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Greetings and a warm welcome to our May 19 Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of May 2019. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI) and Insolvency and Bankruptcy Board of India (IBBI).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circulars issued by regulatory authorities during the month in concise and in simplified manner.

Our article of the month relates to **“Board Room” for which the information is collated from business newspapers and online news websites.**

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,
Amita Desai & Team



A. INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) AMENDMENT RULES, 2019:

- MCA vide its notification dated 1st May, 2019 has amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 and has notified Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2019..
- The said notification has been effective from the date of its publication in the Official Gazette i.e. 1st May, 2019.
- MCA has vide this notification made two amendments, in the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.
- **Amendment in rule 2, in sub-rule(1), in clause (d):**

In the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (d), for the words, brackets, letter and figures “and ‘subsidiary bank’ as defined in clause (k) of section 2 of State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959)”, the words, figures, brackets and letter “, State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955), ‘subsidiary bank’ as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959) and includes any other entity which is required to transfer any fund to Investor Education and Protection Fund in accordance with any Act or statute governing it” shall be substituted.

- **Amendment in rule 3, in sub-rule (2) in clause (g):**

In the said rules, in rule 3, in sub-rule (2) in clause (g), after the words, figures, letter and brackets “section 10B of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980”, the words, figures, letter, and brackets “, sub-section (3) of section 38A of the State Bank of India Act, 1955” shall be inserted.

- The link of the aforesaid notification is as under:
<http://www.iepf.gov.in/IEPF/pdf/IEPFAmendmentRules.pdf>

B. COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES) AMENDMENT RULES, 2019:

- In exercise of the powers conferred by sub-sections (1), (2) and Sub-section (4) of section 248 read with section 469 of the Companies Act, 2013 the Central Government vide its notification dated 8th May, 2019 has amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (hereinafter referred to as the ‘Principal Rules’) through the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019 which have come into force with effect from 10th May, 2019.

- As per the Amendment Rules, in the Principal Rules, i.e. Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, in rule 4, following shall be substituted:

(a) in sub-rule (1), for the words “five thousand rupees”, the following shall be substituted, namely:-

“ten thousand rupees:

Provided that no application in Form No. STK-2 shall be filed by a company unless it has filed overdue returns in Form No. AOC-4 (Financial Statement) or AOC-4 XBRL, as the case may be, and Form No. MGT-7 (Annual Return), up to the end of the financial year in which the company ceased to carry its business operations:

Provided further that in case a company intends to file Form No. STK-2 after the action under sub-section (1) of section 248 has been initiated by the Registrar; it shall file all pending overdue returns in Form No. AOC-4 (Financial Statement) or AOC-4 XBRL, as the case may be, and Form No. MGT-7 (Annual Return) before filing Form No. STK-2:

Provided also that once notice in Form No. STK-7 has been issued by the Registrar pursuant to the action initiated under sub-section (1) of section 248, a company shall not be allowed to file an application in Form No. STK-2.

(b) in sub-rule (3), in clause (ii), after the words, “statement of accounts”, the words, letters and figures “in Form No. STK-8” shall be inserted.

- In the Annexure to the principal rules,-

(a) in Form No. STK-4, in Serial Number 2, after item (vii), the following item shall be inserted, namely:-

“(viii) The company has fulfilled all pending compliances, if any [Applicable in case an application under sub-section (2) of section 248 has been filed after the initiation of action under sub-section (1) of section 248].

(b) after Form No. STK -7, the Form No. STK -8 shall be inserted.

- The link of the aforesaid notification is as under:

http://www.mca.gov.in/Ministry/pdf/AmendmentRules3_08052019.pdf

C. NATIONAL COMPANY LAW TRIBUNAL (SECOND) AMENDMENT RULES, 2019:

- On 8th May 2019, MCA has notified the National Company Law Tribunal (NCLT) (Second Amendment) Rules, 2019 with immediate effect. Vide this notification, Rule 84 of the principal rule namely NCLT Rules 2016 was amended by inserting following sub-rules (3) and (4) which prescribes Right to apply for Class Action u/s 245 of the Companies Act 2013.

- **Rule 3:** In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least 5% of the total number of members of the company; or
(b) 100 members of the company, whichever is less; or

- (ii) (a) member or members holding not less than 5% of the issued share capital of the company, in case of an unlisted company;
- (b) member or members holding not less than 2% of the issued share capital of the company, in case of a listed company.

➤ **Rule 4:** The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

- (i) (a) at least 5% of the total number of depositors of the company; or
- (b) 100 depositors of the company, whichever is less; or;

(ii) Depositor or depositors to whom the company owes 5% of total deposits of the company.

➤ The link of the aforesaid notification is as under:

http://www.mca.gov.in/Ministry/pdf/AmendmentRules1_08052019.pdf

D. COMPANIES (INCORPORATION) FIFTH AMENDMENT RULES, 2019:

➤ In exercise of the powers conferred by sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 the Central Government vide its notification dated 10th May, 2019 has amended the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the 'Principal Rules') through the Companies (Incorporation) Fifth Amendment Rules, 2019 (hereinafter referred to as the 'Amendment Rules') which have come into force with effect from 10th May, 2019.

