



Consultation Paper on Regulatory Provisions Related to Independent Directors



Current Provisions and Proposed Changes



(a) Eligibility Conditions for appointment as an Independent Director

Current Provisions	Proposed changes:
<p>A person who has been:</p> <ul style="list-style-type: none">✓ Employee,✓ KMP or✓ His/her relatives have been KMPs <p>Of the Listed entity, its holding/ subsidiary/ associate company cannot be appointed as IDs.</p>	<p>A person who has been:</p> <ul style="list-style-type: none">✓ Employee,✓ KMP or✓ Relative of such KMP <p>Of the <u>companies forming a part of the Promoter Group</u> should also be excluded from acting as an ID.</p>



(b) Cooling off period for persons to be eligible for acting as an Independent Director

Current Provisions	Proposed changes:
<p>1. Cooling-off period of 3 years in case of Ex-employees/ KMP or relative of KMP of such company, its holding/ subsidiary/ associate company.</p> <p>2. Cooling-off period of 2 years in case of a material pecuniary relationship between a person or his relative and the listed entity or its holding/ subsidiary/ associate company.</p>	<p>KMPs or employees of promoter group companies & their relatives, cannot be appointed as IDs in the company, unless there has been a cooling-off period of 3 years.</p> <p>3 Years - Cooling off Period in case of a material pecuniary relationship</p>



Appointment and re-appointment process of Independent Directors

Current Provisions	Proposed changes:
<p>As per the current provisions, independent directors are:</p> <ul style="list-style-type: none">➤ Recommended by the Nomination and Remuneration Committee,➤ Appointed by the Board of Directors,➤ And finally, confirmed by approval of majority of shareholders.	<p>Appointment/re-appointment to be subject to “dual approval” taken through a single voting process:</p> <ol style="list-style-type: none">1. Approval of <u>majority of all shareholders</u> (ordinary resolution in case of appointment and special resolution in case of re-appointment), <p><u>And</u></p> <ol style="list-style-type: none">2. Approval of <u>majority of minority shareholders.</u>





Appointment and re-appointment process of Independent Directors

Proposed changes (cont.):

- **If either of the tests fails, the appointment/ re-appointment is rejected.**
- In such case, the listed entity may:
 - Propose a new candidate for appointment/re-appointment, or
 - Propose the same candidate for second voting:
 - After a cooling off period of 90 days but before 120 days (**without a separate requirement of approval by 'majority of the minority'**).
 - Such approval shall be sought through a **special resolution**.
 - Notice to shareholders shall contain the reasons for proposing the same person despite being rejected in the first take.





Prior approval of shareholders for appointment of Independent Directors

Current Provisions	Proposed changes:
<ul style="list-style-type: none">Companies appoint IDs as additional directors, subject to approval of shareholders in next general meeting.	<ul style="list-style-type: none">Appointment of IDs only with <u>prior approval</u> of shareholders in the General meeting.In case of casual vacancy due to resignation/removal/death/failure to get reappointed, approval of shareholders to be taken within 3 months from the date of such casual vacancy.





Removal of Independent Directors

Current Provisions	Proposed changes:
<p>LODR: NO PROVISION</p> <p>CA 13: An ID can be removed through:</p> <ul style="list-style-type: none">➤ Ordinary resolution in the first term, and➤ Special resolution in case of a second term, after giving reasonable opportunity of being heard.	<p>Removal of ID to be subject to “dual approval” taken through a single voting process:</p> <ol style="list-style-type: none">1. Approval of majority of all shareholders, <p>And</p> <ol style="list-style-type: none">2. Approval of majority of minority shareholders.





Removal of Independent Directors

Proposed changes (cont.):

- **If either of the thresholds are not met, the removal is rejected.**
- In such case, the listed entity may:
 - Propose removal of such candidate through a second voting
 - After a cooling off period of 90 days but before 120 days (without a separate requirement of approval by 'majority of the minority').
 - Such removal shall be sought through a special resolution
 - Notice to shareholders shall contain the reasons for proposing the same person despite not getting shareholders' approval in the first take.





Resignation of Independent Directors

Current Provisions	Proposed changes:
<ul style="list-style-type: none">Resigning ID to disclose reasons of his resignation along with a confirmation that there is no other material reason for resignation other than those already provided.	<ul style="list-style-type: none">Entire resignation letter of the ID to be disclosed along with list of their present directorships and memberships in board committees.Mandatory cooling off period of 1 year if the reason for resignation is preoccupation, other commitments or personal reasons.Cooling off period of 1 year before an ID can transition from an ID to a whole time Director.





(a) Enhancing and bringing in more transparency in the role of Nomination and Remuneration Committee

Proposed changes: to prescribe disclosures regarding the appointment process

Process for shortlisting of candidates:

1. For each appointment, NRC shall:
 - evaluate the balance of skills, knowledge and experience on the board;
 - On the basis on such evaluation, prepare description of roles and capabilities required for the particular appointment.
2. Proposed candidate should have the capabilities identified in this description.
3. For the purpose of identifying a suitable candidate, NRC may:
 - Use services of external agencies,
 - Consider candidates from a wide range of backgrounds, having due regard to diversity
 - Consider time commitments of the appointees.





(a) Enhancing and bringing in more transparency in the role of Nomination and Remuneration Committee

Proposed changes:

Disclosures to be made to shareholders: Notice to shareholders for appointment of directors shall include:

- Skills and capabilities required for appointment and how the criteria is met by proposed candidate,
- Channels used for searching the proposed candidate.





(b) Modified Composition of Nomination and Remuneration Committee

Current Provisions	Proposed changes:
➤ Non-Executive Directors with at least 50% to be IDs.	➤ NRC to have at least 2/3 rd IDs.





Composition of Audit Committee

Current Provisions	Proposed changes:
<ul style="list-style-type: none">• 2/3rd should be Independent Directors.	<ul style="list-style-type: none">• 2/3rd Independent Directors, and• 1/3rd Non-executive Directors who are not related to Promoters, including nominee director.





Review of Remuneration to Independent Director

Current Provisions	Views sought on:
<ul style="list-style-type: none">• Maximum permissible sitting fees of IDs: Rs. 1,00,000/- and profit linked commission within an overall limit.• IDs cannot be given stock options.	<p>Whether there is a need for reviewing the remuneration structure of IDs?</p> <ul style="list-style-type: none">• Option 1: Removal of profit linked commission and increase in sitting fees paid to IDs• Option 2: Permitting grant of ESOPs with atleast 5 years vesting period, in place of profit linked commission.



THANK YOU

Anjali AGGARWAL

Partner & Head Capital Market
Services, Corporate Professionals
anjali@indiacp.com
+91 9971673336

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