Brief Notes- Provisions regarding Independent Directors

Applicability: Listed and Unlisted Companies

Compliances: Companies Act, 2013 & SEBI LODR, 2015

Financial Year: 2023-24

Note: Where limit/restriction has not been specified for Independent Directorship/ Membership/ Chairpersonship, it is presumed that a director is allowed to hold such position as Independent Director/Member/Chairperson to the extent permitted by provision of Section 165 of Companies Act, 2013.

Prepared by Yogesh Sharma
Company Secretary
Mob: 99927-37013
Email id: yogeshsharma37013@gmail.com

Provisions regarding Independent Director

Sr. No.	Nature of Difference	SEBI LODR, Reg. 2015	Companies Act, 2013
1.	**Definition**	**Reg. 16(1)(b):** **"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 or member of the promoter group of the listed entity; (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 three immediately preceding financial years or during the current financial year; (v) none of whose relatives— (A) is holding securities of or interest in the listed entity, its holding, subsidiary or associate company during the three immediately preceding financial years or during the current financial year of face value in excess of fifty lakh rupees or two percent of the paid-up capital of the listed entity, its	**Section 2(47):** **"Independent Director" means an independent director referred to in sub-section (6) of section 149.** **Section 149(6): Qualifications to become an Independent Director** **An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,-** (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience; (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company; (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company; (c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

Sr. No.	Nature of Difference	SEBI LODR, Reg. 2015	Companies Act, 2013
		holding, subsidiary or associate company, respectively, or such higher sum as may be specified; (B) is indebted to the listed entity, its holding, subsidiary or associate company or their promoters or directors, in excess of such amount as may be specified during the three immediately preceding financial years or during the current financial year; (C) has given a guarantee or provided any security in connection with the indebtedness of any third person to the listed entity, its holding, subsidiary or associate company or their promoters or directors, for such amount as may be specified during the three immediately preceding financial years or during the current financial year; or (D) has any other pecuniary transaction or relationship with the listed entity, its holding, subsidiary or associate company amounting to two percent or more of its gross turnover or total income: Provided that the pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors in relation to points (A) to (D) above shall not exceed two percent of its gross turnover or total income or fifty lakh rupees or such higher amount as may be specified from time to time, whichever is lower.] (vi) who, neither himself / herself, 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 or any company belonging to the promoter group of the listed entity, in any of the three	(d) none of whose relatives— (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed; (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

Sr. No.	Nature of Difference	SEBI LODR, Reg. 2015	Companies Act, 2013
		financial years immediately preceding the financial year in which he is proposed to be appointed: Provided that in case of a relative, who is an employee other than key managerial personnel, the restriction under this clause shall not apply for his / her employment. (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 organization 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.	(e) who, neither himself nor any of his relatives- (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years. (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of- (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm; (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or (iv) is a Chief Executive or director, by whatever name called, of any nonprofit 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

Sr. No.	Nature of Difference	SEBI LODR, Reg. 2015	Companies Act, 2013
		(viii) **who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director:** **Explanation- In case of a 'high value debt listed entity':** (a) which is a body corporate, mandated to constitute its board of directors in a specific manner in accordance with the law under which it is established, the non- executive directors on its board shall be treated as independent directors; (b) which is a Trust, mandated to constitute its 'board of trustees' in accordance with the law under which it is established, the non-employee trustees on its board shall be treated as independent directors.	(f) who possesses such other qualifications as may be prescribed. **Rule-5 of Companies (Appointment and Qualifications of Directors) Rules, 2014** (1) 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. (2) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.
2.	**Provisions regarding Appointment of Minimum Numbers of ID**	**Reg. 17(1)(b):** **If chairperson of the BoD is a non-executive director:** Min. 1/3 of total Directors **If chairperson of the BoD is not a non-executive director:** Min. 50 % of total Directors	**Section 149(4) read with Rule 4 of Companies (Appointment and Qualifications of Directors) Rules, 2014** Min. 1/3 of total Directors
3.	**Types of Resolution required for**	**Reg. 25(2A):**	**Section 152(5) and Section 169 & read with Schedule IV**

