



**Corporate
Professionals**

INDEPENDENT DIRECTORS

**Catalysts to Strong
Corporate Governance**

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Founder – Corporate Professionals Group

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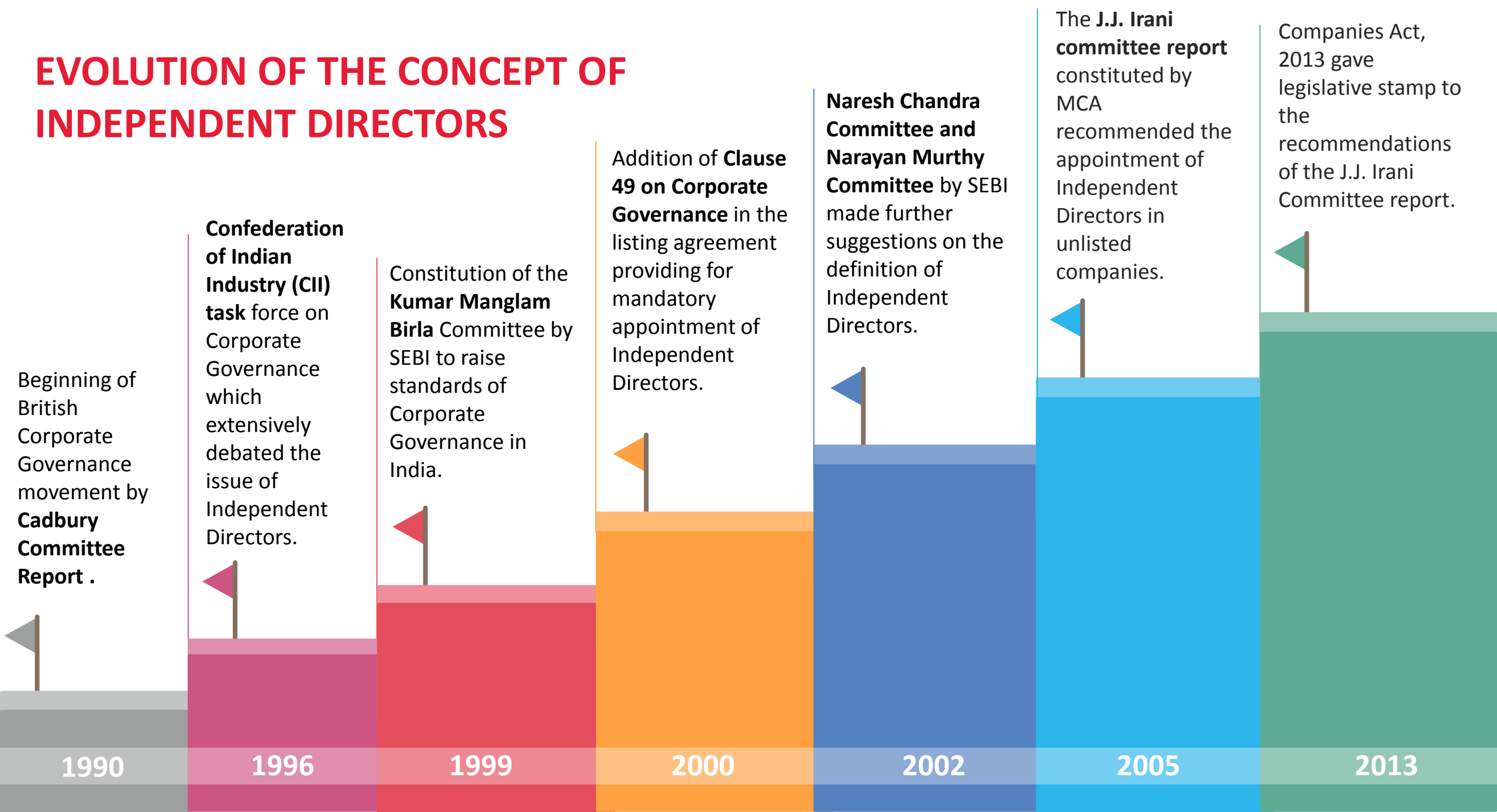
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INSTITUTION OF INDEPENDENT DIRECTORS IN INDIA

EVOLUTION OF THE CONCEPT OF INDEPENDENT DIRECTORS



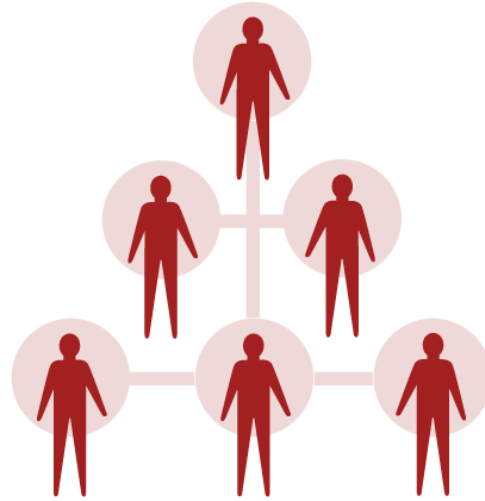
**IN INDIA,
CORPORATE
GOVERNANCE IS AN
AGE OLD CONCEPT**





Rig Veda ... 1500-1200 BC

INDIAN MYTHOLOGY



Commitment to well-being and progress of all stakeholders is our age old mantra

“सत्यं वद धर्म चर”

Satyam Vada Dharmam Chara

- Taittiriya Upanishad

“

*Forever speak the **truth** and
follow the **dharma***

”

***Truth : Disclosure of Actual State of
Affairs (Transparency in operations and
transactions)***

Dharma : “ Dharma is for the **stability of society, the maintenance of social order and the general well-being and progress of humankind.** ”

- Karna Parva of the Mahabharata. Verse-58 in Chapter 69

GOVERNANCE CONCEPT IN 'RAMAYANA'

To provide “the maximum happiness for the maximum number of people for the maximum period, based on the principles of Dharma – righteousness and moral values.”

