

Independent Directors



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COMPANY SECRETARIES

GUIDE

TO

INDEPENDENT

DIRECTORS

“Independent Directors play an important role in corporates to put the checks and balances in place by their neutral opinions, ensure best judgement on decisions by asking the right questions, benefiting the company”.



Emergence of the concept of “Independent Directors”

The emergence of the concept of “Independent Director” can be seen in the light of evolution of the term “Corporate Governance” over time. A corporate form of entity has stakeholders viz. shareholders, creditors, banks and financial institutions, employees, community and environment. The working of the corporate system depends on how well the interest of these stakeholders are served. In the year 1999, 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 additions of “Clause 49-Corporate Governance” in the Listing Agreement in the year 2000. In the report, the committee defines independent director as:

“Independent director 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 judgement of the Board may affect their independence of judgement”.

The scam such as Enron, WorldCom, Qwest, Global Crossing and the milestone legislation SOX triggered corporate governance reforms in the international arena. Accordingly, in the year 2002, the Government of India appointed Naresh Chandra Committee which among other recommendations in line with international best practices, recommend that the extent definition of independent director should be made more precise.

Another major development took place in the year 2002, when a Committee was formed by SEBI under the chairmanship of N R Narayanmurthy for reviewing the implementation of corporate governance code by listed companies. Accordingly, the Committee revised clause 49 to include the revised definition of Independent Director as under:

For the purpose of the sub-clause (ii), the expression ‘independent director’ shall mean a non-executive director of the company who:

- a. apart from receiving director’s remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director;
- b. is not related to promoters or persons occupying management positions at the board level or at one level below the board;
- c. has not been an executive of the company in the immediately preceding three financial years;

d. is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:

i. the statutory audit firm or the internal audit firm that is associated with the company, and

ii. the legal firm(s) and consulting firm(s) that have a material association with the company.

e. is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director;

f. is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares.

SEBI vide circular SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004, amended the listing agreement whereby the minimum age for independent director was prescribed as 21 years.

Meaning of Independent Director and Regulatory Requirements

As per Section 149 (6) of the Companies Act, 2013

- A.** 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 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) 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.

B. An independent Director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

MCA vide General Circular No. 1/22/2013-CL-V dated 09.06.2014 has issued the following clarifications with respect to 'Pecuniary Relationship' of Independent Director:

- ✓ In case, a company carries out transactions in the ordinary course of business at arm's length price with an Independent Director, such Independent Director would not be said to have 'pecuniary relationship' with the company.
- ✓ In case of Independent Director, 'Pecuniary Relationship' doesnot include receipt of remuneration by way of sitting fees, reimbursement of expenses for participation in the Board and other meetings and remuneration in the form of commission.

C. Independent directors shall also abide by the provisions specified in Schedule IV i.e. (CODE FOR INDEPENDENT DIRECTORS) placed at Annexure 1.

As per SEBI (LODR) Regulations, 2015

Independent director means a non-executive director, other than a nominee director of the listed entity:

- i. who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;

- ii. who is or was not a promoter of the listed entity or its holding, subsidiary or associate company;
- iii. who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;
- iv. who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- v. none of whose relatives has or had pecuniary relationship or transaction with the listed entity, 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 from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- vi. who, neither himself, nor whose relative(s) —
 - (A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (B) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —
 - (1) a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or
 - (2) any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
 - (C) holds together with his relatives two per cent or more of the total voting power of the listed entity; or
 - (D) is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its

holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity;

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

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

Other regulatory requirements as per SEBI Regulations have been incorporated under various chapters.

