

# **NEWS LETTER**

## **COMPANY LAW AND CORPORATE AFFAIRS COMMITTEE**

**THE MADRAS CHAMBER OF COMMERCE AND INDUSTRY**

**ISSUE NO: 4**

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### **FLASH NEWS**

**FIFTH MEETING – 11.12.2024 – PRESENTATION ON THE STAMP DUTY  
IMPACT – IN PARTICULAR WITH REFERENCE TO MERGERS AND  
AMALGAMATIONS**

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# **CONTENTS**

**1. ARTICLE – TOPIC : INDEPENDENT DIRECTORS LEGISLATIVE REQUIREMENTS AND COMPLIANCES**

**2. CIRCULARS, MASTER CIRCULARS, NOTIFICATIONS, AMENDMENTS TO RULES AND CONSULTATION PAPERS (FOR PUBLIC COMMENTS) ISSUED BY:**

**a) MINISTRY OF CORPORATE AFFAIRS – No Notification and Circulars were issued during the month of November, 2024.**

**b) SECURITIES EXCHANGE BOARD OF INDIA**

**c) RESERVE BANK OF INDIA**

**IN THE MONTH OF NOVEMBER 2024**

**3. SPECIAL ATTENTION:**

**Company Law and Corporate Matters committee through the Chamber has sent their comments/suggestions on the Consultation Paper on Unpublished Price Sensitive Information on November 23, 2024**

# ARTICLE

02.12.2024

## INDEPENDENT DIRECTORS

### LEGISLATIVE REQUIREMENTS AND COMPLIANCES

**NOT FOR CIRCULATION –**

**FOR INTERNAL USE ONLY**

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B RAVI & ASSOCIATES**

#### **INTRODUCTION:**

The Companies Act 2013 (hereinafter referred to as Act) has defined under Section 2(10) the term Board of directors or Board in relation to a company, means the collective body of the directors of the company. The term director means a director appointed to the Board of a company. The Act prescribes the minimum number of directors a company shall have in place and also prescribes the maximum subject to certain exemption for certain class of companies and prescribes approval for certain other class of companies if they have to exceed the maximum prescribed for a Board. Considering the important played by the Board in a company, the Act contemplates how the composition of the shall be in respect of certain class of companies to ensure that the decisions taken by the board as a whole is an unbiased and informed decision in the larger interest of the stakeholders. One such concept that was evolved is to have certain number of a special category of directors called as “Independent directors” with strict norms for their appointment, remuneration, removal and so on, to ensure that there is no conflict of interest on the decisions taken by the Board.

#### **BIRTH OF THE CONCEPT INDEPENDENT DIRECTORS:**

The excerpt from the report of the expert committee on Company Law constituted under the Chairmanship of Dr. JJ Irani is extracted below which is the starting point:

*“The committee is of the view that given the responsibility of the Board to balance various interests, the presence of Independent directors on the Board of a company would improve corporate governance. This is particularly important for public companies or companies with a significant public interest. While directors specific interests would be confined to the perspective dictated by such interests, independent directors would be able to bring an element of objectivity to Board process in a general interests of the company and thereby to the benefit of minority interest and smaller shareholders.*

*Independence, therefore, is not to be viewed merely as independence from promoter interest but from the point of view of vulnerable stakeholders who cannot otherwise get their voice heard.”*

Based on the recommendations made by the Irani Committee report and various discussions with the stakeholders, the concept of Independent director was introduced under the Companies Act 2013. Securities Exchange Board of India, in its regulations Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) have also provided a stricter regulations in respect of Independent Directors, for those companies which are covered by the said regulations.

An attempt has been made to capture all about the Independent directors provided under the Act read with the rules framed there under and also under LODR in one place for easy reading and understanding and compliance.

## **CHARGING SECTION, RULES, CODE UNDER THE ACT AND LODR REGULATION:**

Section 149 of the Act.

Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014

Schedule IV – Code for Independent directors. Regulations 16, 17 and 25 of LODR

## **DEFINITION:**

There is no straight jacket definition for the term Independent director (ID). Section 2(47) of the Act defines the term as follows:

“Independent director” means an independent director referred to in sub-section (6) of section 149”

Regulation 16(1) (b) states that "independent director" means a non-executive director, other than a nominee director of the listed entity ..... And thereafter proceeds to detail the eligibility norms to be appointed as an Independent director.

There is no precise definition for the term ID either in the Rules or in the code.

The fact remains that an ID is a director and by virtue of the fact that he fulfils the requirements stated under Section 149(6) and or Regulations 16(1)(b) of LODR can be appointed as ID to fulfil the legislative and LODR requirements.

## **COMPANIES WHICH ARE REQUIRED TO HAVE ID ON THE BOARD:**

**Section 149(4)** mandates as follows: reproduced below for the purpose of easy reference.

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

*Explanation: For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.*

**Rule 4** of the Companies (Appointment and Qualification of Directors) Rules, 2014.

### ***4. Number of Independent Directors***

*(1) The following class or classes of companies shall have at least two directors as independent directors -*

- *the Public Companies having paid up share capital of ten crore rupees or more; or*
- *the Public Companies having turnover of one hundred crore rupees or more; or*
- *the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:*

*Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:*

*Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;*

*Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:*

*Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.*

*(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-*

*(a) a joint venture;*

*(b) a wholly owned subsidiary; and*

*(c) a dormant company as defined under section 455 of the Act.*

On a combined reading of Section 149(4) read with Rule 4 framed thereunder, the following companies are required to appoint Independent directors on the Board:

- a. Every Listed Public Company
- b. Every Public company:
  - i. having paid up share capital of 10 crore rupees or more\* or
  - ii. having turnover of 100 crore rupees or more\* **or**
  - iii. which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees\*

*\*For the purpose of determining the threshold, it is clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account*

It is pertinent to note that, where a company ceases to fulfil any of thresholds mentioned above in point b for 3 consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.

**Exemption to appoint independent directors by certain unlisted companies:**

The following classes of unlisted public company shall not be required to appoint Independent directors though they fall under the threshold mentioned above:

(a) a joint venture;

(b) a wholly owned subsidiary; and

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

*It has been clarified vide notification no. GSR 466(E) dated 05.06.2015 that the provisions contained in Section 149(4) to 149(11), (12)(i) and (13) relating to independent directors shall not apply to a not for profit company set up under Section 8 of the Act.*

**POINTS TO BE NOTED:**

- a) *in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it;*
- b) *a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.*

**Eligibility criteria to appoint a director as an Independent Director:**

A person to be appointed as an Independent director need to meet the criteria of independence as envisaged under section 149(6) of the Companies Act, 2013 and Regulation 16(1)(b) of SEBI LODR.

The same is produced below for easy reference:

<b>COMPANIES ACT, 2013- Section 149 (6)</b>	<b>SEBI LODR – Regulation 16(1)(b)</b>
<p><i>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,—</i></p> <p><i>(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;</i></p> <p><i>(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;</i></p> <p><i>(ii) who is not related to promoters or Directors in the company, its holding, subsidiary or associate company;</i></p> <p><i>(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;</i></p> <p><i>(d) none of whose relatives—</i></p> <p><i>(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:</i></p> <p><i>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;</i></p> <p><i>(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</i></p>	<p><i>"Independent director" means a non-executive director, other than a nominee director of the listed entity:</i></p> <p><i>(i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;</i></p> <p><i>(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;</i></p> <p><i>(iii) who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;</i></p> <p><i>(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;</i></p> <p><i>(v) none of whose relatives—</i></p> <p><i>(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 holding, subsidiary or associate company, respectively, or such higher sum as may be specified;</i></p> <p><i>(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;</i></p> <p><i>(C) has given a guarantee or provided any security in</i></p>

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);

(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 organization 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.

Additional compliance required are prescribed under Rule 6 of Companies ((Appointment and Qualification of Directors) Rules, 2014 and the same is reproduced below.

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 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 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.

