

Independent Directors – start your preparations

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In brief

MCA has introduced Online proficiency test will be conducted by the Indian Institute of Corporate Affairs (IICA) which is mandatory all the Independent Directors.

In detail

The role of Independent Directors first came into limelight after the Satyam scandal and 10 years on, we wonder how far they have come. Their powers and responsibilities towards stakeholders are enormous but even today there exist unfair and biased work which is unjust. The recent scam at IL&FS brings their role once more into perspective.

On October 22, 2019 the notification was published by the Ministry on "Appointment and Qualification of Independent Directors". The amended rules Companies (Appointment and Qualification of Director) Fifth Amendment Rules, 2019, – Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019 and – Companies (Accounts) Amendment Rules, 2019 and will come into force with effect from December 1, 2019.

This move is introduced with a view to strengthen the Corporate Governance practices in India. Online proficiency test will be conducted by the Indian Institute of Corporate Affairs (IICA) which will also be responsible for maintaining the databank containing name, address and qualifications of the person eligible and hereby displaying the names of members who have cleared the exams in the data bank.

Compliance requirements

1. A person appointed as an Independent Director on the commencement of the said rules

should apply to the institute for the inclusion of his name within a period of five months.

2. A person who intends to be appointed as the independent Director of the company after the commencement of the said rules shall apply to the institute before his appointment for the inclusion of his name.

Additional Compliances

Independent directors should submit the declaration of compliance of this rule while submitting a declaration under Section 149(7) of the Companies Act, 2013.

Exemptions

An individual who has served for more than ten years in a public listed company or in an unlisted company having paid-up share capital of rupees ten crores or more shall not be required to pass the online proficiency self-assessment test. The period during which the individual acting as director or as a key managerial person shall be counted as one.

Passing Criteria - 60%.

Validity Time

Name included in the data bank of independent directors is valid for 1 year, 5 years or lifetime of applicant as requested.

Fees

There are prescribed fees for the inclusion of the name as well as for the Companies if they wish to access such a database for the appointment of the Independent Director as would be fixed by the

Indian Institute of Corporate Affairs with the prior approval of the Central Government.

Privacy

The person whose name is listed on the databank can restrict his personal information to be disclosed in the databank.

It also provides the duties of the institute and the composition of the panel set-up for this purpose.

Renewal

Every individual within 30 days of expiry renew his/her name for further 1 year, 5 years or lifetime as the case may be, failing which, the name of such individual shall stand removed from the data bank.

Duty of Board

The Companies Accounts Amendment Rules, 2019 cast the duty on the Board of the Company to declare in its Directors report that the independent directors have cleared the self-assessment test or are exempted from the same.

Conclusion

The indication behind the new approach seems that the Ministry wants the Independent Directors to become more aware and cautious about their roles and responsibilities towards stakeholders so that Corporate Governance can be enhanced. A start of the progressive step towards better Corporate Governance Practices has begun. However, this is the beginning and we will have wait to see how will it practically lead the desired results.



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