Criteria for becoming Independent Director

In addition to the criteria laid down under the definition of Independent Director by SEBI (LODR) Regulations, 2015, the skills of directors are valuable to the company; these may vary depending on the industry and company's particular requirements. The criteria for considering appointment to the Board may include:

- ❖ Financial Expertise
- ❖ Relevant Industry Experience
- ❖ Legal Expertise
- ❖ Technical Expertise Relevant To The Company
- ❖ Age
- ❖ Other Directorship

The mix in an effective Board should be such that the Board functions as a team in defining the future of the company. The requirements of the company may vary from industry to industry but the basic traits that a director should possess include Intellectual Quotient, Emotional and Social Quotient, and Managerial Quotient. The essential characteristics expected in a Board member include attributes of asking relevant questions, having industry awareness, providing valuable inputs, availability when needed, being alert and inquisitive, and making long range planning contribution among others.

Best practices to be adopted by the company while selecting Independent Director

- 1) Independent Directors are not expected to serve on the Boards of competing Companies.
- 2) The company should look for following qualities in Independent Directors
 - ❖ Well Educated
 - ❖ Reputation Of Character And Integrity
 - ❖ Specialist/Expert In Functional Areas
 - ❖ General Management Exposure And Experience
 - ❖ Industry Awareness
 - ❖ Global Awareness
 - ❖ Entrepreneurial Experience
- 3) As a good disclosure practice, the company should disclose the complete details of criteria of appointment of Independent Directors in its Annual Report.
- 4) The company may constitute Governance and Compensation Committee that reviews potential candidates in terms of their expertise, skills, attributes, personal and professional backgrounds and their ability to attend meetings.
- 5) Independent Director should have following quality so as to bring synergetic advantages like:
 - ❖ Improving company's credibility with Government, lenders and customers etc.
 - ❖ Bringing investor confidence
 - ❖ Adding comfort to overseas collaborators by virtue of international exposure.
- 6) The Independent Directors should adhere to the Code of Conduct as specified in Schedule IV of the Companies Act, 2013 i.e. (CODE FOR INDEPENDENT DIRECTORS). **Refer – Annexure-1.**

Requirement of number of Independent Directors on Board

The Companies Act, 2013 mandates the appointment of Independent Directors for certain Companies.

According to Section 149(4):

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

(The explanation to the sub section specifies that any fraction contained in such one-third number shall be rounded off to one).

In terms of Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies should have at least two directors as independent Directors-

- i. Public Companies having paid up share capital of Rs.10 crore or more; or
- ii. Public Companies having turnover of Rs.100 crore or more; or
- iii. Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crore.

However, the Board composition in case of Listed Company is governed by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. According to Regulation 17:-

- a) The Board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director. At least 50 % of the Board should be non-executive directors
- b) where the chairperson of the board of directors is a non-executive director, at least 1/3rd of the board of directors shall comprise of independent directors.
- c) where the company does not have a regular non-executive chairperson, at least 50% of the Board of directors shall comprise of independent directors.
- d) where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least 50% of the Board shall be Independent Directors.

- *If the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it.*
- *If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.*
- *The woman director could be either whole time director or non-whole time director. May or may not be independent director.*

Mode of Appointment of Independent Directors

The appointment process of Independent Directors should be independent of the Company management. Section 178(3) of the Companies Act, 2013, provides the Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director.

However, Ministry of Corporate Affairs has notified vide Notification F No 1/2/2014-CL.V dated 5th June, 2015 that Sub-section (2), (3) and (4) shall not apply to Government Company except with regard to appointment of senior management* and other employees.

Section 178(2),(3) and (4) of the Companies Act, 2013 provides as under

(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management* in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

(4) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that—

(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;

(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals:

Provided that such policy shall be disclosed in the Board's report.

“senior management” means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.

Note: In case of Public Sector Undertakings (PSUs), the directors including Independent Directors are appointed by the Government of India. The Department of Public Enterprises (DPE) maintains a panel of Independent Directors (comprising of retired government bureaucrats, professionals and persons having industrial, business and social background). The government has constituted a search committee who recommends the name of Independent Directors for their appointment in various PSUs as per the requirement.

Limit on Number of Directorships

The Companies Act, 2013 does not provide any specific limit on the number of independent directorships. As per the provisions of section 165 of the Companies Act, 2013, the maximum number of directorships:

- i. Maximum directorship in aggregate (including alternate directorships) is twenty companies
- ii. Maximum directorship in public companies is 10 companies. This includes directorship in private companies that are either holding or subsidiary company of a public company.