- Ayodhya Kand

OBJECTIVE BEHIND THE CONCEPT OF INDEPENDENT DIRECTORS



1

Independent functioning of the Board

2

To protect the interest of minority Shareholders & other stakeholders of the Company

3

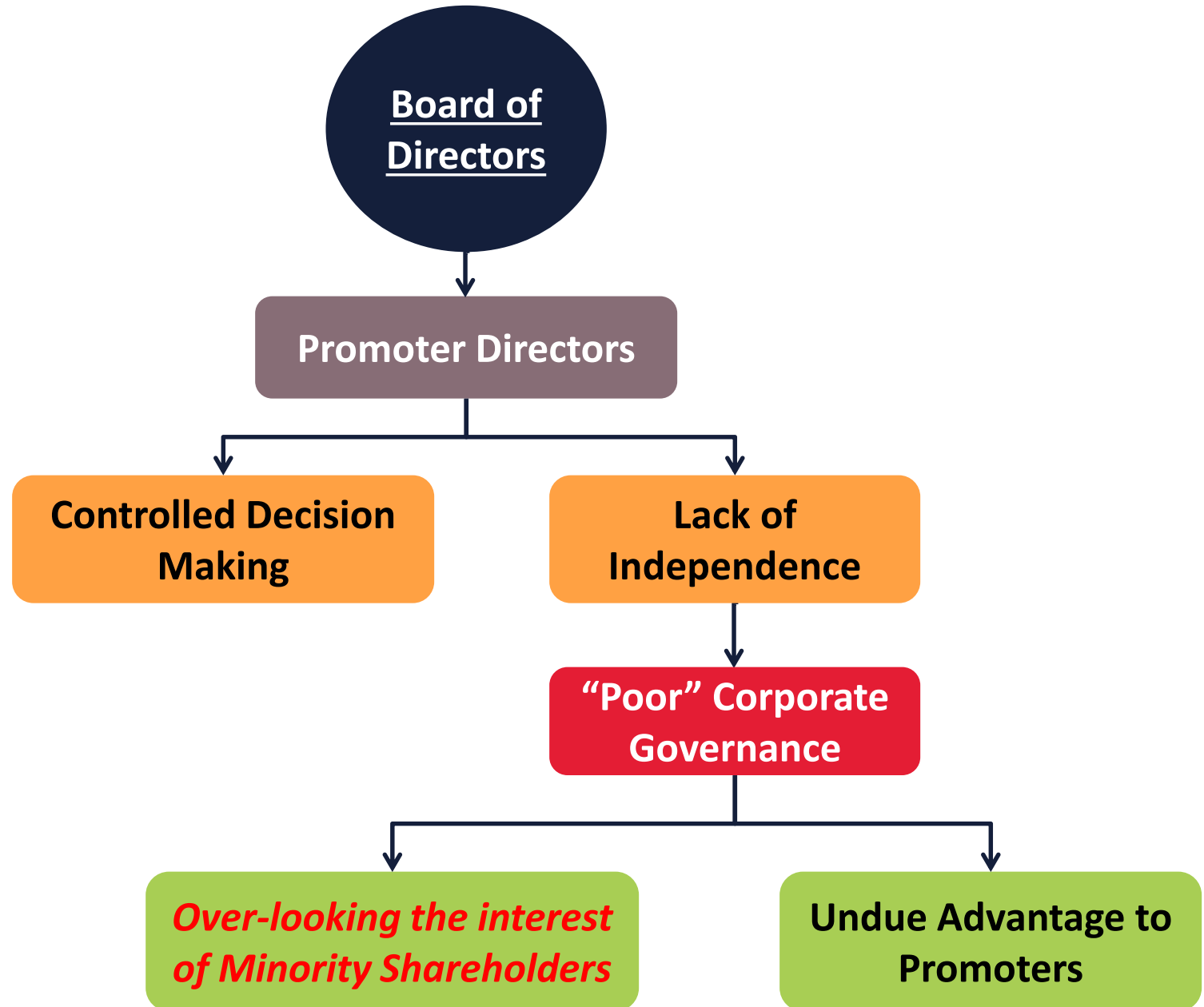
Independent monitoring of the company's performance