➤ As per the Amendment Rules, in the Principal Rules, for rule 8, the following rules shall be substituted:

➤ **8. Names which resemble too nearly with name of existing company.-**

(1) A name applied for shall be deemed to resemble too nearly with the name of an existing company, if, and only if, after comparing the name applied for with the name of an existing company by disregarding the matters set out in sub-rule (2), the names are same.

(2) The following matters are to be disregarded while comparing the names under sub-rule (1):-

- (a) the words like Private, Pvt, Pvt., (P), OPC Pvt. Ltd., IFSC Limited, IFSC Pvt. Limited, Producer Limited, Limited, Unlimited, Ltd, Ltd., LLP, Limited Liability Partnership, company, and company, & co, & co., co., co, corporation, corp, corpn, corp or group;
- (b) the plural or singular form of words in one or both names;
- (c) type and case of letters, spacing between letters, punctuation marks and special characters used in one or both names;
- (d) use of different tenses in one or both names;
- (e) use of different phonetic spellings including use of misspelled words of an expression;
- (f) use of host name such as 'www' or a domain extension such as 'net', 'org', 'dot' or 'com' in one or both names;
- (g) the order of words in the names;
- (h) use of the definite or indefinite article in one or both names;
- (i) a slight variation in the spelling of the two names including a grammatical variation thereof;
- (j) complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English;
- (k) addition of the name of a place to an existing name, which does not contain the name of any place;

- (l) addition, deletion, or modification of numerals or expressions denoting numerals in an existing name, unless the numeral represents any brand;

Provided that clauses (f) to (h) and clauses (k) and (l) shall not be disregarded while comparing the names, if a no objection by way of a Board resolution has been provided by an existing company.

➤ **8A. Undesirable names.-**

- (1) The name shall be considered undesirable, if-
- (a) it is prohibited under the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950), unless a previous permission has been obtained under that Act;
 - (b) save as provided in section 35 of the Trade Marks Act, 1999 (47 of 1999), the name includes a trade mark registered under the Trade Marks Act, 1999 and the rules framed thereunder in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;
 - (c) it includes any word or words which are offensive to any section of the people;
 - (d) the proposed name is identical with or too nearly resembles the name of a limited liability partnership:

Provided that the provisions of rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling the name of a limited liability partnership;

- (e) the proposed name is identical with or too nearly resembles with a name which is for the time being reserved in accordance with rule 9:

Provided that the provisions of rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling with a reserved name;

- (f) the company's main business is financing, leasing, chit fund, investments, securities or combination thereof, but the proposed name is not indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc.;
- (g) the company's name is indicative of activities financing, leasing, chit fund, investments, securities or combination thereof, but the company's main business is not related to such activities;
- (h) it resembles closely the popular or abbreviated description of an existing company or limited liability partnership;
- (i) the proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian State or city, if otherwise available:

Provided further that provisions of rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India;

- (j) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG, etc.;

Explanation.- For the purposes of this clause, it is hereby clarified that the name including phrase 'Electoral Trust' may be allowed for registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT):

Provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under the said Electoral Trust Scheme as notified by the Central Board of Direct Taxes;

- (k) the proposed name contains the words 'British India';
- (l) the proposed name implies association or connection with an embassy or consulate of a foreign government;
- (m) the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in the Government;
- (n) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years has not elapsed from the date of such dissolution:

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act or under section 560 of the Companies Act, 1956 (1 of 1956) then the same shall not be allowed before the expiry of twenty years from the date of publication in the Official Gazette being so struck off;

- (o) it is identical with the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;
- (p) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual Fund', etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA, etc. have been complied with by the applicant;
- (q) the proposed name includes the word "State", in case the company is not a Government company;
- (r) the proposed name is containing only the name of a continent, country, State, city such as Asia limited, Germany Limited, Haryana Limited or Mysore Limited;
- (s) Use of descriptive names, where the name merely consists of commonly used words to describe an activity.

Explanation.—For the purposes of this clause,—

- (A) the term “commonly used words” refers to use of generic expressions which may be used by any other company to describe its trade;
- (B) while determining whether a name is descriptive or not, the objects of the proposed company or the order of words appearing in a name shall not be relevant;
- (C) the name shall not be deemed to be descriptive where “commonly used words” are used in addition to other words in the name;
- (t) the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like memorandum of understanding with a company of such country:

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country.

Explanation.- For the purposes of this clause, ‘enemy country’ means so declared by the Government of India from time to time.

- (u) the proposed name of a section 8 company under the Act does not include the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust and the like, etc.
 - (v) the proposed name of a Nidhi company under the Act does not have the last words “Nidhi Limited” as a part of its name.
 - (w) the proposed name has been released from the register of companies upon change of name of a company and three years have not elapsed since the date of change unless a specific direction has been received from the competent authority in the course of compromise, arrangement or amalgamation.
- (2) The applicant shall declare in affirmative or negative (to affirm or deny) whether he is using or has been using in the last five years, the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not.

