

Number game in the appointment of independent directors

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At the time of establishment of a company, active role is taken by industrialists, business tycoons and even by the government. At the initial stage itself, many calculations are made by those involved in promoting the companies (promoters) from the business proposals and its prospects, requirement of funds and its sources, break-even points to making profits and so on. The risk appetites of such promoters are very high and, therefore, caution would be exercised without giving any chance for derailment.



Board of directors

In companies promoted by government, individuals are identified to be on the Board of directors by the government itself who are the promoters. Private sector promoters take active part in the Board of directors by themselves with further association of their relatives and friends with their professional background, experience and goodwill.

The lenders who join hands with such companies also consider and calculate the role of promoters, their past experience, association and their commitment for investment. As for companies which went into public participation before the commencement of the Companies Act, 2013 (the Act), much consideration was given by public to the goodwill and background of the promoters.

Independent directors

The concept of corporate governance (CG) is the birth place of independent directors (IDs). The Securities and Exchange Board of India (SEBI) had first brought into existence the appointment of IDs in listed companies and the number of such appointment of IDs changed from time to time. The Act also followed such appointment of IDs in unlisted public companies.

Both SEBI and the Act have elaborated who can be appointed as IDs, their role, terms and other conditions. The basic objective of appointment of IDs is to protect the shareholders and, more particularly, the shareholders who are other than the promoters. Interestingly, IDs are identified by the same

promoters who have majority of stakes in the company and one wonders whether such practice would meet the objective of appointment of IDs.

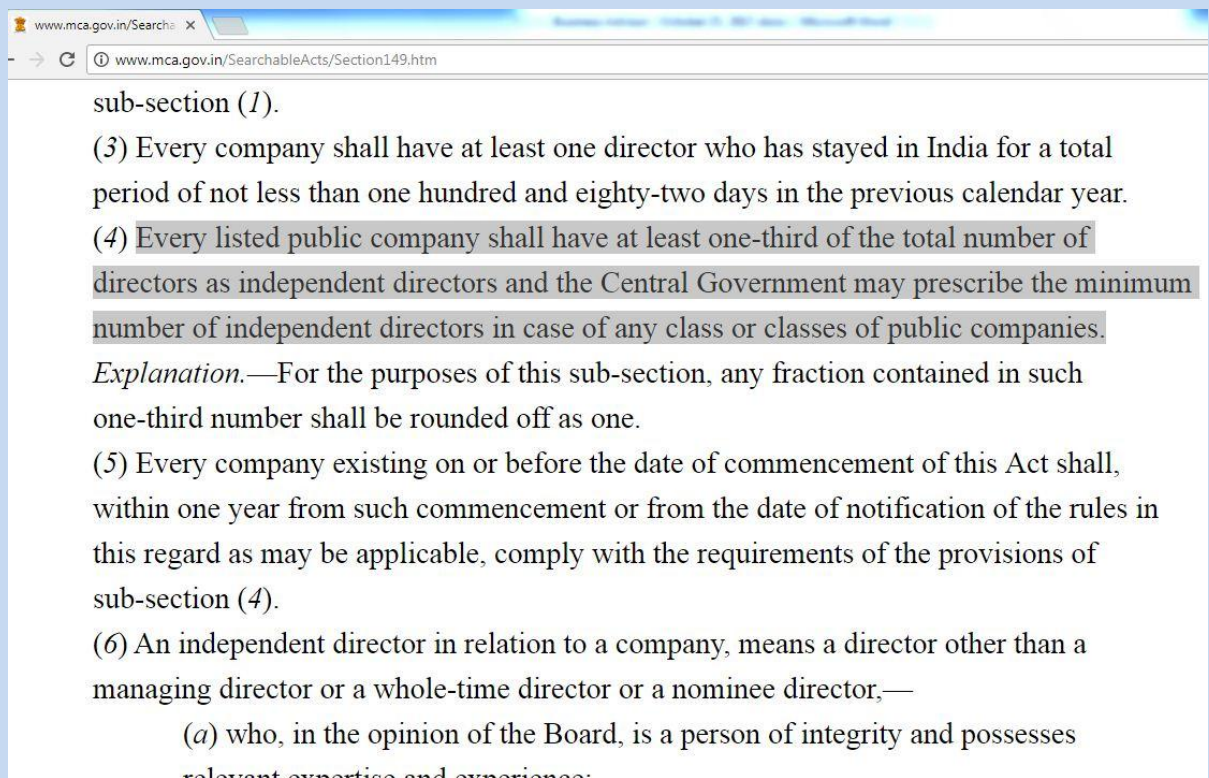
Number game in appointment

SEBI stipulated two types of appointment of IDs, (i) one-third of the Board, and (ii) half of the Board. The Act came into existence from 01.04.2014 but it has spelt out another number game of a minimum of three IDs. The Uday Kotak committee recently recommended that every listed company shall have its Board with half being IDs.

Code for IDs

In today's scenario, the sustainability of a corporate entity is not only to protect the shareholders but to take every stakeholder on the Board. The objective of a company is not only to maximise the profits for the shareholders but also to take care of the interest of all communities, environment and so on. The participation of small investors through mutual funds is increasing steadily and there needs to be an ID to represent the mutual funds collectively, where their holding is 10% and above. There is a code of conduct for IDs under the Act. But, where the number of IDs is in even number and 50% of the IDs give their dissent, by merely recording their dissent, would it serve the investors' protection?

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The screenshot shows a web browser window with the address bar displaying "www.mca.gov.in/SearchableActs/Section149.htm". The main content area displays the text of Section 149 of the Companies Act, 2013. The text is as follows:

sub-section (1).

(3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

(4) 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.

(5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

(6) 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;