

# Role of Independent Director under Corporate Governance Process



M.V. Suresh Kumar, CH. Lakshmana Rao

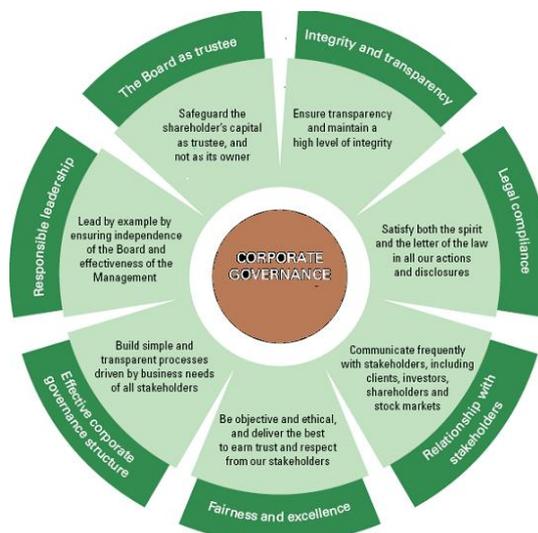
**ABSTRACT:-** According to company law 2013 an independent director in view of a company and in relationship to the board can be said as a director other than the Managing or whole time or a nominee director and in the context of corporate governance an independent director is a non-executive director whose main aim is to help company in improving credibility in the eyes of stake holders with a prescribed set of standards and a set of principals laid for governing the board. The present paper is concerned with the role of Independent Director as part of company in corporate governance process and the importance of each in board.



**INDEX TERMS:** The following are the Key Words-Company Law, Corporate Governance, Director, Independent Director, Women Director, SEBI

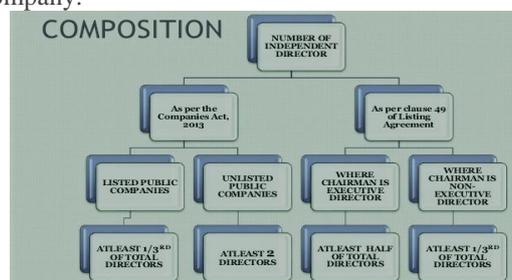
## I. INTRODUCTION SEBI CODE

The Securities and Exchange Board of India (SEBI) has constituted a committee on corporate governance under the chairmanship of Kumar Mangalam Birla to promote good corporate governance which are required to be incorporated in the listing agreement between the company and the stock exchange regarding Board of Directors. The committee recommendations to SEBI which form part of guidelines on corporate governance; are as detailed



a) Some points in this regard are as follows:

1. The company shall have a mixture of combination of executive and non-executive categories of directors on the Board.
2. In a corporate setup the category of chairman would decide upon the number of Independent directors (i.e.) if he is in executive or non-executive in nature of his position regarding company.
3. At least One third of the Board should comprise of independent directors in case of non-executive chairman and whereas half of the Board should comprise of independent directors in case of executive chairman.
4. The expression 'independent directors' means directors, who apart from receiving director's remuneration, do not have any other material pecuniary relationship with the company.



The Board and its responsibilities are as follows

- a. The promoter will select the first director of the company and the first director will select the other director of the board who can form into one unit and then setup a board committee.
- b. The board committee under the guidance of the board with all directors will monitor, evaluate and compensate senior management and there by evaluate the succession planning of the board and senior persons in the company

Manuscript published on 30 September 2019

\* Correspondence Author

M V Suresh Kumar\*, LLB, M. Com, LLM, Research Scholar, College of Law, Koneru Lakshmaiah Education Foundation, Vaddeswaram, A.P., India.

CH Lakshmana Rao, M.A., LL.B., LL.M., Ph. D LAW), Associate Professor & I/C Principal, Collage of Law, Koneru Lakshmaiah Education Foundation, Vaddeswaram, A.P., India.