(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



**Compliance required by a person eligible and willing to be appointed as an Independent Director under the Rules pertaining to Companies (Appointment and Qualification of Directors) Rules, 2014**

**As per Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014**

- a. Every Individual who intends to get appointed as an Independent director in a company shall before such appointment apply online to the Indian Institute of Corporate Affairs (“institute”) for inclusion of his name in the data bank for a **period of one year or five years or for his life-time,**

*Any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.*

- b. Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of **30 days from the date of expiry of the period up to which the name of the individual was applied for inclusion in the data bank,** failing which, the name of such individual shall stand removed from the data bank of the institute.

- c. Every individual whose name is so included in the data bank shall **pass an online proficiency self-assessment test** conducted by the institute within a period of **2 years** from the date of inclusion of his name in the data bank, failing which, his/her name shall stand removed from the databank of the institute.

*An individual shall not be required to pass the online proficiency self-assessment test in case he/she satisfies any of the conditions specified in proviso to the sub rule 4 of Rule 6.*

**ANALYSIS: NOTABLE POINTS**

**On an analysis of the norms prescribed under the Act and under LODR, few notable points are observed and but for that the norms prescribed under both are similar. The notable points for information are detailed below:**

<b>COMPANIES ACT 2013</b>	<b>LODR REGULATIONS</b>
Managing director, whole time director and nominee director are not ID.	Executive directors and Nominee directors of the listed company cannot be ID. (By and large both are same, since MD and WTD are Executive directors).
	Member of the promoter group of the listed entity is not eligible.
Pecuniary relationship is defined on monetary terms – not exceeding 10% and the relevant period is previous 2 years or during the current year.	Not monetary ceiling is prescribed. Merely having pecuniary relationship disqualifies. The relevant period is 3 years or during the current year.
The relevant period is restricted to previous two years for checking the applicable norms of eligibility	The relevant period is restricted to previous three years for checking the applicable norms of eligibility



The relevant period is restricted to previous three years for checking the applicable norms of eligibility in respect of the candidate or his relatives holding the position as KMP or employee and couple of norms thereafter.	The relevant period is restricted to previous three years for checking the applicable norms of eligibility in respect of the candidate or his relatives holding the position as KMP or employee and couple of more norms.
	(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. (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

**MINIMUM NUMBER OF INDEPENDENT DIRECTORS TO BE APPOINTED:**

<b>COMPANIES ACT, 2013</b>	<b>SEBI LODR</b>
<b><u>Listed Public Company,</u></b> At least 1/3 <sup>rd</sup> * of the directors shall be independent directors. <i>*Any fraction contained in such one-third number shall be rounded off as one.</i>	<b><u>Where the chairperson of the Board of Directors is a non-executive director:</u></b> At least 1/3 <sup>rd</sup> of the board of directors shall comprise of independent directors. .
<b><u>Unlisted public companies</u></b> shall have at least <b>2 directors</b> as Independent directors	<b><u>Where the listed entity does not have a regular non-executive chairperson</u></b> At least 1/2 of the board of directors shall comprise of independent directors
<i>NOTE: In case a company covered is required to appoint a higher number of Independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.</i>	<b><u>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:</u></b> At least 1/2 of the board of directors of the listed entity shall consist of independent directors.

**APPROVALS REQUIRED FOR APPOINTMENT OF INDEPENDENT DIRECTORS:**

The appointment including re- appointment of an Independent director requires:

Approval of the shareholders at the meeting of the shareholders.

This requirement is mandated both under the Companies Act and SEBI LODR which has been explained in detail below:

COMPANIES ACT, 2013	SEBI LODR
<p><b>APPOINTMENT:</b></p> <p>The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders by <b><u>ordinary resolution</u></b>.</p> <p><b>RE-APPOINTMENT:</b></p> <p>An independent director shall be eligible for re appointment on passing of a <b><u>special resolution</u></b> by the company and disclosure of such appointment.</p>	<p>The appointment/ re-appointment of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a <b><u>special resolution</u></b>.</p> <p><b>NOTE: Deemed approval by special resolution:</b></p> <ul style="list-style-type: none"> <li>➤ Where a special resolution for the appointment of an independent director fails to get the requisite majority of votes</li> <li>➤ But 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,</li> <li>➤ Then the appointment of such an independent director <b>shall be deemed to have been approved by special resolution.</b></li> </ul> <p><b>TIME LIMIT WITHIN WHICH SHAREHOLDERS APPROVAL BE OBTAINED:</b></p> <p>The listed entity shall ensure that approval of shareholders for appointment or re-appointment of a person on the Board of Directors <b>including Independent Directors istaken at the next general meeting or within a time period of 3 months from the date of appointment, whichever is earlier.</b></p> <p><b>AGE VIS – A –VIS SPECIAL RESOLUTION:</b></p> <p>The listed entity is required to pass a special resolution if an <b>ID has attained the age of 75 years</b> in order to appoint or continue the directorship of such person.</p>

