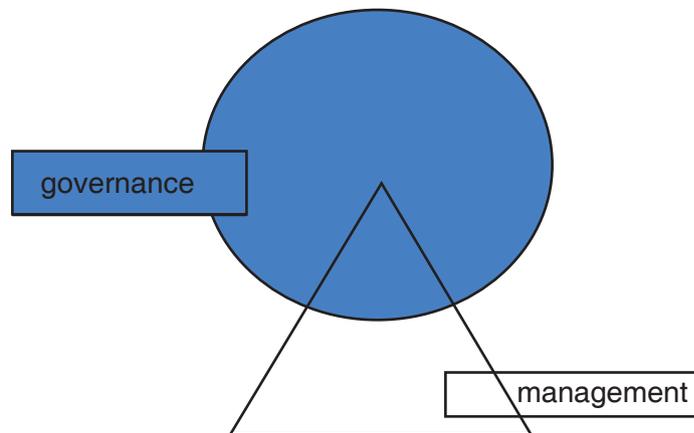


Fig. 2

The success of any business organization to a large extent depends upon the composition of the Board of Directors.

Statutory Requirements relating to Independent Directors

As per the Companies Act, 2013, "Director" means a director appointed to the Board of a company. Further the Act defines "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.

Under section 149, every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. The Companies Act, 2013 has also prescribed the appointment of a Woman Director on the Board of such Companies or class of companies as may be prescribed. Further, The Act prescribes that every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year, thus introducing the concept of Resident Director to be appointed in each company.

The Companies Act, 2013 for the first time has introduced the Concept of Independent Director. It has made the appointment of independent director mandatory in all listed companies. It prescribes that the Board of Directors of all listed companies shall mandatorily comprise 1/3rd as Independent Director and any fraction contained in such one-third number shall be rounded off as one.

The Act has defined the term Independent Director. According to section 149 (6) of the Companies Act, 2013, an Independent Director 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;
- who is or was not a promoter of the company or its holding, subsidiary or associate company and who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- 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 2% 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;
- 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



Article

Composition of Board of Indian Companies and its effect on Corporate Governance

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 10% or more of the gross turnover of such firm; (iii) holds together with his relatives 2% 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 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or

- who possesses such other qualifications as may be prescribed.

The term Independent Director has been defined under Companies Act, 2013 on the same line as it has been prescribed under Clause 49 of the Listing Agreement but it has been substantially widened. It provides that the Independent Director shall be a person of integrity and shall possess relevant expertise and experience. It also prescribes that the relatives of the independent directors shall not have any pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors. The independent director shall also not be the Chief Executive or Director of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company.

Regulatory Requirements as per the Listing Agreement pertaining to the composition of Board of Directors

All Issuers whose securities are listed on the NSE or BSE shall comply with the listing conditions and requirements contained in the Listing Agreement. Clause 49 of the Listing agreement prescribes the provisions pertaining to the composition of Board, Reads:

“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.

Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.

Provided that where the non-executive Chairman is a promoter

of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors.”

Directors represent various shareholders as well as the stakeholders on the Board. The intention of the aforesaid clause 49 of the listing agreement is basically to include the independent and objective element on the board of companies and at least 50% of the board should be comprised of Non-Executive Directors.

Board Size

The statutory requirement for the minimum number of Directors of any public company is three. But, the size of Board of Directors depend upon many factors such as the turnover of the company, geographical reach of the company, future expansion plans, etc. The size of the Board increases as the size of the business increases. Sometimes, the company accommodates the family members on the Board of the company. As and when the company avails financial facility from the banks and financial institutions, Nominee Directors are inducted and the board expands.

According to the Companies Act, 2013, the maximum no. of directors shall not exceed 15. The company can appoint more than 15 directors with the approval of the shareholders by passing a Special Resolution.