The members of a company may, however by passing a special resolution specify any lesser number of companies in which a director of the company may act as director.

As per the eligibility criteria for directorships in CPSEs, a person can't not be a non-official director on the boards of more than 3 CPSEs at the same time. Further, he should not hold directorships in more than 10 private companies.

In addition to the above, Regulation 25 of SEBI (LODR) Regulations prescribes that:

A person shall not serve as an independent director in more than seven listed entities:

Provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than three listed entities.

Limit on Membership in Board Committees

A Director shall not be a member in more than ten Committees or act as Chairman of more than five Committees across all companies in which he is a director. For the purpose of reckoning this limit, Chairmanship/Membership of Audit Committee and Stakeholders' Relationship Committee alone will be considered.

Basis of Letter of Appointment

The appointment of Independent Directors should be formalized through a letter of appointment which shall set out:

- i. The term of appointment, i.e. the tenure for which the independent director has been appointed;
- ii. The expectations of the Board from the appointed director and the Board level Committees in which the director is expected to serve and its tasks;
- iii. The fiduciary duties and liabilities that come with such an appointment;
- iv. The code of business ethics that the company expects its directors and employees to follow;
- v. The list of actions that a director should not do while functioning as such in the company;
- vi. The remuneration, periodic fees, reimbursements of expenses for participation in the Board and other meetings and profit related commission, if any;
- vii. Provision for Directors & Officers insurance, if any.

The terms and conditions of appointment of IDs are to be open for inspection at the registered office of the company by any member during business hours and are also required to be posted on the company's website. A draft format of letter of appointment of Independent Director is enclosed. (**Annexure-2**).

Other Mandatory Requirements regarding Independent Directors

DIN Mandatory

In compliance with Section 152(3), No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.

Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under Companies Act, 2013.

Consent to act as Director

As per Section 152(5) of Companies Act, 2013, A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director. The Consent should be in writing in Form DIR-2 and such consent should be filed with the Registrar in Form DIR-12 within thirty days of his appointment.

Filing of Return of Directors

Details of appointment of Independent Directors or any change should be filed by the company with the Registrar in Form DIR-12 within 30 days of the appointment/change.

Entries in the register of Directors

Rule 17 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 requires that every company shall keep at its registered office a register of its directors and key managerial personnel containing the specified particulars of the directors/KMP alongwith details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding and associate companies.

Self declaration as to independence

Section 149(7) individuals to submit a self-declaration confirming that they meet the criteria prescribed for the position. Every independent director is required to give a declaration that he meets the criteria of independence as required under section 149(6) of the Companies Act, 2013 at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director. A draft certificate of independence is enclosed. **(Annexure-3)**

Filling up of Vacancy

Any intermittent vacancy of an Independent Director should be filled up by the Board at the next Board Meeting or within 3 months from the date of such vacancy, whichever is later.

In addition to the above, Regulation 25 of SEBI (LODR) Regulations prescribes that:

An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later:

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

Tenure of Independent Director

As per Section 149(10) of the Act, an independent director shall hold office for a term up to five consecutive years. He is eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. Section 149(11) restricts the number of terms upto two consecutive terms, each term not exceeding five consecutive years.

Such Independent Director shall be eligible for appointment after two consecutive terms, after a break of three years from cessation of such two consecutive terms. During the said period, the independent director should not be appointed in or associated with the company in any other capacity, either directly or indirectly.

Ministry of Corporate Affairs vide its General Circular 14/2014 dated 9th June, 2014, has clarified that the appointment of an Independent Director for a term less than 5 years would be permissible. Appointment for any term (whether for five years or less) is to be treated as one term under section 149(10) of the Companies Act, 2013.