© The Authors. Published by Blue Eyes Intelligence Engineering and Sciences Publication (BEIESP). This is an open access article under the CC-BY-NC-ND license <http://creativecommons.org/licenses/by-nc-nd/4.0/>

## Role of Independent Director under Corporate Governance Process

- c. The board will Review and approve significant corporate actions which are needed to monitor implementation of management's strategic plans for the growth and all-round development of the company and its employees and society in the overall aim of profit maximisation.
- d. The board will approve the Company's annual operating plans and budgets from time to time depending upon the situation and need of the hour by ensuring a result-based performance and evaluation strategic plans with a long run business in the mind
- e. The key factor for the board is to Review the Company's financial controls and reporting systems for effective reduction of wasteful expenditure.
- f. The analysis of the financial statements and its reporting forms the key responsibility of the Company board
- g. The corporate governance set some ethical standards and legal compliance programs and procedures for the company which are to be evaluated by the board forms a key responsibility.
- h. Board key to success will depend on the relationship<sup>2</sup> with stake holders in business-friendly environment and culture which forms the key responsibility of the board.
- i. Board in particular has to monitor the internal resources such as employees, and the communities in which the Company operates for a environmental compliance growth of the business and all round development of the society.

### II. INDEPENDENT DIRECTORS

In the present world of competitiveness the success of the business and a company depends on the working of the management or the board of directors who are the driving force for the running of the company directly or indirectly to a large extent and are part of the various decisions making and policies including the strategy moves that need to be taken at the right time and in a right spirit of corporate governance the role of independent directors is of immense importance and critical in maximisation of profits and minimisation of risks involved on day to day basis

The independent directors as stated above must not be dependent on the information provided by the management with regards to the policy matters or any decisions that need to be taken from time to time for proper lawful functioning of the organisation instead they must have in-depth knowledge of the affairs and basic principles on which the company came into existence and must guide the board to conclusion under corporate governance system within the preview of the object clause of the company

The various scandals that took place in India and abroad have highlighted the key role that need to be enacted by an independent director in fulfilling the corporate governance norms and with respect to the stake holders who choose the independent director to act on their behalf and protect their interest in the business for a profit maximisation and zero tolerance to risks

The importance of independent directors was more highlighted in the wake of Satyam scam and ICICI case etc; which shock the corporate world and took away the faith of the investor in relation to shareholders prospective and made stake holders to suffer a huge loss.

The independent director's concept was incorporated in the companies act 2013 which paved the way for the finding

of directors who are accountable to the public at large and in ensuring and fulfilling of corporate responsibilities that are needed for true and fair picture of transactions in connection with trade and business to be highlighted under corporate governance system. The concept was discussed under the section 150 in the companies act 2013 and the provisions relating to independent directors has been defined in the section 149(6) and liabilities related to independent directors have been dealt under section 149(12).

### III. INDEPENDENT DIRECTORS

In the onset of companies act 2013 and development of new concept of independent directors with an aim to focus on prevention of scams and frauds role played by them has got significance in the field corporate governance in ensuring the progress of any company.

They act as a safeguard of investors rights and a source of competitive advantage in protection of minority shareholders rights.

Independent Directors due to their vigilant and attentive nature ensure that the promoters and executive directors of a company carry on the activities of the company in accordance with the law of the land and thus prevent any mistakes being committed in the process of business thus maximizing revenue by an organisation and overall value of the company

### IV. DUTIES-INDEPENDENT DIRECTOR

The Independent Directors shall involve themselves in the company affairs by keeping themselves up to date with the knowledge of the company matters with which they are connected and by attending the board meetings regularly under corporate governance process.

The independent directors will make sure that they have enough knowledge with the external environment in which the company operates and collect and report the matters which they think are unethical in the interest of the company for its growth and in contravention with the basic ideology for which the company is formed and reports the matters to the concern.

The independent directors will make sure that they keep up to the safeguarding of the confidential information of the company information commercial secrets and formulas and techniques on which company depends upon for its existence.

**OTHER PROVISIONS-:** At least one independent director should be part of Corporate Social Responsibility Committee (CSR) of the Board which is involved in formulate and monitoring process.

Independent director's during appoint must give a declaration that if a situation arises, which affects his status of independence of being an independent director he will not compromise and stand for the purpose and does not compromise with the situation

Independent directors must attend the first meeting in the financial year as a member of board,

The independent director cannot hold office for more than 2 consecutive terms for a maximum term of 5 years and shall be re-appointed only by special resolution at the board meeting and any vacancies arising must be filled up in the very next Board Meeting or within 3 months whichever is later.