Size of the Board of Directors of SENSEX 30 companies (Total Number of Directors as per 2011-12

Annual Report)

Company	Total No. of Directors
ITC Ltd.	16
Reliance Industries Ltd.	13
INFOSYS Ltd.	15
HDFC Bank Ltd.	11
ICICI Bank Ltd.	12
Housing Development Finance Corp. Ltd.	14
LARSEN & TOUBRO Ltd.	16
TATA Consultancy Services Ltd.	12
State Bank of India	14
Oil and Natural Gas Corporation Ltd.	13
Hindustan Unilever Ltd.	8
TATA Motors Ltd.	13
Bharti Airtel Ltd.	16
Mahindra & Mahindra Ltd.	13
TATA Steel Ltd.	10
NTPC Ltd.	17
Sun Pharmaceutical Industries Ltd.	8
WIPRO Ltd.	12
Bajaj Auto Ltd.	16



Coal India Ltd.	13
Dr. Reddy's Laboratories Ltd.	11
Hero Motocorp Ltd.	12
Bharat Heavy Electricals Ltd.	16
Jindal Steel & Power Ltd.	15
GAIL (India) Ltd.	16
Maruti Suzuki India Ltd.	11
TATA Power Co. Ltd.	13
Cipla Ltd.	9
Hindalco Industries Ltd.	10
Sterlite Industries (India) Ltd.	7

Size of Board and its effect on Corporate Governance

The optimal number of directors is an important question. Efficiency is reduced if the number of directors is too large because there is an increased difficulty in achieving agreement concerning decisions. Conversely, decision-making precision is reduced if the number of directors is too small because there may not be adequate discussion of issues involved.

NTPC Limited is having the biggest Board with 17 Directors and Sterlite Industries (India) Limited has the smallest Board with 7 directors among the SENSEX companies. The average size of the board of SENSEX 30 companies is 13.

Board composition and Balance

Board composition normally concerns issues related to board independence and diversity of members of board. A balanced board should contain an appropriate mix of Executive, Non-Executive Non-Independent and Non-Executive Independent Directors having appropriate qualification, skills, experience and attributes. Board composition is one of the most important determinants of board effectiveness. A board should have a mix of inside and outside directors with a variety of experience and core competence if it is to be effective in setting policies and strategies and for judging the management's performance objectively. The potential competitive advantage of a board structure constituted of executive directors and independent non-executive directors is in its combinations of – the depth of knowledge of the business of the executives and the breadth of experience of the non-executive independent directors.

Percentage of the Executive Directors as per 2011-12 Annual Report

Company	No. of Executive Directors	Total No. of Directors	% of Executive Directors
ITC Ltd.	4	16	25

Reliance Industries Ltd.	5	13	38
INFOSYS Ltd.	6	15	40
HDFC Bank Ltd.	3	11	27
ICICI Bank Ltd.	4	12	33
Housing Development Finance Corp. Ltd.	3	14	21
LARSEN & TOUBRO Ltd.	8	16	50
TATA Consultancy Services Ltd.	2	12	17
State Bank of India	4	14	29
Oil and Natural Gas Corporation Ltd.	5	13	38
Hindustan Unilever Ltd.	3	8	38
TATA Motors Ltd.	1	13	8
Bharti Airtel Ltd.	2	16	13
Mahindra & Mahindra Ltd.	2	13	15
TATA Steel Ltd.	1	10	10
NTPC Ltd.	7	17	41
Sun Pharmaceutical Industries Ltd.	3	8	38
WIPRO Ltd.	3	12	25
Bajaj Auto Ltd.	4	16	25
Coal India Ltd.	3	13	23
Dr. Reddy's Laboratories Ltd.	3	11	27
Hero Motocorp Ltd.	3	12	25
Bharat Heavy Electricals Ltd.	6	16	38
Jindal Steel & Power Ltd.	4	15	27
GAIL (India) Ltd.	6	16	38
Maruti Suzuki India Ltd.	4	11	36
TATA Power Co. Ltd.	3	13	23
Cipla Ltd.	3	9	33
Hindalco Industries Ltd.	1	10	10
Sterlite Industries (India) Ltd.	2	7	29

Percentage of Executive Director and its effect on Corporate Governance

TATA Motors Limited, is having the lowest percentage of Executive Directors in their Board at 8%. LARSEN & TOUBRO Ltd. is having the maximum percentage of Executive Directors at 50%.