However for the purpose of section 149(10) and (11) of the Companies Act, 2013, any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

Ministry of Corporate Affairs vide its General Circular 14/2014 dated 9th June, 2014, has issued the clarifications with respect to Appointment and Tenure of Independent Director:

Appointment of existing Independent Director under the 2013 Act should be made within one year from 01.04.2014, subject to compliance with eligibility and other prescribed conditions.

The appointment of an Independent Director for any term would be treated as a one term. Further, such a person should have to demit office after two consecutive terms if the total number of years of his appointment in such two consecutive terms is less than 10 years. The person completing 'consecutive terms of less than 10 years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of 3 years.

Remuneration to Independent Directors

Subject to the provisions of Section 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under section 197(5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. SEBI(LODR) Regulations, 2015 also provides that Independent Director shall not be entitled to any Stock Option.(Reg 17(6)(d))

Meeting of Board of Directors at a shorter notice

Section 173(3) of the Companies Act, 2013 says that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Retirement by Rotation

As per section 149(13) of the Companies Act, 2013, Independent Directors would not be liable to retire by rotation.

Ministry of Corporate Affairs vide its General Circular 14/2014 dated 9th June, 2014, has issued the clarifications with respect to Appointment and Tenure of Independent Director:

Appointment of existing Independent Director under the 2013 Act should be made within one year from 01.04.2014, subject to compliance with eligibility and other prescribed conditions.

The appointment of an Independent Director for any term would be treated as a one term. Further, such a person should have to demit office after two consecutive terms if the total number of years of his appointment in such two consecutive terms is less than 10 years. The person completing 'consecutive terms of less than 10 years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of 3 years.

Disclosures by/or relating to Independent Directors

(i) Disclosures by Independent Directors

An Independent Director should make the following disclosures:

- a) Any change in the circumstances that may/have led to change in his independence status, whenever there is such change(149(7))
- b) Concern or interest which shall include the shareholding in any company or companies or bodies corporate, firms, or other association of individuals at first meeting of the Board in which he participates and then at first Board meeting in each financial year. If there is any change in such concern/interest, such change should be intimated to the Board in the immediate next Board meeting held after such change.
- c) concern or interest in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—
 - 1) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
 - 2) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,
 - 3) at the meeting of the Board at which the contract or arrangement is discussed. The director is also prohibited to participate in such meeting. If the concern or interest originates after the contract is entered, such concern/interest should be disclosed forthwith or at the immediate next meeting of the Board held after the director become interested (Section 184(2)).

(ii) Disclosures relating to Independent Directors

The law requires the following disclosures to be made/information to be provided in relation to independent directors:

- a) Disclosure in Board's Report:
 - ✓ A statement from the Board on declaration of independence given by independent directors under Section 149.
 - ✓ The composition of CSR Committee, in which at least one director should be an independent director.
 - ✓ The composition of the Audit Committee with details of independent directors.

- ✓ independent directors, key managerial personnel and other employees Policy relating to the remuneration for the directors including recommended by the Nomination and Remuneration.

Independent Directors mandatory in certain committees

Audit Committee of a listed company constituted under Section 177(1) shall consist of a minimum of three directors of which independent directors shall form a majority. Furthermore, Nomination and Remuneration Committee constituted under section 178, shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors. Further, as per section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more, or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Training of Independent Director

One of the duties laid down in the Code for Independent Directors is that independent Directors shall undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company.

The company should provide suitable training to Independent Directors to familiarize them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc.

An effective induction program of Independent Director should focus to enable the new directors to gain an understanding of:

- ❖ The company's financial strategic, operational and risk management position
- ❖ The roles, rights, responsibilities of the directors
- ❖ The roles and responsibilities of senior executives
- ❖ The role of Board Committee
- ❖ Company Background
- ❖ An induction kit should be given to new directors, which should contain the following
 - ✓ Memorandum and Articles of Association;
 - ✓ Current business plan, market analysis and budgets;
 - ✓ All relevant policies and procedures, such as a policy for obtaining independent professional advice for directors;
 - ✓ Protocol, procedures for Board meetings, general meetings, site visits etc;
 - ✓ Press release in the last one year;
 - ✓ Copies of recent press cuttings and articles concerning the company;
 - ✓ Annual report for last three years;
 - ✓ Notes on agenda and Minutes of last six Board meetings;
 - ✓ Board's meeting schedule and Board committee meeting schedule;
 - ✓ Description of Board procedures.