4

To enhance the quality of Corporate Governance

**WHAT
VACUUM
THEY WANTED
TO FULFILL?**

COMPOSITION OF BOARD

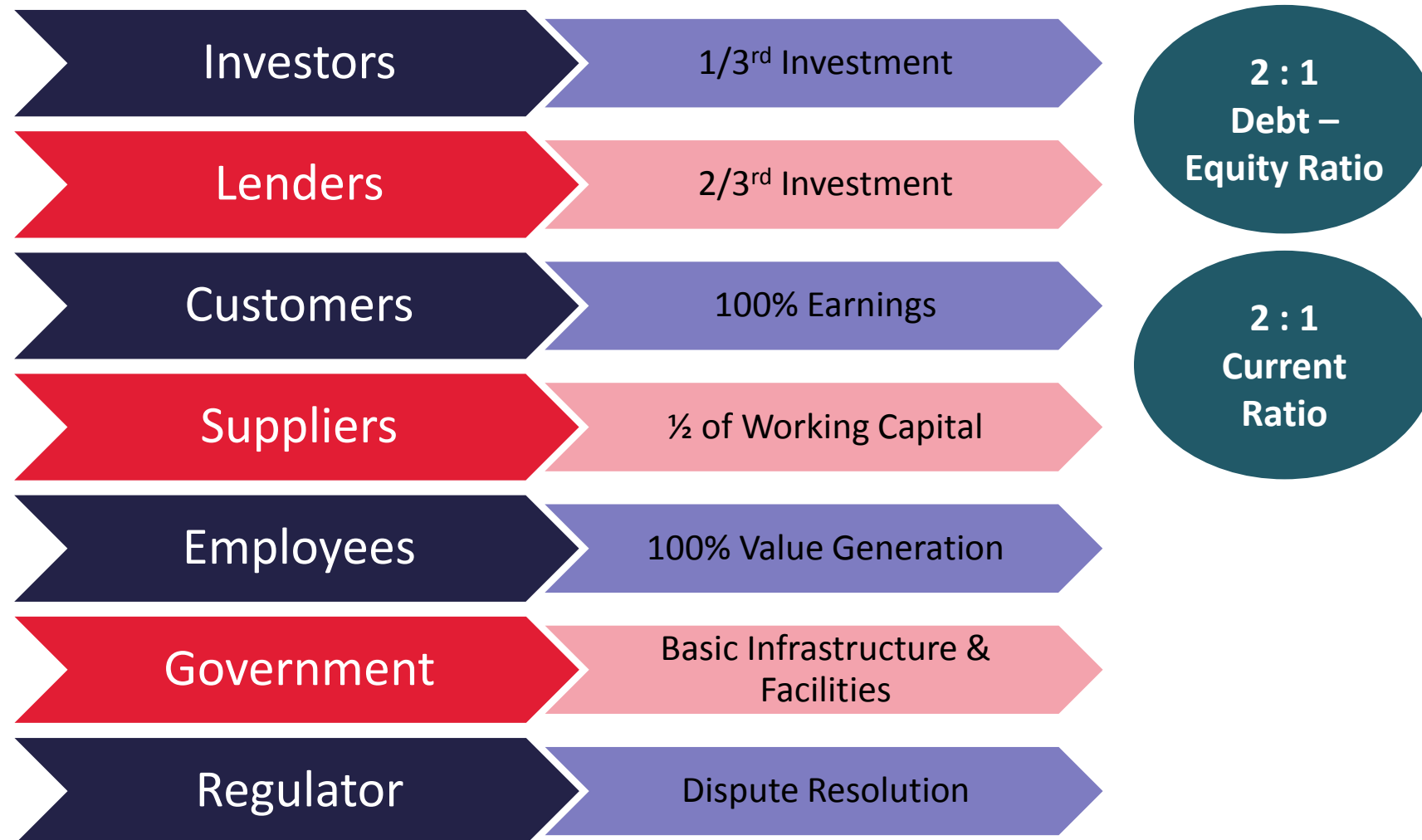


STAKEHOLDERS EXPECTATIONS FROM INDEPENDENT DIRECTORS

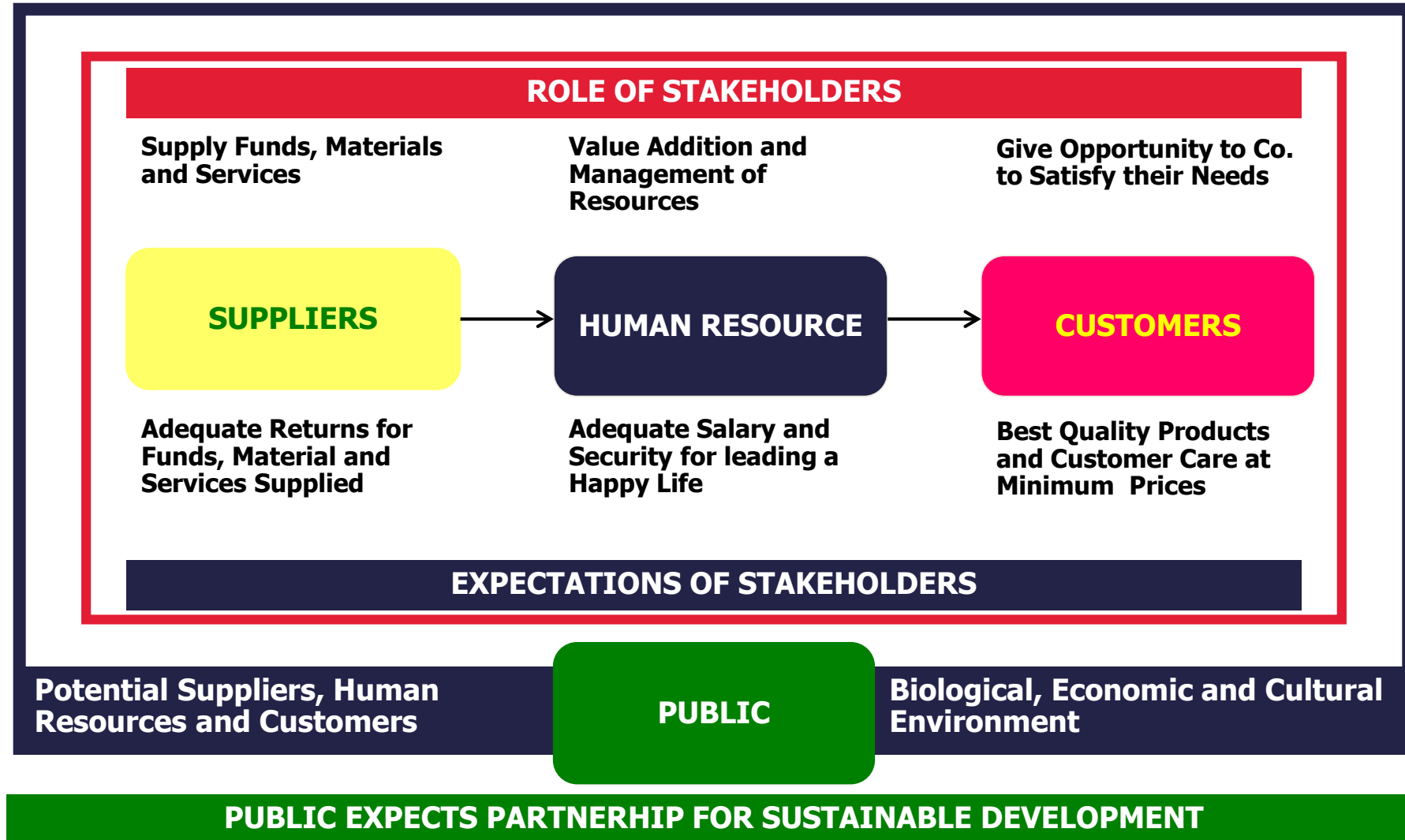


**Shareholders are not the only
Stakeholders in Corporate Governance**

STAKEHOLDERS' STAKE IN CORPORATE GOVERNANCE VALUE CHAIN



STAKEHOLDERS IN VALUE CHAIN



INVESTORS

CUSTOMERS

EMPLOYEES

Enhanced Trust and Confidence of all Stakeholders

GOVERNMENT AND
REGULATORS

SUPPLIERS

SOCIETY

STAKEHOLDERS EXPECTATIONS

Investors/shareholders: IDs are expected to be **independent from the management** and **act as trustees** of shareholders.

Regulators: that the independent directors must institutionalize compliance with applicable laws/regulations , **ensure timely & complete disclosures** and **bring red-flags** to the notice of Regulator

Board of Directors: that they should **add value to the board discussions** and act objectively in evaluation of various proposals.

Employees: that the independent directors should ensure that **employees are treated as stakeholders** in the decision making process.

Banks and Financial Institutions: It is expected that IDs must ensure that there is a **timely and accurate flow of information** to them.

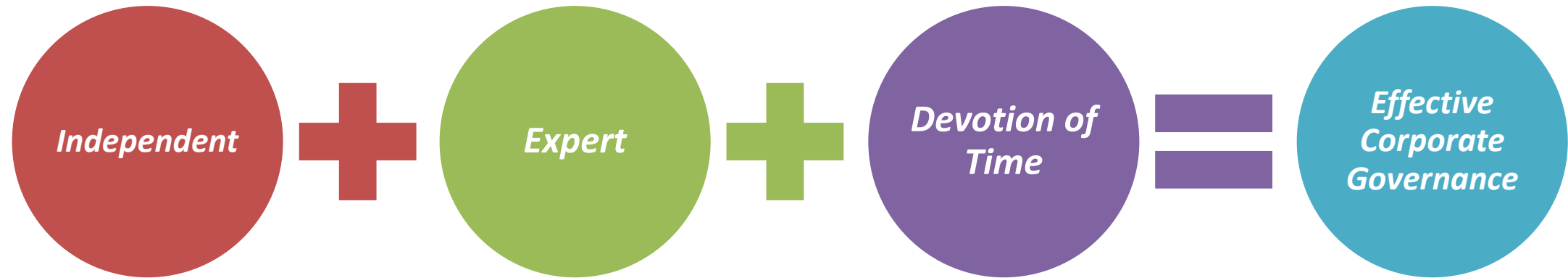
Society: considering society as a stakeholder, the independent director should ensure that the company conducts its **business responsibility taking due care of environment & natural resources**.

