



PREFACE

Economic liberalization and globalization resulted into the enormity of corporates as the centre of economic power. Many of today's corporates are larger and more powerful than many a nation. Obvious enough, these economic behemoths do not represent the interest of their proprietors or owners. The owners themselves are scattered into institutional and other retail investors all over the world and in addition, massive money of bankers, lenders and others. With power inevitably come responsibilities and responsibilities throw issues of governance. Can those running corporates run them as if they are running proprietary shops? Every crisis and every scam makes regulators of the world sit back and think about best corporate practices. While the day may not be far when the clock of de-regulation may be turned back into a level of re-regulation, currently, corporate governance seems to be the theme of the hour in ensuring that corporates are not run for segmental interests and that those of variety of stakeholders are not ignored while the board of directors are on the driving seat of the corporate vehicle. The primary organ of executive management of the company is the executive board. Many countries, including India, do not have the distinction between executive and supervisory boards. Therefore, in Indian legal system, the board may or may not be performing executive functions. However, beyond doubt, the primary responsibility for policymaking and supervision is on the board of directors. While recent reports of boards of directors specifically contain a so-called Directors' Responsibility Statement, whether they say so or not, it is innate understanding

that the board is the collective body that has the first answerability for whatever happens in the company. Since boards run companies and companies have to balance the interests of stakeholders, the presence of an independent director in the board becomes a primary tool of corporate governance.

Independent directors are, by definition, people without any stake in the company. Free from any personal stakes, they can hopefully take an independent view of the running of the company. Much as there might be legal provisions on related party transactions and regulation of directors' interests, it is sheer human instinct that greed overpowers wisdom and therefore, those having their own stake in the company may be tempted to run companies to serve personal interests. Therefore, the onus is on independent directors to ensure that they serve as the balancing mechanism on corporate boards.

From being mere embellishments on boards to those who can be looked at for providing checks and balances, the institution of independent directors has assumed as much significance, as responsibility. World-over, courts and regulators are inclined to lean on independent directors, particularly when it comes to approving transactions with directors' interests are involved.

The Companies Act, 2013 provides recognition to the institution of independent director in the basis statute dealing with companies and takes independent director out of the realm of listing. Where there are public stakes, indicated by either a degree of paid up capital, or other indicators, independent directors are required. The law also makes independent directors the appointees of the company in general meeting, rather than the management, to give them the real feeling of independence.

The concept is surely not new, but the legal provisions are. And of course, the tons of liability provisions in the Companies Act has naturally resulted into the scare that independent directors may be scapegoats of regulators punitive instinct. Not only does the law bring liabilities - the law also brings immunities, but of course, every immunity has to be earned and deserved and cannot be taken for granted.

Our book will perhaps be one of the first detailed commentary on independent directors after the passage of the Companies Act, 2013. We have tried to cover almost all fine details, including

complex topics like evaluation of the performance of independent directors.

The book is not merely for the corporate professional - it is an essential guide to all those who are serving or hope to serve corporate boards as independent directors. It is not just an entry-point guide; it is a survival guide too - as we have dealt in great details about how to prove diligence, reasonable care and avoid penalties and prosecutions.

The book is written in lucid style, with language not burdened with legal jargon. Some legal jargon is unavoidable - but we have taken care to include those words into a glossary so as to make the book readable by persons outside the field of law and governance. We are fully aware that persons without any legal or corporate governance background may be joining corporate boards and they are the ones who may be in the maximum need for reading a guide such as this. To retain readers' interest, we have used illustrations with personification. And there are plenty of illustrations. We have also tried to include several filled up forms and templates, so that prospective independent directors may use the book as the basis to carry out their responsibilities in companies.

Needless to say, we will look forward to readers' feedback.

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