Duties of Non – Official Directors (Independent Director) in CPSEs

The Ministry of heavy Industries and Public Enterprises came up with draft Model Role and Responsibilities for Non-Official Directors on the Board of CPSEs on 28th December, 2012 later modified on 20th June, 2013. The model enlists duties of non-official directors. These duties are in consonance with the duties cast under the Companies Act, 2013, however with some additions as specifically stated hereunder:

- a) Not to use confidential information acquired in the course of their service as non-official director for their personal advantage or for the advantage of any other entity
- b) Keep the Board informed in an appropriate and timely manner any information in the knowledge of the member which is related to the decision making or is otherwise critical for the company;
- c) Furnish a report to the board about their role & contribution during the year.
- d) be acquainted with the applicable laws and understand that the Liability may arise, where a company violates any law and shall get a list of applicable laws to the company and understand the penal provisions for contraventions under those laws
- e) Not be a member on more than ten Committees/Sub-Committees of the Boards and shall not act as Chairman of more than five Committees/Sub-Committees of the Boards across Boards of CPSEs companies in which he/she is a Director. Furthermore, each non-official Director should inform the company about the Committee/Sub-Committee positions he/she occupies in other companies and notify change(s) as and when they take place.

Separate Meetings of Independent Directors

Para VII of the Code for Independent Directors deals with separate meeting of independent directors. It requires for conducting of atleast one separate meeting of independent directors in a year without the presence of non-independent directors and members of the management.

These are the following businesses which can be transacted in the meetings of Independent Directors:

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

Other issues that may involve the management or the executive directors of the company and which is likely to have an impact on the reputation to the company which includes:

- a) Any reporting of deviation in the ethical or governance issues
- b) Any reporting of insider trading issues
- c) Any reporting on critical whistle blower incident.

Immunity under the companies Act, 2013

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.

'Act of omission' implies failure to act where the law requires him to act. 'Act of commission' implies an act conducted so as to cause harm. 'Connivance' means indirect consent to the commission of offence. 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 authorized to receive as director of the Board as per the decision of the Board. Knowledge coming from external sources has not been referred here. 'Acted diligently' means that the director should have taken steps to avoid the act of contravention, as much as possible.

CODE FOR INDEPENDENT DIRECTORS

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of professional conduct:

An independent director shall:

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

II. Role and functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties:

The independent directors shall—

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;

- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- (5) strive to attend the general meetings of the company;
- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
- (7) keep themselves well informed about the company and the external environment in which it operates;
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- (11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

IV. Manner of appointment:

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge

in the Board so as to enable the Board to discharge its functions and duties effectively.

(2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.

(3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

(4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out :

a) the term of appointment;

(b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;

(c) the fiduciary duties that come with such an appointment along with accompanying liabilities;

(d) provision for Directors and Officers (D and O) insurance, if any;

(e) the Code of Business Ethics that the company expects its directors and employees to follow;

(f) the list of actions that a director should not do while functioning as such in the company; and

(g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.

(5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.

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

V. Re-appointment:

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

VI. Resignation or removal:

(1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.

(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.

(3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

VII. Separate meetings:

(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(2) All the independent directors of the company shall strive to be present at such meeting;

(3) The meeting shall:

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

(b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;

(c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

(1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

LETTER OF APPOINTMENT FOR INDEPENDENT DIRECTORS

Dear ,

This is to inform that (pursuant to Ministry of , letter No.) * the Board of Directors (the Board) of the Company has inducted you as a Part time Non-Official Director on the Board of Directors of Limited (hereinafter referred to as or the Company) with effect from for a period of ... years or until further orders, whichever is earlier.

