



Know your Independent Director Meeting compliance requirements and enhancing corporate governance



**Deloitte Forensic
Business Intelligence services**

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Independent Directors represent the interests of minority shareholders and are expected to ensure effective corporate governance. However, at times, the theoretical benefits of this may not be completely practiced in the intended manner. There have been some cases in the past that demonstrate disturbing facts on how Independent Directors (IDs) have been negligently appointed where some are mere graduates, lacking basic industry knowledge. In some of the scams, a large number of IDs have also found to be related to the company's promoters. In such a scenario, these IDs may have been reluctant to question the board's decisions.

How independent is your Independent Director?

- Background, track record and reputation
- Requisite knowledge and experience
- Management style
- Unethical business practices
- Political affiliations and social profile
- Litigation record/ involvement in dispute
- Conflict of interest



Requirements under law



The Companies Act, 2013

Indian lawmakers have attempted to address the issue in the newly enforced Companies Act, 2013 (the Act), which makes companies responsible for ensuring the independence of their Independent Directors. The Act has prescribed specific parameters against which the eligibility of Independent Directors needs to be evaluated. The major notable requirements mandated by the Act for exercising due diligence when appointing IDs are provided below.

- Integrity and experience
A person of integrity and should possess relative expertise and experience.
- Conflict of interest and independence
 - Not a current/former/related to the promoter of the company, its affiliates or upstream owners.
 - Has or had no pecuniary relationship (including sub-clauses on relatives) with the company/

subsidiary/affiliates during the two immediately preceding financial years or during the current financial year.

- An ID should not have been an employee or proprietor of a legal or consulting firm that has derived 10 per cent or more of its revenue from the company in the past three financial years.
- Neither the ID nor any relatives should have been associated with a firm providing audit, company secretary or cost audit services to the company, its affiliates or upstream owners in the past three financial years.
- Restriction on holding a position at a non-profit that receives 25 per cent or more of its receipts from the company or related parties.
- Restriction on holding two per cent or more of voting power in the company either directly, through relatives or other entities.



SEBI's Clause 49 of the Listing Agreement

While the revised Clause 49 will be applicable to all listed companies with effect from 1 October 2014, it is important to remember that this new Clause also confers greater power and responsibility on the Independent Directors on matters relating to corporate governance. It also incorporates certain selection criteria leading to

greater transparency, similar to those mentioned by the Companies Act, with an added restriction:

- Has not been a material supplier, service providers or customer of the company.

Responsibility to exercise due diligence

While the scope and extent of the appropriate due diligence might tend to vary across circumstances, under the law i.e. the Companies Act, 2013 holds companies responsible for exercising due diligence on Independent Directors as per Section 150 (1).

To ease the process of the selection of Independent Directors, the Central Government has also aimed to create and maintain a data bank of persons willing and eligible to be appointed as Independent Directors that will be placed on the website of the Ministry of Corporate Affairs or on any other website as may

be approved or notified by the Central Government. However, the eventual responsibility of exercising due diligence before selecting a person from this data bank (as an Independent Director) lies with the company itself. While companies are free to choose a suitable person from this data bank, it is also important to remember that the Central Government may not be held responsible for the accuracy of information or suitability of the person forming a part of the data bank. In such a case therefore, a due diligence is of paramount importance.

How we can help

Our Independent Director Due Diligence (“IDD”) solution offers years of business intelligence experience to a rigorous due diligence process for potential or existing ID candidates. We leverage public information sources, proprietary databases and our intelligence experts to gather qualitative information to assist in complying with the new requirements mandated by law.

The due diligence would typically include a candidate’s business background, domain expertise, experience and reputation apart from tracking past legal or regulatory action and conflict of interest situations. Candidates are also examined for political exposure and “red flag” issues such as bribery, corruption and links to organized crime.



What we probe

You need to know



Background, track record and reputation

- **Family background, opinions of former employers and colleagues**
- **Risk to your reputation by hiring this individual**



Management style

- **The individual’s management style, accountability and if his values match those of your organization**



Integrity

- **Instances of bribery, fraud or mismanagement and if this has been a trend across his prior positions**



Litigation

- **If the individual has been involved in civil or criminal proceedings and if yes, who these issues involve**



Conflict of interest

- **If there are any undisclosed business interests**
- **If there are connections to competitors or other parties that may compromise his judgment**



Political affiliations

- **If the individual is politically connected and if his connections have contributed to his growth**
- **If the company may face problems from a shift in the political power balance**



Why Deloitte Forensic

The Deloitte Forensic team has over 300 person-years of senior management experience and been able to successfully deliver quality results in the most challenging assignments. Covering various areas under business intelligence, disputes, discovery, investigations, analytics and advisory; our 150+ member team possess various skill sets and diverse educational backgrounds such as CAs, MBAs, CFEs, forensic accountants, research specialists, computer forensic specialists, engineers, lawyers, investigative journalists, economists and professionals with law enforcement experience.

Working according to a proven methodology with strict quality control procedures, our due diligence is conducted using a combination of public record research, application of our existing in-depth knowledge, and gathering information through our network of trusted sources.

We have access to public and private databases such as corporate registries, press and court

archives and international lists of concern. Our experience enables us to determine the quality and timeliness of information and to cross-check it across different independent sources. Our team has extensive experience selecting and using reliable sources of information, while also providing suitable context.

When working with confidential sources, we first vet these sources and ensure that they operate according to Deloitte's strictest standards of confidentiality and ethical behavior. We undertake certain confidentiality measures to avoid any leakage of information related to the client and the engagement.

Additionally, our Business Intelligence services team has conducted several due diligence assignments across the globe and can provide a unique insight into the key risks associated with a wide range of sectors and jurisdictions.

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