

Terms and Conditions for appointment of Independent Director

- A director will be considered as an "independent director" if the person meets with the criteria for 'independent director' as laid down in the Act and Clause 49 (as may be applicable).
- The definition of Independence as provided in the Act and Clause 49 is as follows:

“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;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) Who is not related to promoters or directors in the company, its holding, subsidiary or associate Company;

(c) who has or had no pecuniary relationship with the company, its holding subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) None of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of-

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) Any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) Holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) Is a Chief Executive or director, by whatever name called, of any nonprofit organization that receives twenty-five per cent. Or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company;

(v) is a material supplier, service provider or customer or a lessor or lessee of the company; (additional provision as per Clause 49);

(f) who is not less than 21 years of age (additional provision as per Clause 49)

- While recommending appointment of an ID, it is expected that the NRC consider the manner in which the function and domain expertise of the individual contributes to the overall skill-domain mix of the Board. IDs ideally should be thought/ practice leaders in their respective functions/ domains.
- IDs are expected to abide by the 'Code for independent directors' as outlined in the Act. The Code specifies the guidelines of professional conduct, role and function and duties of independent directors.
- These are as follows:

"I. Guidelines of professional conduct: An independent director shall:

- 1) uphold ethical standards of integrity and probity;*
- 2) act objectively and constructively while exercising his duties;*
- 3) exercise his responsibilities in a bona fide manner in the interest of the company;*

- 4) *devote sufficient time and attention to his professional obligations for informed and balanced decision making;*
- 5) *not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;*
- 6) *not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;*
- 7) *refrain from any action that would lead to loss of his independence;*
- 8) *where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;*
- 9) *Assist the company in implementing the best corporate governance practices.*

II. Role and functions: *The independent directors shall:*

- 1) *Help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;*
- 2) *bring an objective view in the evaluation of the performance of board and management;*
- 3) *scrutinize the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;*
- 4) *satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;*
- 5) *safeguard the interests of all stakeholders, particularly the minority shareholders;*
- 6) *balance the conflicting interest of the stakeholders;*
- 7) *determine appropriate levels of remuneration of executive*

directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;

- 8) Moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.*

III. Duties: *The independent directors shall*

- 1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;*
- 2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;*
- 3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;*
- 4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;*
- 5) strive to attend the general meetings of the company;*
- 6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;*
- 7) keep themselves well informed about the company and the external environment in which it operates;*
- 8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;*
- 9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;*
- 10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;*

- 11) *report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct duct or ethics policy;*
 - 12) *acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;*
 - 13) *not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law*
- *In addition to the above, the Code for independent directors' in the Act, also covers aspects on "Manner of Appointment, Re-appointment, Resignation or Removal, Separate Meetings and Evaluation Mechanism".*
 - IDs should be provided with the freedom to constructively challenge strategies and policies proposed by management. They should also be at the liberty to use all channels of communication, formal as well as informal, to put across their point of view to the management
 - IDs will not be liable for retirement by rotation.

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