The terms of your Appointment are as follows:

1. Appointment

- a) Your appointment is subject to approval by the Shareholders as per the provisions of the Companies Act, 2013. Your appointment is also subject to the maximum permissible Directorships that one can hold as per the provisions of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. You will not be entitled to compensation if the shareholders do not re-elect you at any time.
- b) The term "Independent Director" should be construed as defined under the Companies Act, 2013.
- c) The Company has adopted the provisions with respect to appointment and tenure of Independent Directors which is consistent with the Companies Act, 2013, DPE guidelines.
- d) To Facilitate the functioning of the Board, there are presently Board level Committees which have been constituted to recommend to the Board on various Agenda items / Policy related issues. Subject to approval of the Board, you will be nominated on some of these Committees. Your appointment on such Committee(s) will be subject to the applicable regulations.

2. Expectations of the Board

- a) As a Non-Executive Director you are expected to bring objectivity and independence of view to the Board's discussions and to provide the Board with effective leadership in relation to the Company's Strategy, Performance,

Risk Management as well as ensuring high standards of financial probity and Corporate Governance.

- b) We request you to attend Board, Board Committees to which you may be appointed in addition to the Shareholders meetings. We also request you to devote such time, as appropriate to discharge your duties effectively and to meet the expectations from your role to the satisfaction of the Board. The Board meets at least ... times in a year. The Audit Committee also meets at leasttimes in a year. Besides, there are other meetings of various Board level Committees which are ordinarily convened to coincide with the Board meeting. Ordinarily, all meetings are held in

3. Role and Duties

Your role and duties will be those normally required of a Non-Executive Independent Director under the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. There are certain duties prescribed for all Directors, both Executive & Non-Executive, which are fiduciary in nature and are as under:

- I. You shall act in accordance with the Company's Articles of Association.
- II. You shall act in good faith in order to promote the objects of the Company for the benefit of its members as a whole, and in the best interest of the Company.
- III. You shall discharge your duties with due and reasonable care, skill and diligence.
- IV. You shall not involve yourself in a situation in which you may have a direct or indirect conflict of interest or possibly may conflict with the interests of the Company.
- V. You shall not achieve or attempt to achieve any undue gain or advantage either to yourself or to your relatives, partners or associates.
- VI. You shall not assign your office as Director and any assignments so made shall be void.

In addition to the above requirements, your role, functions and duties as Independent Director of the Company shall be in accordance with the Code for Independent Directors (**Copy enclosed**) prescribed under the Companies Act, 2013.

You will be held liable in respect of such acts of omission/ commission by a company which had occurred with your knowledge, attributable through Board processes and with your consent or where you did not act diligently with respect to the provisions contained in the Companies Act as well as the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

4. Status of Appointment

You will not be an employee of the Company and this letter shall not constitute a contract of employment.

5. Code of Business Ethics.

We request you to adhere to the Code of Ethics and:

- a) uphold ethical standards of integrity and probity;
- b) act objectively and constructively while exercising your duties;
- c) exercise your responsibilities in a *bona fide* manner in the interest of the company;
- d) devote sufficient time and attention to your professional obligations for informed and balanced decision making;
- e) not allow any extraneous considerations that will vitiate your 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;
- f) not abuse your 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;
- g) refrain from any action that would lead to loss of your independence;
- h) assist the company in implementing the best corporate governance practices.

Further, where circumstances arise which make you lose your independence, you must immediately inform the Board.

6. Conflict of Interest

- a) It is accepted and acknowledged that you may have business interests other than those of the Company. As a condition to your appointment, you are required to declare any such directorships, appointments and interests to the

Board in writing in the prescribed form within 15 days of your appointment. Further, you are also required to give a declaration of Independence in terms of section 149(7) of the Companies Act, 2013 **(format enclosed)**.

- b) In the event of any change in circumstances which lead to conflict of interest and the Board to revise its judgment that you are independent, this should be disclosed to the Chairman, / Company Secretary.

7. Confidentiality

All information acquired during your tenure will be kept as confidential and shall not be released, either during your appointment or following cessation of term to third parties without prior clearance from the Chairman,unless required by law or by the rules of any stock exchange or regulatory body.