Effect on Corporate Governance

Whole time executive directors are very often not sure of what is expected of them in their role as members of the board. Management issues usually get entangled with matters that the board has to deal with. If the number of executive directors is more, they can dominate the board proceedings and may prevail on the non-executive directors. The number of executive directors should be based on their relevance, contributions to the board deliberations and the total no. of executive directors should be limited enough to enlighten the board on various important facets of the company.



Article

Composition of Board of Indian Companies and its effect on Corporate Governance

Percentage of the Non-Executive Non Independent Directors as per 2011-12 Annual Report

Company	No. of Non-Executive Non Independent Directors	Total No. of Directors	% of Non-Executive Non Independent Directors
ITC Ltd.	3	16	19
Reliance Industries Ltd.	1	13	8
INFOSYS Ltd.	0	15	0
HDFC Bank Ltd.	2	11	18
ICICI Bank Ltd.	1	12	8
Housing Development Finance Corp. Ltd.	1	14	7
LARSEN & TOUBRO Ltd.	0	16	0
TATA Consultancy Services Ltd.	4	12	33
State Bank of India*	2	14	14
Oil and Natural Gas Corporation Ltd.	1	13	8
Hindustan Unilever Ltd.	1	8	13
TATA Motors Ltd.	5	13	38
Bharti Airtel Ltd.	6	16	38
Mahindra & Mahindra Ltd.	2	13	15
TATA Steel Ltd.	4	10	40
NTPC Ltd.	2	17	12
Sun Pharmaceutical Industries Ltd.	1	8	13
WIPRO Ltd.	0	12	0
Bajaj Auto Ltd.	3	16	19
Coal India Ltd.	3	13	23
Dr. Reddy's Laboratories Ltd.	0	11	0
Hero Motocorp Ltd.	2	12	17
Bharat Heavy Electricals Ltd.**	2	16	13
Jindal Steel & Power Ltd.	3	15	20
GAIL (India) Ltd.***	2	16	13
Maruti Suzuki India Ltd.	3	11	27
TATA Power Co. Ltd.	4	13	31
Cipla Ltd.	0	9	0
Hindalco Industries Ltd.	3	10	30
Sterlite Industries (India) Ltd.	1	7	14

* Government nominee and RBI nominee on the Board of SBI has been treated as Non-Executive Non-Independent Directors.

** Part-time Official Directors (Government Nominees, representing the Ministry of Heavy Industries & Public Enterprises, Government of India) have been considered as Non-Executive Non Independent Directors.

*** Part-time Directors (Government Nominees) have been considered as Non-Executive Non Independent Directors.

Percentage of Non-Executive Non Independent Directors and its effect on Corporate Governance

A non-executive director is the member of Board who is not in employment with the company. A non-executive director can be independent or non-independent depending on his association with the company. If the NED is having any material pecuniary relationships with the company, its promoters, its senior management or its holding company, its subsidiaries and associated companies or is related to the promoters or management at the board level or at one level below the board or has been an executive of the company in the immediately preceding three Financial Year (FY) or is a partner or an executive of the statutory audit firm or the internal audit firm that is associated with the company or has been a partner or an executive of such firm for the last three years or is a supplier, service provider or customer of the company or is a substantial shareholder of the company, i.e. owning 2% or more of the block of voting shares.

The Boards of INFOSYS Limited, LARSEN & TOUBRO Ltd., WIPRO Limited and Dr. Reddy's laboratories Limited do not have any Director who is Non Executive Non Independent. It shows that all of their Directors apart from Executive Directors are Independent Directors. TATA Steel Limited is having the maximum number of Non-Executive Non Independent Directors at the Board (40%).

Effect on Corporate Governance

It has become apparent that the non-executive director (NED) plays a pivotal role in successful corporate governance implementation. The NED's purpose is to provide: 'A creative contribution to the board by providing objective criticism. Non-executive directors are expected to focus on board matters and not stray into "executive direction", thus providing an independent view of the company that is removed from day-to-day running. But the non-executive non-independent directors cannot make any objective and independent decision because of their relationship or present or past association with the company.

