



Revamped norms proposed for independent directors by SEBI - "Dual Approval" envisaged for appointment and removal of IDs | Master Circular on Surveillance of Securities Market

INSIGHTS

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In order to strengthen the institution of independent directors (IDs) and enhance their effectiveness in protection of the interest of the minority shareholders, and other functions, SEBI has issued a consultation paper proposing broadening the eligibility criteria for IDs, changes in the process of appointment/re-appointment and removal of IDs, enhancing transparency in the nomination and resignation of IDs, strengthening the composition of Board Committees, and review of remuneration of IDs (**Consultation Paper on Independent Directors**). The recommendations are provided below.

Additionally, in order to enable the users to have access to the applicable circulars relating to surveillance of the securities market, SEBI has issued a Master Circular on Surveillance of Securities Market ([available here](#)) compiling the relevant circulars issued by Integrated Surveillance Department, which are operational as on March 1, 2021.

Changes proposed under the Consultation Paper on Independent Directors

SEBI has proposed the following changes:

Eligibility criteria for IDs	<ul style="list-style-type: none">Key Managerial Personnel (KMPs) or employees of companies forming part of the promoter group and relatives of such KMPs cannot be appointed as IDs, unless there has been a cooling off period of 3 years;Cooling-off period in case of a material pecuniary relationship between person or his/her relative and the listed entity/its holding company/subsidiary/associate company to be increased to 3 years from 2 years.
Appointment/ Re-appointment of IDs	<ul style="list-style-type: none">Minority shareholders to have greater say in the appointment re-appointment process of IDs;Appointment and re-appointment of IDs to be subject to "dual approval", taken through a single voting process and meeting following two thresholds:<ul style="list-style-type: none">Approval of shareholders through ordinary resolution in case of appointment and special resolution in case of re-appointmentApproval by 'majority of the minority' (simple majority) shareholders. 'Minority' shareholders would mean shareholders, other than the promoter and promoter group.If either of the approval thresholds are not met, the person would have failed to get appointed / re-appointed as ID. Further, in such case, the listed entity may either:<ul style="list-style-type: none">Propose a new candidate for appointment/re-appointment; orPropose the same person as an ID for a second vote of all shareholders (without a separate requirement of approval by 'majority of the minority'), after a cooling-off period of 90 days but within a period of 120 days. Such approval for appointment/re-appointment shall be through special resolution and the notice to shareholders will include reasons for proposing the same person despite not getting approval of the shareholders in the first vote.
Removal of IDs	<ul style="list-style-type: none">Minority shareholders to be given a say in the removal process of IDs;Removal of IDs to be subject to "dual approval", taken through a single voting process and meeting following two thresholds:<ul style="list-style-type: none">Approval of shareholders through ordinary resolution in case of removal in the first term and special resolution in case of removal in the second term.Approval of 'majority of the minority' (simple majority) shareholders. 'Minority' shareholders would mean shareholders, other than the promoter and promoter group.If either of the approval thresholds are not met, the person would have failed to get removed as an ID. In such case, the removal of such ID may again be proposed through a second vote of all shareholders (without a separate requirement of approval by 'majority of the minority'), after a cooling-off period of 90 days but within a period of 120 days. Such approval for removal shall be through special resolution and the notice to shareholders will include reasons for proposing the removal again despite not getting approval of the shareholders in the first vote.

Role of Nomination and Remuneration Committee (NRC) in selecting IDs	<ul style="list-style-type: none"> Process for shortlisting of the candidate by NRC to be laid down; Disclosures to be made regarding the process followed by NRC for selection of candidates for the post of ID; Composition of NRC to be modified to include 2/3rd IDs instead of majority of IDs.
Prior approval of shareholders for appointment of IDs	<ul style="list-style-type: none"> IDs to be appointed on the board only with prior approval of the shareholders at a general meeting; In case, a casual vacancy arises due to resignation/removal/death/failure to get re-appointed etc., the approval of shareholders to be taken within a time period of 3 months.
Resignation of IDs	<ul style="list-style-type: none"> The entire resignation letter of an ID to be disclosed along with a list of his/her present directorships and membership in board committees; If an ID resigns from the board of a company stating reasons such as pre-occupation, other commitments or personal reasons, there will be a mandatory cooling-off period of 1 year before the ID can join another board; There should be a cooling-off period of 1 year before a director can transition from an ID to a whole-time director.
Composition of Audit Committee	<ul style="list-style-type: none"> Considering the importance of the Audit Committee with regard to related party transactions and financial matters, Audit committee to comprise of 2/3rd IDs and 1/3rd Non-Executive Directors (NEDs) who are not related to the promoter, including nominee directors, if any.
Remuneration of IDs	SEBI has sought views on whether there is a need for reviewing the remuneration structure for IDs. If so, (i) Whether ESOPs with a long vesting period of 5 years, be permitted for IDs, in place of profit linked commission, and (ii) What should be the maximum limit of remuneration through ESOPs.

Detailed proposal and recommendations are provided under SEBI Consultation Paper on Review of Regulatory Provisions relating to Independent Directors dated March 1, 2021 ([available here](#)). Public comments have been sought till **April 1, 2021**

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com

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