

Position of directors and independent directors in chambers of commerce

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Introduction

Companies are incorporated in India, by pooling funds together as capital of the company for the purposes of carrying on business. Such persons pooling the funds in the company are called the shareholders of the company and are entitled to the dividend out of the profits generated by the company. The main object of the company is to earn profits and to maximise wealth of the shareholders.



On the other hand, companies are also incorporated without any capital and are involved with the object of promotion of commerce, art, science, sports, education, research, social welfare, religion, protection of environment etc. The members give guarantee of some particular amount to be paid in the event of winding up of the company. Such guarantors of the company are called the members of the company and such company shall necessarily plough back its relevant profits in promoting its objects and the members are not entitled to any dividend. Section 8 of the Companies Act, 2013 (the Act) (section 25 in Companies Act, 1956) deals with registration of such companies. Chambers of commerce are such companies registered in this manner and they fulfil all the preconditions and hence fall under section 8 of the Companies Act, 2013 (the Act). Section 8 companies are not required to prepare the profit and loss account, but as per the provisions of the Act, they are required to prepare an income and expenditure account, and the excess of the income over expenditure is termed as surplus and not profit. Therefore, it can be concluded that the chambers of commerce do not generate profits but only generate surplus of income over expenditure. The surplus generated by chambers of commerce is exempted and is not taxable.

Board of directors vs management committee

Companies are managed by the Board of the directors but in the case of the chambers of commerce, the management committee manages its operations. The constitution of the Board is the directors of the company, and in the chamber of commerce the constitution of the management committee is the members of such committee. The committee members appointed in the

management committee of the chambers of commerce are experienced industrialists, well versed professionals of the various fields who are endowed with great potential to contribute in the accomplishment of the objectives of the company.

The Ministry of Corporate Affairs (MCA) clarified through a circular way back in 1964 that the members shall not be entitled to vote for the election of the directors of the company (members of the committee), unless they have paid subscription fees for the current relevant year. This is a valid indication that the committee members of the chamber occupy the same place as the directors in a company. It can be further observed that the recent notification issued by the MCA, on 05th June, 2015, substituted the provision of quorum of directors for a Board meeting to eight members or twenty five per cent of the total strength, whichever is less. It is also an indication that the management committee in chambers of commerce is equivalent to the Board of directors of a company. The Board of directors of the company comprises the managing directors and whole time directors as its key managerial personnel but in case of management committee in a chamber of commerce the key managerial personnel are generally designated as president, senior vice president and vice president. Further, a company can appoint maximum of 15 directors on its Board and can increase the number with the previous approval of shareholders, but in case of the chambers of commerce such restriction has been removed and it can appoint any number of members in its managing committee pursuant to its articles of association and their designation shall be committee members.

Position of the committee members

The position of committee members in chambers of commerce is co-extensive to that of the directors as mentioned in the Act. They possess the same responsibilities, liabilities and duties as that of the directors. A person can be a director in maximum twenty companies but the positions of holding managing committee membership of chambers of commerce are not counted for the purposes of said ceiling. Besides, various other provisions relating to the directors like quorum of the Board meeting, candidature and consent to act as director are exempted for the chambers of commerce. However, MCA has clarified that the directors of the company act in fiduciary capacity and similarly the members of the managing committee act in the fiduciary capacity to the chambers of commerce.

Independent directors

As per the provisions of the Act, the listed companies and the public companies having paid up capital of rupees ten crores or turnover of rupees

one hundred crores or loans debentures and deposits exceeding rupees fifty crores, are required to appoint the requisite number of independent directors. MCA in its notification dated 05th June, 2016 has exempted the concept of the independent director on the chambers of commerce. The concept of independent director is not applicable to chambers of commerce and accordingly the related provisions of the independent directors are also exempt like definition of independent director, manner of selection, declarations of independent director, compliance with Schedule IV, compensation to the independent directors, term of independent director and independent director to be non-rotational directors.

The basic concept behind appointment of independent director is to look into the affairs of the company so that the promoter directors and related parties are not able to use their undue influence in the company. The companies carrying on business are managed by the Board of directors, who are generally related to the company; at times there are certain conflict of interest between the personal gains of the directors and organisational gains of the company. But in the case of chambers of commerce, the objective is to work for the welfare of the society and protection of environment etc., and not to generate any profit and distribute among the members. Therefore, there is no conflict of interest in the chambers of commerce among the managing committee members. Similarly, MCA has very categorically exempted chambers of commerce from appointment of independent directors in the constitution of audit committee and also not required to constitute the nomination and remuneration committee.

Conclusion

Chambers of commerce are also governed by the provisions of their memorandum and articles of association like other companies. The members of managing committee act in the fiduciary capacity to the chambers of commerce and, therefore, shall act diligently in the company and abide all the applicable rules on it so that the object for which the chamber is incorporated is not defeated anywhere.

Overall, the chambers of commerce though registered under section 8 of the Act, are different from a company with respect to the appointment of directors and constitution of the Board of directors. They work for the social welfare, protection of environment and, therefore, the Central Government has also relaxed various provisions over them, so that they could focus more on their main objects instead of paying much heed towards unwarranted compliances.

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