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**WHETHER THE INSTITUTION OF
INDEPENDENT DIRECTORS ACHIEVED THE
PURPOSE OR NOT?**

WHETHER THE PURPOSE HAS BEEN ACHIEVED OR NOT?

Ingredients of Independent Directors



BUT

- Those who are **expert**, have **no time**
- Those who have **time**, are **not expert**.

REALITY OF INDEPENDENCE

Independent Directors

*Disinterested
Director*

*Uninterested
Director*

REALITY- APPOINTMENT OF INDEPENDENT DIRECTOR

Compliance in Spirit

- *Disinterested Director*
 - Expert in a particular discipline.
 - Knowledge about the companies business.
 - Precedence to knowledge over names.
 - Capability to dissent.
 - Provides independent assessment of business decisions.
 - Informed decisions.

Compliance in Letter

- *Uninterested Director*
 - Uninterested towards Company but Interested towards his own.
 - Not concerned with the Company's business.
 - Precedence to name over knowledge.
 - Acts as per the whims of the management.
 - Silent observer at the meeting.
 - Decision on selective basis.

CONTROVERSIES SURROUNDING INDEPENDENT DIRECTORS

- ❑ **Satyam Computer Services Limited** : The Independent Directors completely failed to identify the huge financial irregularities in the Company.
- ❑ **IL & FS Ltd**: The Independent Directors are under lens on account of willful neglect and failure to stall or raise questions on the decisions of the Company.
- ❑ **Tata-Mistry Clash**: Mr. Nusli Wadia (Former Independent Director of Tata Group) was removed from the board by Tata's apparently for presenting an opinion contrary to the views of majority shareholders. After this dispute, the ease with which IDs can be removed as per the whims of the promoters, came into limelight.

CONTROVERSIES SURROUNDING INDEPENDENT DIRECTORS

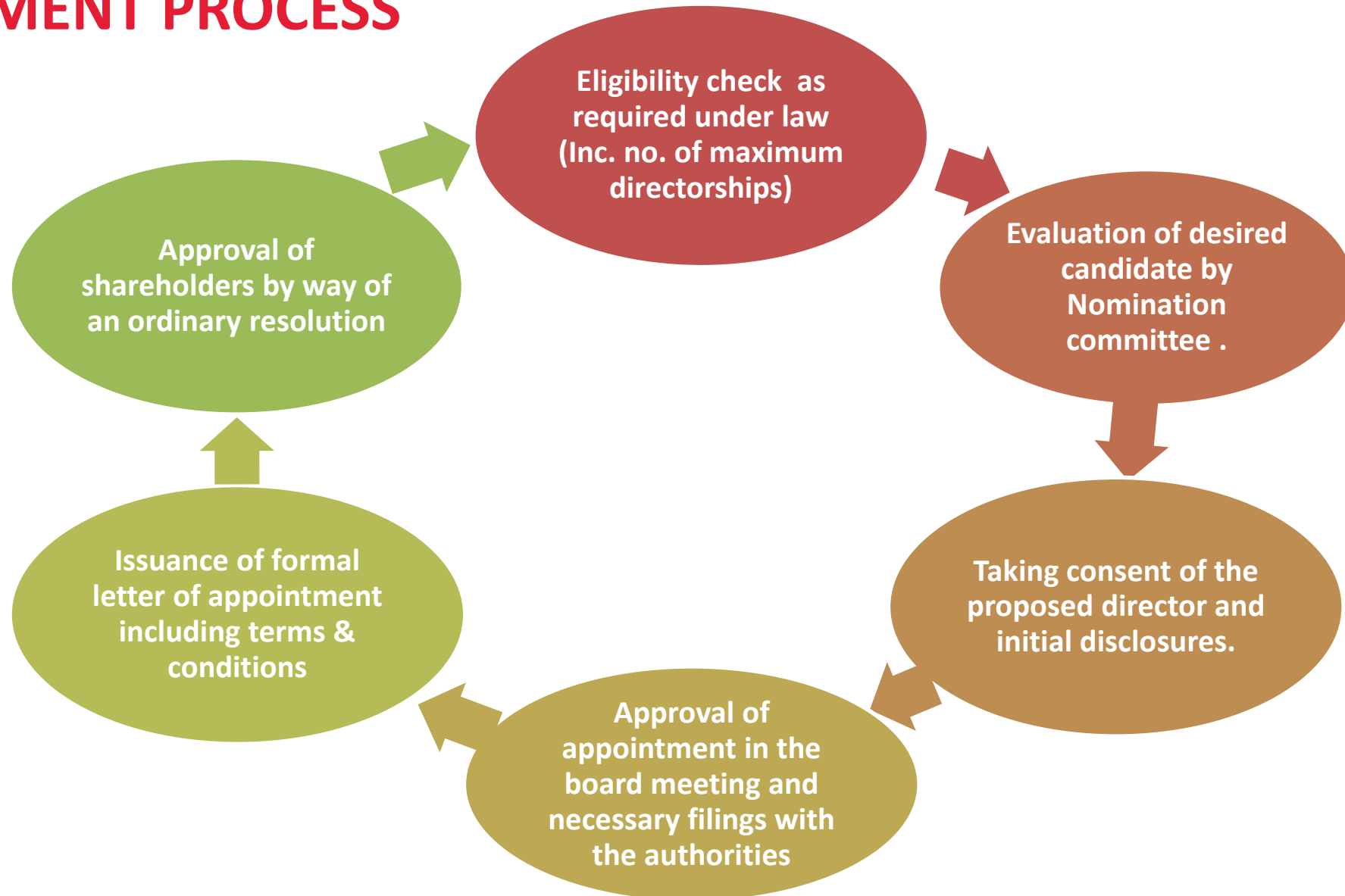
❑ **Nagarjuna Finance Ltd.:** Arrest warrants were issued by the Andhra Pradesh govt. against the independent Directors of the company namely Mr. Nimesh Kampani, Mr. A.P. Kurian & Minoo Shroff for breach of trust in the alleged involvement of repayment of public deposits taken by the Company.

❑ **Fortis Healthcare Ltd.:** 4 independent directors were removed from the board of Fortis healthcare at the request of investors for not satisfactorily exercising their fiduciary duties towards the shareholders after alleged news of siphoning of funds by the Singh Brothers without the approval of Board.