Further, we request you 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.

Your attention is also drawn to the requirements under the applicable regulations and the Prevention of Insider Trading “**The Code of Internal Procedures and Conduct in dealing with the Securities of**” which concern the disclosure of price sensitive information and dealing in the securities of, Consequently, we request you to avoid making any statements or performing any transactions that might risk a breach of these requirements without prior clearance from the Chairman,

8. Remuneration

- a) You will be paid such remuneration by way of sitting fees for meetings of the Board and its Committees as may be decided by the Board from time to time.
- b) The sitting fees presently paid to the Non-Executive Independent Director is limited to Rs...../- per meeting of the Board or a Committee thereof.

- c) notice You shall not be entitled to receive any remuneration other than the aforesaid fee and reimbursement of expenses, for attending the meetings of the Board or any committee thereof or for any other purpose as decided by the Board.
- d) In addition to the remuneration described above, the Company will, for the period of your appointment, reimburse for travel, hotel and other incidental expenses incurred by you in the performance of your role and duties.

9. Inspection

The terms and conditions of your appointment shall be open for inspection at the registered office of the Company by any member during normal business hours.

10. Induction

You will be invited to attend an initial induction session and thereafter, ongoing training and familiarization sessions, including briefings from management and site visits which will enable you to take informed decisions during the discharge of your duties. We urge you to attend the same.

11. Insurance

..... has Directors' and Officers' liability insurance which shall cover the full term of your appointment.

12. Independent Professional Advice

There may be occasions when you consider that you need professional advice in furtherance of your duties as a Director and it is deemed appropriate/ necessary to consult independent advisers at the Company's expense. The Company will reimburse the full cost of expenditure incurred on the engagement of such advice in accordance with the Company's policy.

13. Disclosure of Interest

The Company is required to include in its Annual Accounts a note of any material interest that a Director may have in any transaction or arrangement that the Company has entered into. Therefore, any such interest should be disclosed no later than when the transaction or arrangement comes up at a Board meeting so

that the minutes may record your interest appropriately. A general disclosing your interest in any contract with a particular person, firm or company is acceptable.

14. Termination

- a) You may resign from your position at any time and if you wish to do so, you are requested to serve a reasonable written notice on the Board.
- b) Your tenure of appointment is subject to any further order by the Administrative Ministry.

15. Governing Law

This letter is governed by and will be interpreted in accordance with Indian law and your appointment shall be subject to the jurisdiction of the Indian courts. If the terms of appointment as a non executive Independent Director ofis acceptable to you, kindly confirm your acceptance of these terms by signing and returning to us the **duplicate** copy of this letter.

16. Website

The above stated terms and conditions shall be posted on the Company's website.

Yours sincerely

For and on behalf of

.....

(.....)
Company Secretary

Enc: As above

***In case of PSUs**

ACKNOWLEDGEMENT

I, hereby acknowledge receipt of and accept the terms set out in this letter.

Signature:

Name:

DIN:

Date:

The Board of Directors
_____ Limited

Dated:

Subject: Certificate of Independence as per Section 149(7) of the Companies Act, 2013

I,.....,S/O.....R/O.....
..... Having been appointed as a Director of with effect
from do hereby declare that

1. I am not a promoter of the company or its holding, subsidiary or associate company;
2. I am not related to promoters or directors in the company, its holding, subsidiary or associate company;
3. I have 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;
4. None of my 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;
5. I, neither myself nor any of my relatives—

(i) hold or have held the position of a key managerial personnel or is or have 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 I am proposed to be appointed;

(ii) am or have been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which I am 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) hold together with my relatives two per cent. or more of the total voting power of the company; or

(iv) am 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

6. I possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

'References'

- 1) Companies Act, 2013
- 2) New Listing (Obligations and Disclosure Requirements) Regulations, 2015
- 3) Guidelines on Independent Director by The Institute of Company Secretaries of India.

