INCREASE IN RESPONSIBILITY AND LIABILITY OF BOARD MEMBERS

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Overview Of Director and Board of Directors

- As per Section 2(34) of the Companies Act (CA), 2013 a DIRECTOR is an individual who is appointed to the Board of the company.
- As per Section 2(10) of the CA Board or Board of Directors in the company means the altogether body of the directors of the company
- Company's Board of Directors is chosen by following the procedures outlined in the Companies Act of 2013 and the company's Articles of Association.
- Therefore, A board of directors is nothing but a group of people chosen by shareholders to represent them and who are in control of the company's operations ***on their behalf***.

Overview Of Director and Board of Directors (contd)

- BOD has to exercise strategic oversight over business operations, ensure compliance with the legal framework, integrity of financial accounting and reporting systems and credibility in eyes of stakeholders. BOD's responsibilities inherently demand the exercise of judgment. Therefore, BOD has to be vested with a reasonable level of discretion.
- Corporate governance comprises both legal and behavioral norms, but no written set of rules or law can contemplate every situation that a director or the board collectively may find itself in.
- Besides, existence of written norms in itself cannot prevent a director from abusing his position while going through the motions of proper deliberation prescribed by written norms. Therefore behavioural norms that include informed and deliberative decision making, division of authority and monitoring of management are equally important.
- It has become important to prescribe an appropriate basic framework that needs to be complied with by all companies without sacrificing the basic requirement of allowing exercise of discretion and business judgment in the interest of the company and the stakeholders.

Governance of the Board of Directors

BOUND BY:
Companies Act, 2013
Memorandum of Association
Articles of Association
Any Regulation made by the company during general meetings

Independent Directors

Topic	Details
Need for independent director	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**. They bring an element of objectivity to Board process in the general interests of the company and thereby to the benefit of minority interests and smaller shareholders. This is particularly important for public companies or companies with a significant public interest.
Number of independent directors	In general, a minimum of one third of the total number of directors as independent directors should be adequate for a company having significant public interest, irrespective of whether the Chairman is executive or non-executive, independent or not.
Mode of appointment	The appointment of independent directors should be made by the company from amongst persons, who in the opinion of the company, are persons with integrity, possessing relevant expertise and experience and who satisfy the above criteria for independence.

Functions of Independent Director

- Bring an independent judgment to bear on BOD's deliberations

- Bring an objective view in the evaluation of the performance of the BOD and the management

- Scrutinize the performance of management in meeting agreed goals and objectives and monitor the reporting of performance

- Balance the conflicting interests of the stakeholders

- Safeguard the interests of all the stakeholders, especially minorities

- Determine appropriate levels of remuneration of executive directors, KMP and senior management and have a prime role and appointing and recommending removal of executive directors, KMP and senior management

Number Of Directorships and Alternate Directors

Topic	Details
Total number	The total number of Directorships any one individual may hold should be limited to a maximum of 15. This is necessitated so that the same person is not an alternate director in a large number of companies which may result in deficiency in discharge of duties.
Limit within same company	An individual should not be appointed as an alternate director for more than one director in the same company.
Interchangeable with Independent director	An alternate director may be allowed to be appointed for an independent director. However, such alternate director should also be an independent director.
Liability structure	Same liability structure as would be applicable to Independent Directors should also apply to Alternate Directors to Independent Directors.

Committees for discharge of increased responsibilities

Name	Duties and responsibilities
Audit Committee	• Chairman of the Committee should be independent • At least one member of Audit Committee to have knowledge of financial management or audit or accounts • The Chairman of the Audit Committee should be required to attend the Annual General Meeting of the company to provide any clarification on matters relating to audit. • The recommendation of the Audit Committee if overruled by the Board, should be disclosed in the Directors' Report along with the reasons for overruling.

Committees for discharge of increased responsibilities

Name	Duties and responsibilities
Nomination and Remuneration Committee	• For listed and other prescribed class of Companies • 3 or more non-executive directors out of which not less than half should be independent • In charge of key responsibilities including Board recruitment, succession planning, annual Board evaluations, induction, training and development of new directors, building strong qualified Board and evaluating their performances

Committees for discharge of increased responsibilities

Name	Duties and responsibilities
Stakeholders Relationship Committee	• Required for companies having more than 1,000 shareholders, debenture holders, deposit holders and any other security holders • Chairperson shall be non-executive member, and other members as decided by Board • Responsibilities include approving and reviewing the mechanism adopted for redressing the grievance(s) of the security holders and the status of such redressal and all other matters relating to the stakeholder grievances

Committees for discharge of increased responsibilities

Name	Duties and responsibilities
Corporate Social Responsibility Committee	• Required for companies having net worth of Rs. 500 crores or more, turnover of Rs. 1,000 crores or more, or net profit of of Rs. 500 crores or more in any financial year • Committee to have 3 or more directors, out of which one should be an independent Director • Responsibilities include: a) Formulate and recommend to the Board, the Corporate Social Responsibility Policy and the activities to be undertaken by the Company. b) Recommend the amount of expenditure to be incurred on CSR activities. c) Monitor the Corporate Social Responsibility Policy from time to time.