By Yogesh Sharma **Mob: 9992737013** **Email id: yogeshsharma37013@gmail.com**

Sr. No.	Nature of Difference	SEBI LODR, Reg. 2015	Companies Act, 2013
	Appointment / Re-appointment / Removal	**Appointment**: Special Resolution **Re-appointment:** Special Resolution **Removal**: Special Resolution **If Special Resolution fails,** however the votes cast in favour of the resolution exceed the votes cast against the resolution and **the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, the criteria of appointment of Independent Director deemed to have been fulfilled**. An Independent Director appointed through **fulfilling above criteria shall be removed only** if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and **the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.**	**Appointment**: Ordinary Resolution **Re-appointment:** Special Resolution **Removal**: Special Resolution **Schedule IV: CODE FOR INDEPENDENT DIRECTORS** [Paragraph IV-Manner of Appointment] [Paragraph V-Re-appointment] [Paragraph VI- Resignation or Removal]
4.	**Restriction on further appointment** **(Cooling off Period)**	**Reg. 25(11):** **Ceased due to Resignation**: **Can not be appointed as an Executive / Whole Time Director** on the board of the listed entity/ holding, subsidiary/ associate company or a company belonging to its promoter group **unless period of one year has elapsed from the date of resignation as an independent director.**	**Section 149(11):** **Ceased to be ID**: An Independent Director **shall not be appointed or be associated with the company** in **any other capacity**, either **directly or indirectly**, **for a period of three years,**

By Yogesh Sharma **Mob: 9992737013** **Email id: yogeshsharma37013@gmail.com**

Sr. No.	Nature of Difference	SEBI LODR, Reg. 2015	Companies Act, 2013
5.	**Time period for filling up of casual vacancy**	**Reg. 25(6):** Not later than 03 months from date of such vacancy	**Section 149(8) read with Schedule IV :** Within 03 months from date of such vacancy **[Paragraph VI-Resignation or removal]**
6.	**Annual Evaluation**	**Reg. 17(10):** **Evaluation Criteria formulated by**: Nomination And Remuneration Committee **Monitored and reviewed by**: Board of Directors **Evaluation carried /done by**: Entire Board of Directors **[directors who are subject to evaluation shall not participate]**	**Section 149(8) read with Schedule IV :** **Evaluation Criteria formulated by**: Nomination and Remuneration Committee **Evaluation carried /done by**: Entire Board of Directors **[excluding the director being evaluated]** **[Paragraph VII-Evaluation Mechanism]**
7.	**Separate Meeting**	**Reg. 25(3) & (4):** **At least one meeting in a financial year**: Without the presence of non-independent directors and members of the management. **Presence of ID**: All the independent directors shall **strive to be present** at such meeting. **Review of Performance**: 1. Non-Independent Directors and the Board as a whole; 2. Chairperson of the listed entity, taking into account the views of	**Section 149(8) read with Schedule IV :** **At least one meeting in a financial year**: Without the attendance of non-independent directors and members of the management. **Presence of ID**: All the independent directors shall **strive to be present** at such meeting. **Review of Performance**: 1. Non-Independent Directors and the Board as a whole; 2. Chairperson of the company, taking into account the views of executive

By Yogesh Sharma **Mob: 9992737013** **Email id: yogeshsharma37013@gmail.com**

Sr. No.	Nature of Difference	SEBI LODR, Reg. 2015	Companies Act, 2013
		executive directors and non-executive directors;	directors and non-executive directors; **[Paragraph VII-Separate meetings]**
8.	**Quorum in Board Meeting**	**Reg. 17(2A): With effective from 01.04.2020** **Top 2000 Companies**: 1/3 of total Directors or 3 Directors, whichever is higher including **01 Independent Director** **Other than 2000 Cos.**: 1/3 of total Directors or 2 Directors, whichever is higher	**Section 174(1):** **All Companies**: 1/3 of total Directors or 2 Directors, whichever is higher
9.	**Quorum in Audit Committee Meeting**	**Reg. 18(2):** **All listed Entities**: 1/3 of total Directors or 2 Directors, whichever is higher including **02 Independent Director**	**Section 177 read with SS-1:** **All Companies**: 1/3 of total Directors or 2 Directors, whichever is higher
10.	**Quorum in Nomination and Remuneration Committee Meeting**	**Reg. 19(2A):** **All listed Entities**: 1/3 of total Directors or 2 Directors, whichever is higher including **01 Independent Director**	**Section 178 read with SS-1:** **All Companies**: 1/3 of total Directors or 2 Directors, whichever is higher