**Key points:**

- *The requirement of deposit of Rs. 1,00,000/- as required under section 160 of the Act, shall not be required in case of appointment of an independent director.*
- *Schedule IV of the Act provides that the appointment of Independent directors shall be formalized through a letter of appointment.*

**TENURE/TERM OF INDEPENDENT DIRECTORS:**

- **TERM:**  
An independent director shall hold office for a term **up to 5 consecutive years** on the Board of the company.
- **MAXIMUM TERM PERMITTED:**  
No independent director shall hold office for **more than 2 consecutive terms**, but such independent director shall be eligible for appointment **after the expiration of 3 years** of ceasing to become an Independent director. (This gap of three years is generally referred to as cooling period). **During the cooling period of 3 years, the independent director shall not be associated with the company in any other capacity either directly or indirectly.**

- **RETIREMENT BY ROTATION:**

An independent director is not required to retire by rotation. As per the explanation given under Section 152(6): 152(6) deals with retirement of directors by rotation.

For the purposes of this sub-section, “total number of Directors” **shall not include independent Directors**, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

Section 149(13) also provides that the provisions of sub-sections (6) and (7) of section 152 in respect of retirement of Directors by rotation shall not be applicable to appointment of independent Directors.

Section 152(6)& (7) is reproduced *below for easy reference:*

*(6) (a) Unless the articles provide for the retirement of all Directors at every annual general meeting, not less than two-thirds of the total number of Directors of a public company shall—*

*(i) be persons whose period of office is liable to determination by retirement of Directors by rotation; and*

*(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.*

*(b) The remaining Directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.*

*(c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first Directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the Directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.*

*(d) The Directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became Directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.*

*(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.*

*Explanation.—For the purposes of this sub-section, “total number of Directors” shall not include independent Directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.*

*(7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.*

*(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—*

*(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;*

*(ii) the retiring director has, by a notice in writing addressed to the company or its Board of Directors, expressed his unwillingness to be so re-appointed;*

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) section 162 is applicable to the case.

*Explanation.—For the purposes of this section and section 160, the expression “retiring director” means a director retiring by rotation.*

## **REMUNERATION:**

The ways through which an Independent director can be remunerated is envisaged under Section 149(9) of the Act.

Section 149(9) is produced herewith for easy reference:

*“Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members:*

*Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V”*

### **Analysis:**

1. Independent directors may receive remuneration by way of fee for attending meetings of the Board or Committees i.e sitting fee.
2. As per Rule 4 of Companies (Appointment and Remuneration of Managerial Personnel Rules), 2014, sitting fee payable to directors shall not exceed Rs. 1,00,000/- per meeting of the Board or committee thereof. It also provides that the sitting fee payable to independent directors shall not be less than the sitting fee payable to other directors.
3. Independent directors shall be reimbursed of the expenses for the participation in the Board/ committee meetings.
4. They are also entitled to profit related commission subject to the approval of shareholders.
5. In case of no profits/inadequate profits, independent directors may receive remuneration (apart from sitting fee) in accordance with Schedule V.
6. Independent directors are not entitled to stock options.