Duties of Directors

- Major corporate failures in recent years, such as Kingfisher, Sahara, and Satyam, have repeatedly shown the ineffectiveness of the Company Act 1956 in enforcing corporate governance. Every time, it is the Directors who are responsible for failing to meet Shareholder expectations and, on occasion, betraying stakeholder sentiments under the guise of charisma, thereby exploiting corporate mechanisms for personal gain. Companies Act 2013 was passed almost 50 years after the last amendment to address this challenge. It is founded on the principles of board accountability, shareholder protection, self-regulation, and transparency by disclosures.

- The 2013 amendment has ensured a number of successful steps by specifically specifying the Directors' liabilities and duties, as well as the penalties that would be imposed if they are not followed.

- Section 166 of the CA Act, 2013 enumerates the duties of directors, which apply to all categories of directors, including independent directors.

Basic duties and responsibilities of Directors

- Direct the affairs of the Company and to exercise such control that the wealth and wealth creating assets of the Company are protected

- Duty of care and diligence, Exercise of powers in good faith, i.e., discharge of duties in the best interest of the company, no improper use of position and information to gain an advantage for themselves or someone else and Duty to have regard to the interest of the employees

Duties of Directors – as per CA, 2013

<u>Two broad categories of duties and responsibilities:</u>

1) The roles, liabilities, and obligations that foster corporate governance through directors' sincere efforts inefficient management and quick resolution of critical corporate issues, as well as sincere and mature decision-making to avoid unnecessary risks to the corporate organization and its shareholders.

2) Putting the company's and its stakeholders' interests ahead of personal ones.

Duties of Directors – Section 166 Of CA Act, 2013

- A director must behave in compliance with the company's Articles of Association
- A director must act in the best interests of the company's stakeholders and promote the company's objectives in good faith.
- A director must exercise impartial judgment in carrying out his responsibilities with due consideration, ability, and diligence.
- A director should always be mindful of potential conflicts of interest and strive to prevent them in the best interests of the company
- Before authorizing related party transactions, the Director must ensure that proper deliberations have to be taken place and that the transactions are in the company's best interests.
- To ensure that the company's vigilance system and users are not harmed as a result of such use.

Duties of Directors – Section 166 Of CA Act, 2013

- Confidentiality of confidential proprietary knowledge, business secrets, inventions, and unpublished prices must be maintained and should not be revealed until the board has authorized it or the legislation requires it
- A Company's Director can not appoint his or her office, and any such assignment is invalid.
- If a company director violates the provisions of this section, he or she will be fined not less than one lakh rupees but not more than five lakh rupees.
- The Companies Act of 2013 also assigns different roles to Independent Directors in order to ensure the Board's independence and fairness. An Independent Director is a member of the Board of Directors who does not hold any stock in the company and has no financial ties to it other than the fees it earns for serving on the board. According to the Companies Act of 2013, Schedule IV

Duties of Directors – Section 166 Of CA Act, 2013

- Protecting and promoting the interests of all stakeholders, especially minorities shareholders.
- In the event of a conflict of interest among the stakeholders, acting as a mediator.
- Assistance in delivering an independent and fair decision to the Board of Directors.
- Adequate attention is paid to transactions between related parties.
- Any unethical activity, code of ethics breach, or alleged fraud in the company should be reported honestly and impartially.

Liabilities of Directors

- For any and all acts prejudicial to the company's interests, the directors may be held jointly or collectively liable. Despite the fact that the Director and the Company are distinct bodies, the Director can be held responsible on behalf of the Company in the following situations:
- Directors who fail to make the necessary disclosures under the SEBI (Acquisition of Shares & Takeovers) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992 can face legal action from SEBI.
- Refunding of share application or excess in share application fee
- To pay for qualification shares
- Civil Liability for Prospectus Misrepresentation

Tax Liability:

Unless a Director or a Former Director can show that the non-recovery or non-payment of taxes is due to gross negligence or violation of duty, any present or past Director (during the defaulter's time period) will be liable to pay tax deficit and any penalties.

Criminal Liabilities associated with Directors’ actions

- Bounced or dishonored checks: Under the Negotiable Instruments Act of 1881, a Director's signature on a dishonored check may result in criminal charges, in addition to the company's income tax violations under the 1961 Income Tax Act, and under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and the Factories Act, 1948.
- Derivative action is characterized as an action taken by one or more shareholders of a corporation in which the company is the plaintiff and relief is sought on its behalf. It must, however, be presented in a representative manner.
- A shareholder can bring an action against the company and its directors for matters that are in violation of the company's Memorandum or Articles and that no majority shareholder can sanction.
- Directors and the corporation could be held liable if the majority of shareholders engage in "fraud on the minority," or discriminatory conduct. As a result, this is an extremely valuable clause for Directors to be aware of and strive to take advantage of as much as possible.
- The Companies Act requires a corporation to purchase insurance to cover itself against losses caused by its directors. A director may also purchase insurance to compensate for losses incurred due to liability to the company, with the premium charged by the company.

THANK YOU