An independent director shall not hold office in more than seven listed companies at a time and does not retire by rotation.

An independent director gives a declaration of his independent u/s 149(7) during his appointment

**V. CONCEPT OF WOMAN DIRECTOR**

A women Director shall be appointed by the company under section 149(1) of the act under the following two circumstances

1. When a public limited company which is listed has a paid-up share capital is Rs 100 crores or more and when its turnover as per latest audited financial statements exceeds Rs 300 crores or more in a financial year.

The conditions that are stipulated are as follows

- a) Under Companies Act, 2013 in case of a new company incorporated a period of six months from the date of company’s incorporation has been provided to enable the companies to comply with this requirement of appointment of women director.

If there is a vacancy occurring at irregular interval than the vacancy must be filled with in 3 months from the date when it falls vacant with a suitable women director eligible as per the guidelines setup by the board of directors with the approval of the chairman of the company or not later than the next board meeting as per existing rules and regulations monitoring the board

**a) Roles of Women Directors**

1. She is on the board like any other director.
2. She can be a Nominee Director who will be nominated by a party in the company to take care of its interest of the group of shareholders
3. Can be part of the organisation in the position of Independent Director who is not liable to retire by rotation.
4. She can hold a maximum of twenty directorships which includes the sub-limit of ten public companies.

**VI. RESULTS AND ANALYSIS**

The data available in NSC Listed Companies as on 13-09-2019 taken for 1820 companies which are covered is reflected for analysis and study of the independent directors.

Particulars	Individuals	No of Director ship Positions Held	Cessations
All Directors	11275	13888	
Independent Directors	5555	7143	7855
Women Directors	1902	2352	
Independent Women Directors	1101	1452	

**VII. CONCLUSION**

1. Independent directors or non-executive directors of the company monitor and control the board; they serve as a link with external environment and provide an international perspective.

2. Thus, Independent directors help to improve board processes through their knowledge and provide the needed thrust by stake holders in the company.
3. It can be concluded that independent directors help maintain an ethical climate in the Organization.
4. In case of independent director, a set of prescribed policy must be laid with specific reference to the role paid by them thus providing a solution to the corporate world of individual outlook of Directors.
5. The key role played by SEBI & Government in the matters relating to independent directors and their functioning as per the guidelines of corporate governance norms set for the company in relation to age and qualifications of the independent directors can highlight the transparency and fair way of dealing to the outside world who are connected to the company.
6. An independent director under corporate governance norms will be responsible for delivering the duties to the stake holders whom he or she represents as a faithful service rendered by dog to his master in terms of general perception of the world and if he or she does not do so then it can amount to committing of an offence
7. An independent director when in knowledge of any wrong doing by the management of the company like committing of fraud and insider trading in relation to the company does not disclose to the general public of such offence being taking place in the organisation or does not set things right at the right time then he or she is equally responsible of committing the crime best example can be taken as in the case of Satyam Computers.
8. The independent directors can attempt to be more effective in the corporate governance system when they collectively stop committing of offences by the directors and other management personal for their own gain and profitability

**REFERENCES**

1. Corporate Governance in India: Change and Continuity’, Oxford University Press (19 September 2016). Book by Asish K. Bhattacharyya
2. Corporate Governance’, Taxmann; 2015 edition (2016). Book by IICA
3. Company Law by author Avtar Singh published by Eastern Book Publishing 2018,
4. Company Law by author B K Goyal published by Singhal law Publications 2018,
5. Corporate Governance, Principles, policies and practice by Pearson Education India; 3<sup>rd</sup> edition (2018) by A, C, Fernando

**AUTHORS PROFILE**



**M.V. Suresh Kumar**, LLB, M. Com, LLM, Research Scholar, College of Law Koneru Lakshmaiah Education Foundation Vaddeswaram, A.P., India



**Dr. CH Lakshmana Rao** M.A, LL.B., LL.M., Ph. D (LAW) Associate Professor, College of Law 1Koneru Lakshmaiah Education Foundation, Vaddeswaram, A.P., India