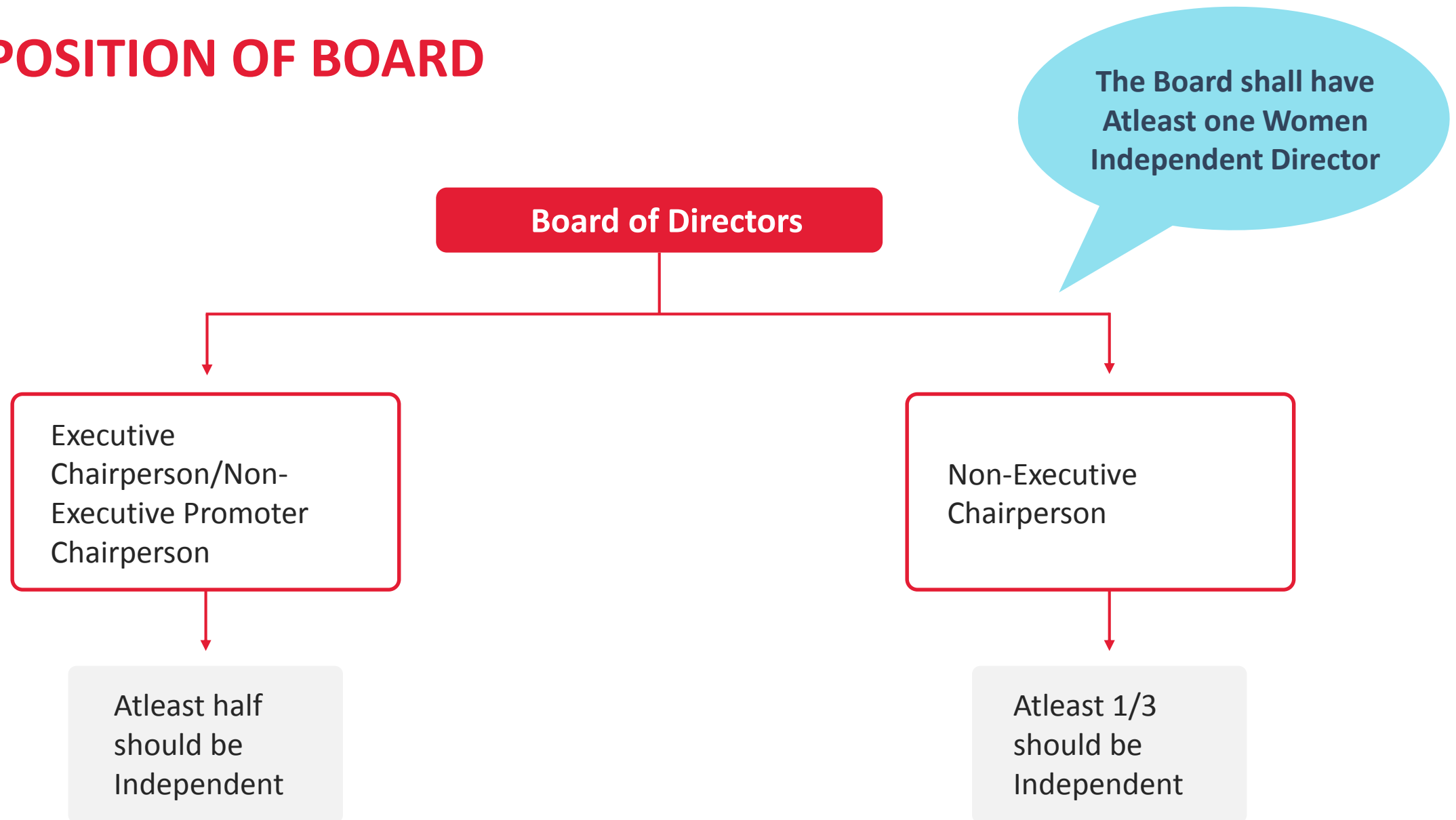
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PROCESS FOR APPOINTMENT OF AN INDEPENDENT DIRECTOR

APPOINTMENT PROCESS



COMPOSITION OF BOARD



DISCLOSURES AT THE TIME OF APPOINTMENT

**Disclosure of
Interest**



**In any other
entity by way of
shareholding or
directorship
along with the
list of relatives.**

**Disclosure of
Disqualification**



**Certificate of
eligibility to be
appointed as
Director.**

**Disclosure of
Independence**



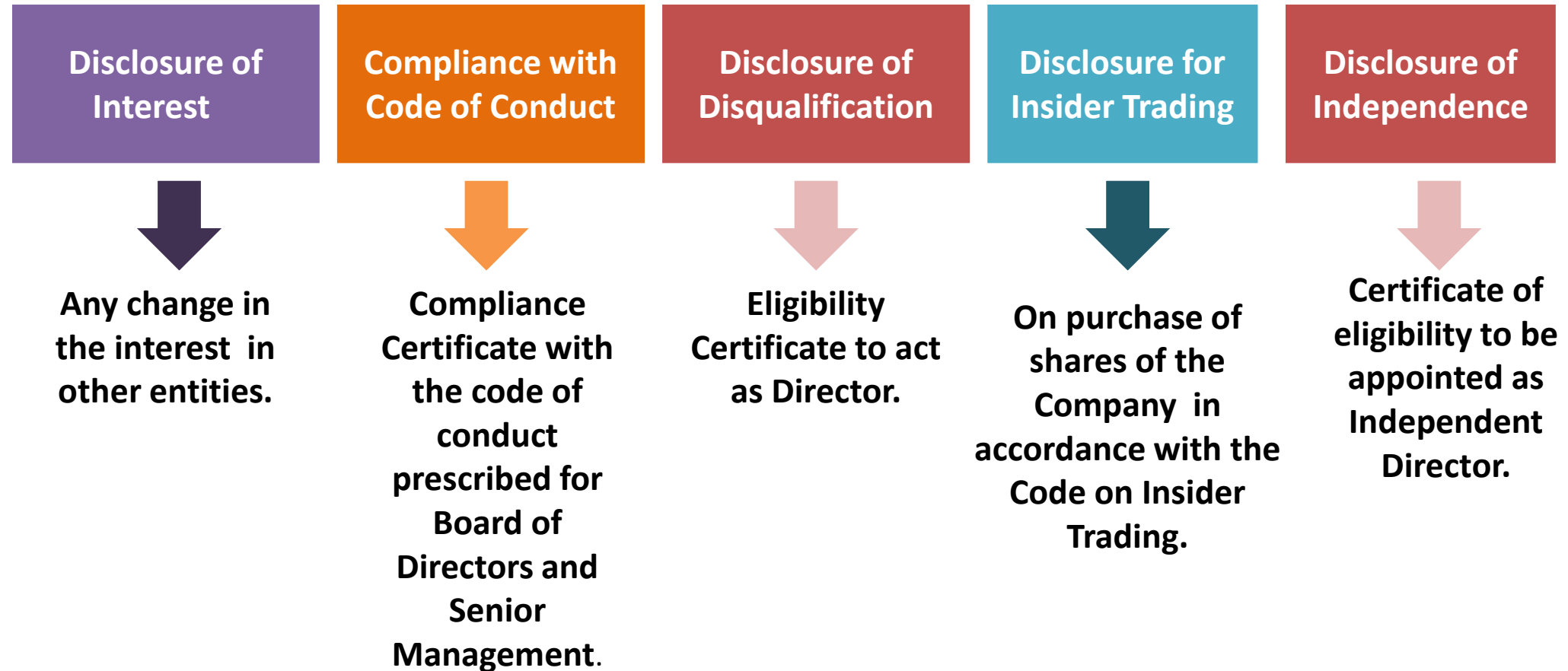
**Certificate of
eligibility to be
appointed as
Independent
Director.**

**Disclosure under
Insider Trading**



**Details of any
shareholding in the
Company.**

CONTINUOUS AND EVENT BASED DISCLOSURES



REMUNERATION TO INDEPENDENT DIRECTORS

SITTING FEES: for attending Board/Committee meetings shall not exceed Rs. 1,00,000/- per meeting.