### **FILLING UP OF VACANCY CAUSED BY AN INDEPENDENT DIRECTOR:**

Any vacancy by an independent director shall be filled by the Board at the earliest as specified below:

<b>COMPANIES ACT, 2013</b>	<b>SEBI LODR</b>
Any intermittent vacancy of an independent director shall be filled-up by the Board <ul style="list-style-type: none"><li>- at the earliest <b>but not later than immediate next Board meeting</b> or</li><li>- three months from the date of such vacancy,</li></ul> whichever is later. Intermittent vacancy means, a vacancy caused by the cessation of office of ID before the expiry of the tenure for which he was appointed.	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 three months from the date of such vacancy.  <i><b>NOTE: If the vacancy is due to expiration of the term of office of any director, the resulting vacancy shall be filled by the listed entity not later than the date such office is vacated.</b></i>

Schedule IV of the Act provides that “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.”

A similar provision is envisaged under Regulation 25(6) of LODR for listed entities: “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.”

### **DECLARATION TO BE GIVEN BY INDEPENDENT DIRECTOR:**

Every independent director shall

- 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 a change in the circumstances which may affect his status as an Independent Director,

give a declaration that he meets the criteria of Independence as provided in sub- section (6) and as per Regulation 25(8) LODR in case of a listed entity.

### **HOLDING OF SEPARATE MEETINGS OF INDEPENDENT DIRECTORS:**

Schedule IV of the Companies Act, 2013 and Regulation 25(3) provide that the Independent directors of the company shall meet at least once in a financial year without the attendance of the non-independent directors and members of the management.

All the independent Directors of the company shall strive to be present at such meeting.

The Independent directors in the meeting shall inter alia:

- (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.

It is pertinent to note that Secretarial Standard 1 is not applicable to the meeting of the Independent directors as it is not a meeting of Board/Committee and hence SS 1 is not applicable to the company.

#### **LIABILITY OF INDEPENDENT DIRECTOR:**

An independent director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes and with his consent or connivance or where he had not acted diligently.

#### **OTHER NOTABLE POINTS UNDER LISTING REGULATIONS:**

- ❖ **Attendance of Independent Directors:** LODR mandates the attendance of the Independent directors in the Board/committee meetings to constitute a valid quorum.
- ❖ **Approval of Related Party Transactions:** Only those members of the audit committee, who are independent directors, shall approve related party transactions.
- ❖ **D and O Insurance:** The top 1000 listed entities by market capitalization shall undertake for all their independent directors of such quantum and for such risks as may be determined by its board of directors.

In conclusion, independent directors are integral to ensure effectiveness of corporate governance framework, playing a vital role in ensuring that boards of directors operate with integrity, objectivity, and accountability. Independent directors ultimately lead to a more resilient and trustworthy corporate landscape, benefiting shareholders, employees and other stakeholders.

#### **DISCLAIMER:**

The above compilation on the topic “**INDEPENDENT DIRECTORS**” is for better understanding and ease of doing the compliance. The above write up does not constitute or purport to be an advice or opinion in any manner. The information provided is not intended to create any client relationship and is not for advertising or soliciting. B RAVI & ASSOCIATES do not intend in any manner to solicit work through this. The objective is only to share information based on the author’s understanding on the subject. B RAVI & ASSOCIATES is not responsible for any error or mistake or omission in this write up or for any action taken or not taken based on the contents of this write up. It is advisable to refer the legislation and the Notifications issued by the Ministry of Corporate Affairs before taking any decision or action. Any error may please be brought to our notice. Email: [bravics@gmail.com](mailto:bravics@gmail.com)