If the numbers of Non-Executive Non Independent Directors are more, then it means that the Board is dependent on the members who are directly or indirectly related to the company and the decision of the board will not be completely independent in nature.

Percentage of the Non-Executive Independent Directors as per 2011-12 Annual Report

Company	No. of Non-Executive Independent Directors	Total No. of Directors	% of Non-Executive Independent Directors
ITC Ltd.	9	16	56



Reliance Industries Ltd.	7	13	54
INFOSYS Ltd.	9	15	60
HDFC Bank Ltd.	6	11	55
ICICI Bank Ltd.	7	12	58
Housing Development Finance Corp. Ltd.	10	14	71
LARSEN & TOUBRO Ltd.	8	16	50
TATA Consultancy Services Ltd.	6	12	50
State Bank of India	8	14	57
Oil and Natural Gas Corporation Ltd.	7	13	54
Hindustan Unilever Ltd.	4	8	50
TATA Motors Ltd.	7	13	54
Bharti Airtel Ltd.	8	16	50
Mahindra & Mahindra Ltd.	9	13	69
TATA Steel Ltd.	5	10	50
NTPC Ltd.	8	17	47
Sun Pharmaceutical Industries Ltd.	4	8	50
WIPRO Ltd.	9	12	75
Bajaj Auto Ltd.	9	16	56
Coal India Ltd.	7	13	54
Dr. Reddy's Laboratories Ltd.	8	11	73
Hero Motocorp Ltd.	7	12	58
Bharat Heavy Electricals Ltd.	8	16	50
Jindal Steel & Power Ltd.	8	15	53
GAIL (India) Ltd.	8	16	50
Maruti Suzuki India Ltd.	4	11	36
TATA Power Co. Ltd.	6	13	46
Cipla Ltd.	6	9	67
Hindalco Industries Ltd.	6	10	60
Sterlite Industries (India) Ltd.	4	7	57

Percentage of Non-Executive Non Independent Directors and its effect on Corporate Governance

Wipro Limited Board comprises the maximum number of Non-Executive Independent Directors at 75%. Maruti Suzuki India Ltd. board comprises the least percentage of Independent Directors at 36%.

Effect on Corporate Governance

The composition of board significantly affects the corporate governance of any company. Compared to an insider-dominated board, an outsider-dominated board is believed to be more vigilant in monitoring managerial behaviours and decision-making of the firm. A board that consists of independent directors with a diverse set of functional expertise (marketing, operations, legal, finance,

etc.) industry experiences, educational qualifications, ethnic and gender mix might be better equipped to deal with a wide range of issues facing the firm and provide executives with advice and consultation from multiple perspectives. Independent Directors are appointed to bring to the board: independence; impartiality; wide experience; special knowledge; personal qualities. The corporate governance of any company is directly proportional to the number of independent directors.

Conclusion

The average size of the Board is 12.73 which is neither too small nor too big. If the board is too small, then it shows that the board does not have adequate number of Directors who can deliberate on various aspects of the business. If the Board is too big, then it hinders in taking an effective and firm decision.

The average percentage of the Executive Directors on the Board of SENSEX companies is 22.67% which is an ideal percentage and well within the prescribed norm (50%) of Listing Agreement. It reflects that the management representation on the Board is limited to the CEO and two other operational heads.

The average percentage of the Non-Executive Non-Independent Directors and Non-Executive Independent Directors on the Board of SENSEX companies is 16.37% and 55.67% respectively, which reflects the dependence on the non-executive directors and specifically the importance of independent directors on the Board of SENSEX companies.

The total average percentage of Non-Executive Directors (both Independent and non-independent) is 72% which is an ideal composition and reflects that the sizeable percentages of Directors on the Boards of SENSEX companies are Outside Directors, who are not involved in the day to day transaction of the company. It provides an assurance to all the stakeholders that their interest will be secured by the outside directors. CS

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