Also IDs shall be entitled to reimbursement of expenses.

PAYMENT OF COMMISSION

Upto 1% of net profits.

Above 1%, special resolution is required.

Remuneration can be paid either by way of a monthly payment or a specified percentage.

IDs shall not be entitled to any stock options.

The company shall undertake Directors and Officers insurance for all the IDs.

The government is considering a proposal to limit the remuneration for independent directors upto 20% of his total income.

IMPORTANT TERMS & CONDITIONS RELATED TO ID

Tenure of ID's

- An ID may hold office for a **term up to 5 consecutive years**;
- For **re-appointment on passing of a special resolution** by the company and disclosure of such appointment in the Board's report;
- shall **not hold office for more than 2 consecutive terms** (cooling period of 3 years for re-appointment);
- Independent Director **shall not be liable to retire by rotation**; and
- The **re-appointment** shall be **on the basis of performance evaluation**.

- A person can be director in maximum 20 companies out of which maximum 10 can be **public companies**.
- With effect from April 01, 2019, a person shall not be a director in more than 8 listed entities.
- A person who is serving as a whole-time or managing director in any listed entity, shall not serve as an independent director in more than 3 listed entities.

Max. number of directorships

IMPORTANT TERMS & CONDITIONS RELATED TO ID

Removal/Resignation of Independent Directors

- An ID may resign from his office by giving notice in writing to the Board and thereafter notify the MCA/Stock exchanges giving detailed reasons of resignation along with a confirmation that there is no material reasons other than those provided.
- The director who has resigned shall be liable even after his resignation for the offences/defaults, if any, occurred during his tenure.
- An independent director may be removed before the expiry of his first term by passing a ordinary resolution. In case of removal in second term, special resolution shall be required.
- An ID who resigns or is removed from the Board shall be replaced by a new ID within 3 months from the date of such resignation or removal.

IMPORTANT TERMS & CONDITIONS RELATED TO ID

Separate Meeting of ID

- At least 1 separate meeting of IDs in a year;
- All IDs to strive to attend such meeting;
- In the said meeting IDs shall :-
 - ✓ Review the performance of Non-ID's and Board as whole;
 - ✓ Review the performance of chairman of the company;
 - ✓ Assess the quality, quantity and timeliness of flow of information b/w the Co. management and Board.

1. Whether ID should require to share the decisions taken in their meeting with the Board?

2. Whether Minutes of Separate Meeting need to be confirmed by the Board?

Act is silent on the same, therefore, ID can decide on their own.

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LIABILITIES OF INDEPENDENT DIRECTORS

LIABILITIES OF **INDEPENDENT DIRECTORS**

1

Under the Companies Act, 2013 ,
Directors are responsible under
various provisions of the Companies
Act, 2013 as officer in default;

2

An Independent Director can be treated as an
officer in default only when he is aware of such
contravention or where such contravention took
place with his knowledge, consent or connivance;

3

Following acts shall be considered as deemed consent:

1. Participating in proceedings of Board or Committee without objecting on any matter;
2. Failure to object to any matter in the draft minutes of a meeting in which he didn't participate;



LIABILITIES OF **INDEPENDENT DIRECTORS**

4

Directors are also criminally liable in case of misleading statement in prospectus, failure to repay deposits or misrepresentation in statements filed with Authorities.

5

Apart from Companies Act, 2013, criminal liability also arises under Negotiable Instrument Act , Prevention of Money Laundering Act etc.

6

It is important to understand that failure to exercise duties carefully can subject ID to cases of criminal breach of trust by the shareholders



JUDICIAL PRONOUNCEMENTS



IN RE: JAIPRAKASH ASSOCIATES LTD:

The Independent Directors along with the promoters were restrained from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to them in order to safeguard the interest of stakeholders.

IN RE: ZYLOG SYSTEM LTD.-

SEBI issued show cause notice of all the directors including IDs for non-payment of dividend after declaration.

IN RE: PYRAMID SAIMARA THEATRE LTD.-

SEBI restrained three independent directors to act as independent directors for two years on account of failure to prevent false and misleading statements.

IN RE: PUNJAB NATIONAL BANK LTD.

The NCLT froze the assets of the independent directors of the company on account of failure by Nirav Modi and Mehul Choksi.

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DUTIES /ROLES & RESPONSIBILITIES

RESPONSIBILITIES & FUNCTIONS OF INDEPENDENT DIRECTORS



1

Strategy Formulation

2

Safeguard interest of stakeholders

3

Fiduciary Duty

4

Social Commitment

- **Responsibilities & Functions of Independent Director**
 - Acts both as a safeguard and a source of competitive advantage;
 - Help in bringing independent judgement on issues like strategy, key appointments, etc.;
 - Bring an objective view in performance evaluation of board & management;
 - Strive to attend all meetings of the members, Board of Directors and committees;
 - Determine appropriate levels of remuneration for ED's, KMP & senior management;
 - Report concerns about unethical behavior, actual or suspected fraud or violation of company's code of conduct or ethics policy; and
 - Calling for additional information where the accounts show less than the actual picture.

DUTIES OF INDEPENDENT DIRECTORS IN A MEETING

Duty as the Chairman of a Committee of Board

To finalize the agenda items which are ought to be discussed in the meeting and invite other members to give comments on draft minutes.

To be present at the General Meetings to answer to the queries of the shareholders.

Duty as the Member of a Committee of Board

To ensure that the statutory terms of reference are duly looked into by each committee.

To effectively contribute towards his role in committee.