## CIRCULARS ISSUED BY SEBI DURING THE MONTH OF NOVEMBER 2024

<b>Date</b>	<b>Title</b>
<b>Nov 28, 2024</b>	Business Continuity for Interoperable Segments of Stock Exchanges
<b>Nov 26, 2024</b>	Valuation of repurchase (repo) transactions by Mutual Funds
<b>Nov 22, 2024</b>	Guidelines to Stock Exchanges, Clearing Corporations and Depositories
<b>Nov 21, 2024</b>	Withdrawal of Master Circular on issuance of No Objection Certificate (NOC) for release of 1% of Issue Amount
<b>Nov 18, 2024</b>	Amendment to Para 15 of Master Circular for Credit Rating Agencies (CRAs) dated May 16, 2024 (“Master Circular”)
<b>Nov 13, 2024</b>	Relaxation from certain provisions for units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme, Alignment of timelines for making distribution by InvITs and Format of Quarterly Report and Compliance Certificate – Infrastructure Investment Trusts (InvITs)
<b>Nov 13, 2024</b>	Relaxation from certain provisions for units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme, Alignment of timelines for making distribution by REITs and Format of Quarterly Report and Compliance Certificate – Real Estate Investment Trusts (REITs)
<b>Nov 12, 2024</b>	Simplified registration for Foreign Portfolio Investors (FPIs)
<b>Nov 11, 2024</b>	Trading supported by Blocked Amount in Secondary Market
<b>Nov 11, 2024</b>	Procedure for reclassification of FPI investment to FDI
<b>Nov 05, 2024</b>	Disclosure of expenses, half yearly returns, yield and risk-o-meter of schemes of Mutual Funds
<b>Nov 04, 2024</b>	Investments in Overseas Mutual Funds/ Unit Trusts by Indian Mutual Funds



## MASTER CIRCULARS ISSUED BY SEBI DURING THE MONTH OF NOVEMBER 2024

Date	Title
Nov 11, 2024	Master Circular for Issue of Capital and Disclosure Requirements
Nov 11, 2024	Master circular for compliance with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by listed entities

## CONSULTATION PAPERS ISSUED BY SEBI DURING THE MONTH OF NOVEMBER 2024

### FOR PUBLIC COMMENTS

Date	Title
Nov 22, 2024	Consultation Paper on Review of Ownership and Economic Structure of Clearing Corporations
Nov 22, 2024	Consultation Paper on Process for appointment of specific KMPs of an MII; and cooling- off period for KMPs and Directors of an MII joining a competing MII.
Nov 19, 2024	Consultation paper on Review of SME segment framework under SEBI (ICDR) Regulations, 2018, and applicability of corporate governance provisions under SEBI (LODR) Regulations, 2015 on SME companies to strengthen pre-listing and post-listing SME provisions.
Nov 13, 2024	Proposed amendments with respect to assigning responsibility for the use of artificial intelligence tools by Market Infrastructure Institutions, Registered Intermediaries and other persons regulated by SEBI
Nov 13, 2024	Consultation paper on review of regulatory framework for Angel Funds in AIF Regulations
Nov 13, 2024	Consultation paper on Review of SEBI (Custodian) Regulations, 1996
Nov 12, 2024	Extension in timeline to submit comments on consultation paper on recognition as Specified Digital Platform
Nov 11, 2024	Consultation paper on “Procedure for seeking waiver or reduction of interest in respect of recovery proceedings initiated for failure to pay penalty”
Nov 09, 2024	Consultation Paper on proposed review of the definition of Unpublished Price Sensitive Information under SEBI (Prohibition of Insider Trading) Regulations, 2015 to bring regulatory clarity, certainty and uniformity of compliance in the ecosystem.

- Nov 06, 2024** Consultation paper on review of requirements of alignment of interest of the Designated Employees of the AMC with the interest of the unit holders.
- Nov 04, 2024** Consultation Paper on Measures for Reforms to Debenture Trustees Regulations including towards Ease of Doing Business.
- Nov 01, 2024** Consultation paper on review of SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008.

**NOTIFICATIONS ISSUED BY RESERVE BANK OF INDIA  
IN THE MONTH OF NOVEMBER 2024**

<b>Date</b>	<b>Title</b>
<b>Nov 11, 2024:</b>	Operational framework for reclassification of Foreign Portfolio Investment to Foreign Direct Investment (FDI)
<b>Nov 08, 2024:</b>	Reporting of Foreign Exchange Transactions to Trade Repository
<b>Nov 07, 2024:</b>	'Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds
<b>Nov 06, 2024:</b>	Amendment to the Master Direction - Know Your Customer (KYC) Direction, 2016

**As we reflect on a successful collaboration this year, we look forward to reaching new heights together in 2025.**



**DR B RAVI  
CHAIRMAN  
COMPANY LAW AND CORPORATE AFFAIRS COMMITTEE  
02.12.2024**