By Yogesh Sharma **Mob: 9992737013** **Email id: yogeshsharma37013@gmail.com**

Sr. No.	Nature of Difference	SEBI LODR, Reg. 2015	Companies Act, 2013
11.	**Director and Officer Insurance for all IDs (D & O Insurance)**	**Reg. 25(10): With effective from 01.01.2022** **Mandatory**: Top 1000 Companies on basis of Market Capitalization **Recommendatory**: Other than top 1000	**Section 149(8) read with Schedule IV :** **Recommendatory**: All Companies **[Paragraph IV(4)(d)-Manner of appointment]**
12.	**Limit on Maximum number of Directorships**	**Reg. 17A: With effective from 01.04.2020** Maximum number of directorships, including any alternate directorships: **07** Maximum number of Independent directorships if he is **not Managing / Whole time Director in any other equity listed entity**: **07** Maximum number of Independent directorships **if he is Managing / Whole time Director in any other equity listed entity**: **03**	**Section 165** **Public Companies**: 10 **Private Companies**: 20
13.	**Limit on Maximum number of Membership /Chairpersonship**	**Reg. 17A: With effective from 01.04.2020** Maximum number of **Membership in public Companies**: **10** Maximum number of **Chairpersonship in public Companies**: **05**	**Section 165** **Public Companies**: 10 **Private Companies**: 20 Where limit/restriction has not been specified for Independent Directorship/ Membership/ Chairpersonship, it is presumed that a director is allowed to hold such position as Independent

By Yogesh Sharma **Mob: 9992737013** **Email id: yogeshsharma37013@gmail.com**

Sr. No.	Nature of Difference	SEBI LODR, Reg. 2015	Companies Act, 2013
		Only Audit and Stakeholders Relationship Committee alone shall be considered for purpose of Corporate Governance.	Director/Member/Chairperson to the extent permitted by provision of Section 165 of Companies Act, 2013
14.	**Declaration on criteria of independence**	**Reg. 26(8):** **Initial declaration /whenever change occurs after his appointment** — **1st Board Meeting** **Every financial year** — **1st Board Meeting**	**Section 149(7):** **Initial declaration /whenever change occurs after his appointment** — **1st Board Meeting** **Every financial year** — **1st Board Meeting**

By Yogesh Sharma **Mob: 9992737013** **Email id: yogeshsharma37013@gmail.com**

Appointment of Independent Directors

Provisions under CA, 2013: Section 149 (4) Rule 4 of the Companies (Appointment and Qualifications of Directors) Rules, 2014

The following class or classes of companies shall appoint independent directors-

(i) Every Listed Company

(ii) Public Companies having paid up share capital of ten crore rupees or more; or

(iii) Public Companies having turnover of one hundred crore rupees or more; or

(iv) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

* **However following classes of unlisted public company shall not be covered under rule-4:**

(a) Joint venture;

(b) Wholly owned subsidiary; and

(c) Dormant company as defined under section 455 of the Act.

Constitution of Audit and Nomination & Remuneration Committee

Provisions under CA, 2013: Sec. 177 and 178 of CA, 2013 read with Rule 6 of the Companies (Meeting of Board and its Power) Rules, 2014

The following class or classes of companies shall appoint independent directors-

(i) Every Listed Company

(ii) Public Companies having paid up share capital of ten crore rupees or more; or

(iii) Public Companies having turnover of one hundred crore rupees or more; or

(iv) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

* **However following classes of unlisted public company shall not be covered under rule-4:**

(a) Joint venture;

(b) Wholly owned subsidiary; and

(c) Dormant company as defined under section 455 of the Act.

By Yogesh Sharma **Mob: 9992737013** **Email id: yogeshsharma37013@gmail.com**