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CORE AREAS TO LOOK INTO

CORE AREAS THAT NEEDS YOUR ATTENTION

Board Processes

- ✗ Maximum time of ID's is consumed in Board/Committee meetings. It is necessary that Board processes are effectively followed;
- ✗ Should recommend setting-up of Board/Committee calendar for the entire year to ensure full attendance;
- ✗ Should contribute in finalization of agenda of meetings, make sure that important issues are discussed in the meetings;
- ✗ Ensure that adequate agenda papers are circulated before the meeting;
- ✗ Seek information/MIS on various agenda items for adequate preparations;
- ✗ Willing to question the management to various issues related to the company; and
- ✗ Ensure that minutes reflects the true proceedings of meetings.



Related Party Transactions

- ✗ Promoters route funds in their companies through a structure of related party transactions (“RPT”);
- ✗ Need and importance of each RPT should be evaluated and then approved;
- ✗ Arm’s length pricing needs to be thoroughly examined;
- ✗ Always useful to check comparable quotes for RPT; and
- ✗ Threshold limits should be fixed for undertaking RPT.



Financial & Internal Controls:

- ✗ Detection and prevention of fraud is assuming significant importance;
- ✗ ID shall ensure effective internal financial controls are implemented and regularly; evaluated by Third Party;
- ✗ Strong and independent Internal Audit team; and
- ✗ Deficiencies identified by Internal Audit Report are adequate addressed.

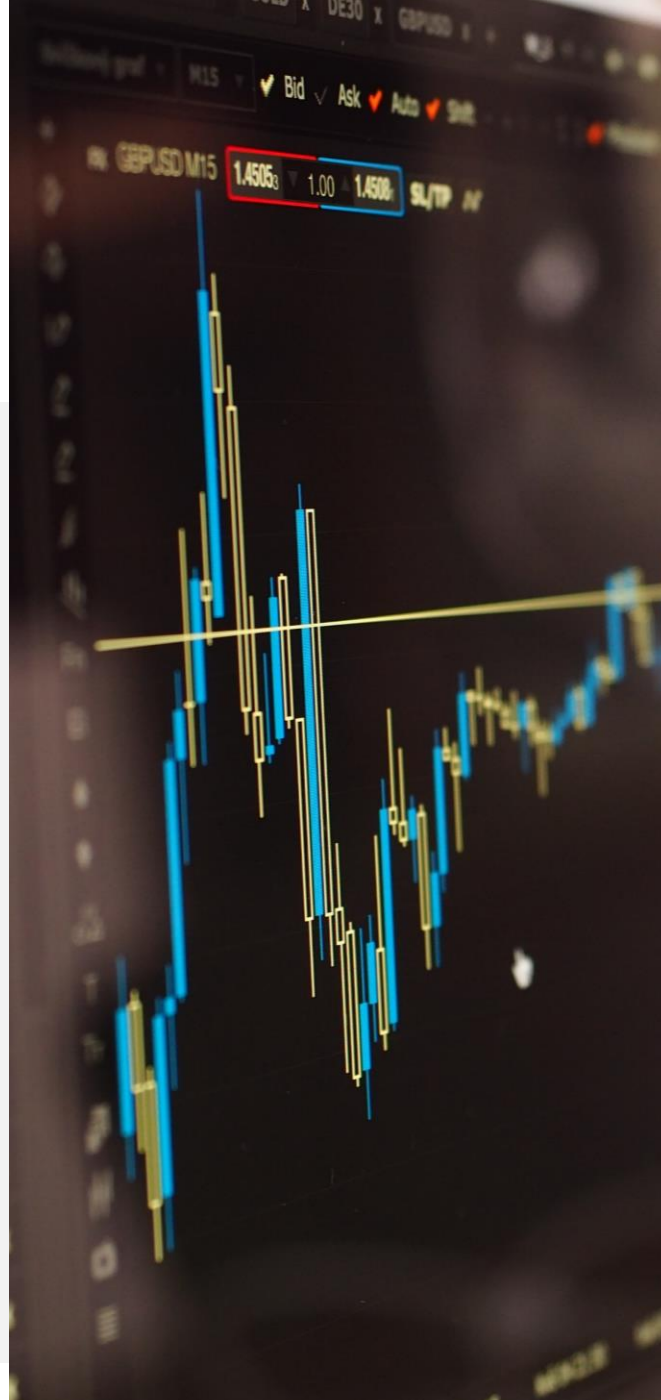
Insider Trading:

For Independent Directors:

- ✗ ID should be careful in discussing matters with Third Party specifically confidential information about the company or any of its group companies; and
- ✗ Not to trade in the shares of the Company or its listed subsidiaries without pre-clearance from the Compliance Officer.

For the Company:

- ✗ Timely disclosures are made on purchase of shares;
- ✗ Cases related to Insider Trading should be dealt with rigorously; and
- ✗ Effective safeguards are built to prevent mis-use of UPSI.

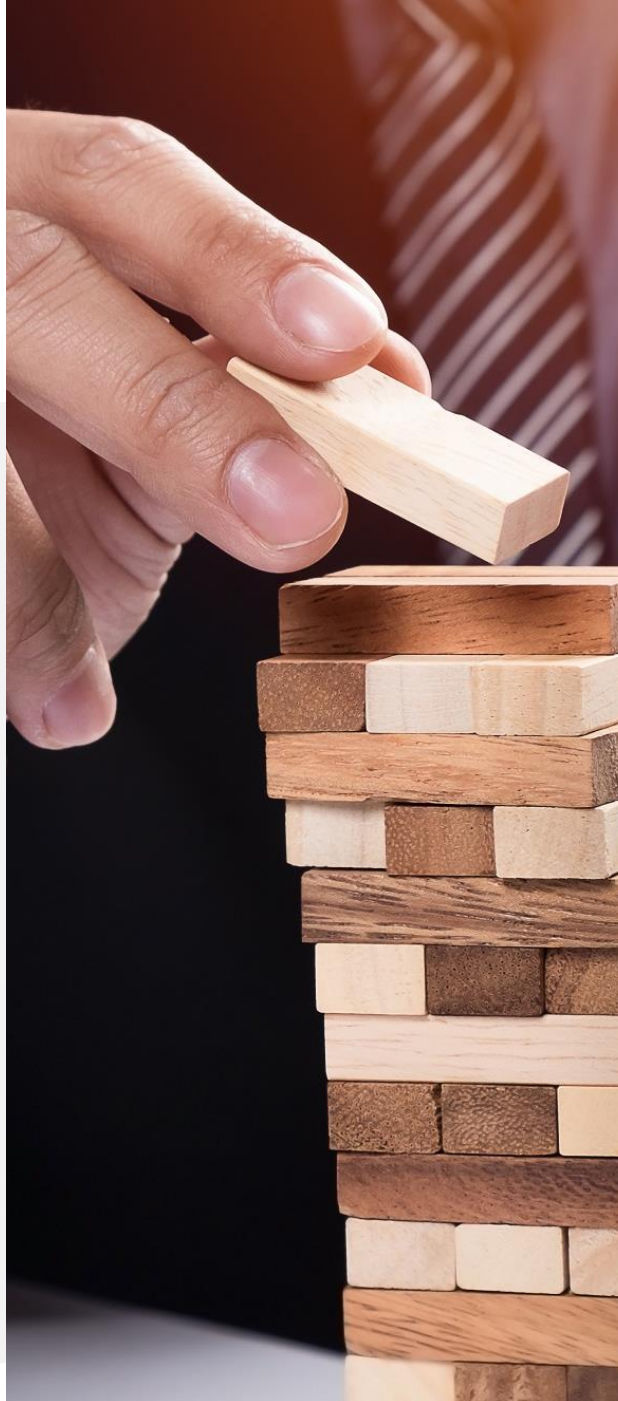


Vigil Mechanism:

- ✗ To ensure that the board has formulated a vigil mechanism for directors and employees to report genuine concerns.
- ✗ To ensure employees can report their genuine concerns without any fear
- ✗ Adequate protection is provided to whistle-blowers

Risk Management:

- ✗ Effective risk management policy is framed adopted;
- ✗ Risk are mapped and necessary precaution against them are adopted
- ✗ Regularly monitor implementation of policy.



Investor Grievance

- ✗ Adequate mechanism to address the grievances of the shareholders
- ✗ Grievance are addressed in a time-bound manner
- ✗ Serious allegations related to fraud/siphoning should be thoroughly investigated



Subsidiary/Associate Companies:

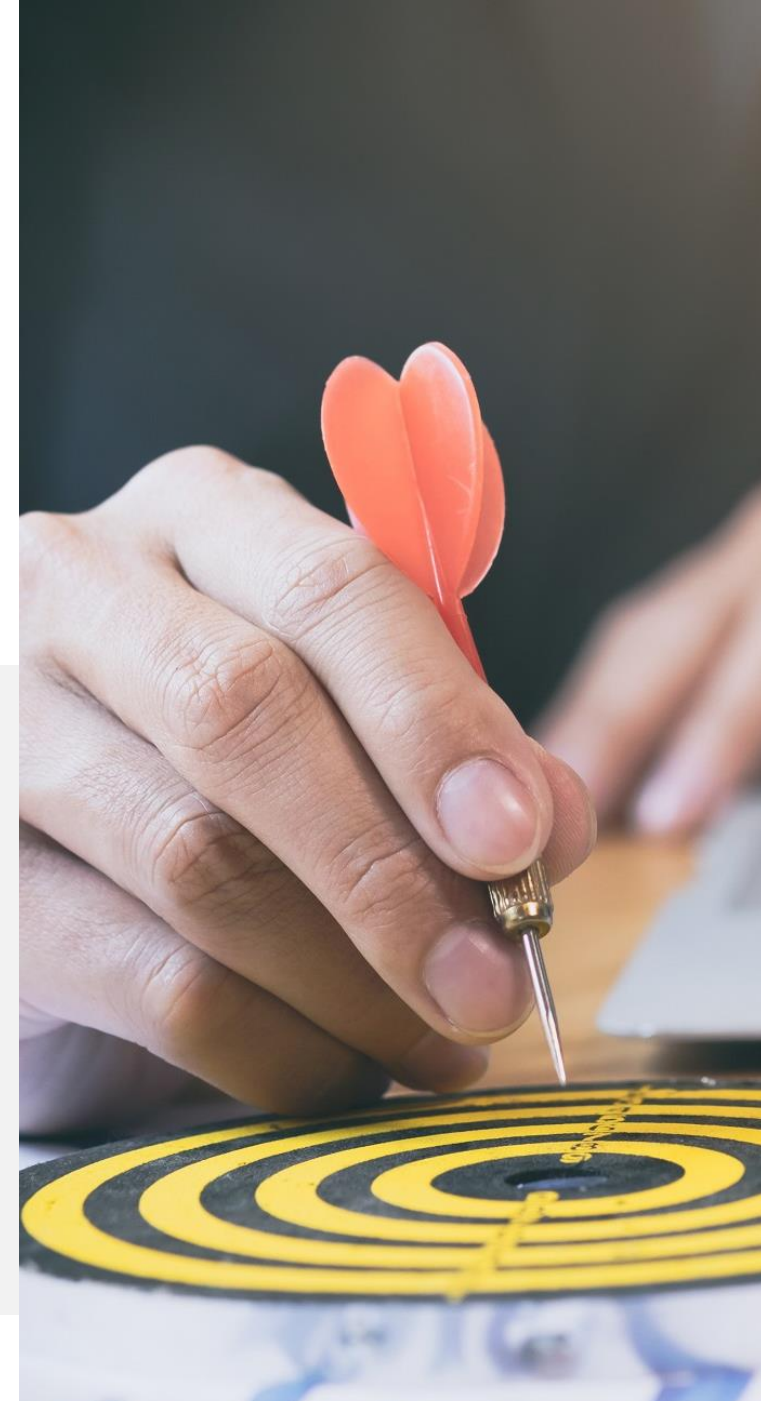
- ✍ In wake of ILFS saga, it is important to continuously working of subsidiary & associate companies;
- ✍ Minutes of Board meeting of group companies should be adequately looked into;
- ✍ Utilization of loans and investment by Companies in group companies should be regularly evaluated;
- ✍ Quarterly review of financial performance; and
- ✍ Requirement of having too many subsidiaries/associates companies should also be questioned.

CORE AREAS THAT NEEDS YOUR ATTENTION

Performance Evaluation

Review the performance of non-independent directors:

- ✗ Subject of Evaluation i.e. who is to be evaluated;
- ✗ Process of Evaluation including laying down of objectives and criteria to be adopted for evaluation of different persons;
- ✗ Feedback to the persons being evaluated;
- ✗ Action Plan based on the results of the evaluation process;
- ✗ Frequency of Board Evaluation;
- ✗ Responsibility of Board Evaluation and
- ✗ Review of the entire evaluation process periodically.



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HOW TO STRENGTHEN THE BOARD PROCESS

STRENGTHENING OF BOARD PROCESS



- The Secretarial Standard Board of ICSI is in the process of introducing a new initiative of **Structured Agendas** to be adopted by the Corporate Houses in India.
- The concept of Structured Agenda aims at **standardization of diverse practices with respect to preparation of Notice, Agenda, ATR, MIS and Minutes**. This will eventually lead to quality and informed decision making essential for attaining the objectives of the company.
- The **standard structure will ensure quality and adequacy of information**, ease of reading, ease of comprehension, Presentation of volume in a manner that vital information is highlighted, Depicting real financial health of the company and **automatic compliance with legal compliances**.

THANK YOU

CS PAVAN KUMAR VIJAY

Founder - Corporate Professionals Group

Chairman Core Group on Vision New ICSI 2022 &

Chairman, Secretarial Standards Board

Past President, ICSI,

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