➤ **8B. Word or expression which can be used only after obtaining previous approval of Central Government.**

In terms clause (b) of sub-section (3) of section 4, the following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression:-

- a) Board;
- b) Commission;
- c) Authority;
- d) Undertaking;

- e) National;
- f) Union;
- g) Central;
- h) Federal;
- i) Republic;
- j) President;
- k) Rashtrapati;
- l) Small Scale Industries;
- m) Khadi and Village Industries Corporation;
- n) Financial Corporation and the like;
- o) Municipal;
- p) Panchayat;
- q) Development Authority;
- r) Prime Minister or Chief Minister;
- s) Minister;
- t) Nation;
- u) Forest corporation;
- v) Development Scheme;
- w) Statute or Statutory;
- x) Court or Judiciary;
- y) Governor;
- z) the use of word Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by Central, State or local Governments and authorities; and
- za) Bureau.”

- The link of the aforesaid notification is as under:

http://www.mca.gov.in/Ministry/pdf/AmendmentRules_08052019.pdf

E. CLARIFICATION FOR FORM ADT-I FILED THROUGH GNL-2 UNDER THE COMPANIES ACT, 2013:

- MCA in continuation of General Circular No. 09/2014 dated 25.04.2014 has received representation from various stakeholders seeking relaxation of fee for filing e-form no. ADT- 1, particularly form ADT- 1 filed through GNL-2 during the period from 01.04.2014 to 20.10.2014 for appointment of Auditor for the period from 01.04.2014 to 31.03.2019 due to non-availability of e-form ADT- I during the said period.
- Accordingly, the matter has been examined and MCA vide its General Circular No. 06/2019 dated 13th May, 2019 clarified that companies which had filed Form no. ADT-1 through GNL-2 as an attachment (by selecting others) during the period from 01.04.2014 to 20.10.2014 may file e-form no. ADT- 1 for appointment of Auditor for the period upto 31.03.2019 without fee, till 15.06.2019 (since fee had been paid for filing GNL-2 for the same purpose) and thereafter fee and additional fee shall be applicable as per Companies (Registration of Office and fees) Rules, 2014.
- Stakeholders are advised to avail this one time opportunity and file ADT-1 without fee as stated above, well in time and adhere to the time lines as specified above.
- The link of the aforesaid general circular is as under:

<http://www.mca.gov.in/Ministry/pdf/GeneralCircular13052019.pdf>

F. COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) SECOND AMENDMENT RULES, 2019:

- In exercise of the powers conferred by the second proviso to sub-section (1), sub-section (4), clause (f) of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 168 and section 170 read with section 469 of the Companies Act, 2013, the Central Government vide its notification dated 16th May, 2019 has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 (hereinafter referred to as the ('Principal Rules') through the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2019 which have come into force with effect from 16th May, 2019.
- As per the Amendment Rules, in the Principal Rules, after rule 12A, Rule 12B pertaining to Directors of company required to file e-form ACTIVE shall be inserted as follows:
- **12B. Directors of company required to file e-form ACTIVE.-**
 - (1) Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, the Director Identification Number (DIN) allotted to its existing directors, shall be marked as "Director of ACTIVE non-compliant company".
 - (2) Where the DIN of a director has been marked as "Director of ACTIVE non-compliant company", such director shall take all necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE.
 - (3) After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as "Director of ACTIVE compliant company".
- The link of the aforesaid notification is as under:
http://www.mca.gov.in/Ministry/pdf/CompaniesRules_16052019.pdf

G. COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) THIRD AMENDMENT RULES, 2019:

- In exercise of the powers conferred by section 26, sub-section (1) of section 27, section 28, section 29, sub-section (2) of section 31, sub-sections (3) and (4) of section 39, sub-section (6) of section 40 and section 42 read with section 469 of the Companies Act, 2013, Central Government vide its notification dated 22nd May, 2019 has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014, (hereinafter referred to as the ('Principal Rules') through the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 which shall come into force with effect from 30th September, 2019.
- As per the Amendment Rules, in the Principal Rules, in Rule 9A, following shall be substituted as follows:
 - (i) in sub-rule (7), for the word and figures "Regulations, 1996", the word and figures "Regulations, 2018" shall be substituted;
 - (ii) for sub-rule (8), the following sub-rules shall be substituted, namely:-

“(8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

(8A) The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.”.

➤ In the principal rules, in the ANNEXURE, after Form PAS-5, Form PAS-6 shall be inserted.

➤ The link of the aforesaid notification is as under:

http://www.mca.gov.in/Ministry/pdf/Rules_23052019.pdf

H. NATIONAL FINANCIAL REPORTING AUTHORITY (MEETING FOR TRANSACTION OF BUSINESS) RULES, 2019:

➤ In exercise of the powers conferred by sub-sections (10) of Section 132 read with section 469 of the Companies Act, 2013 the Central Government vide its notification dated 22nd May, 2019 has made National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019, for Meetings of the Authority and procedure thereof which have come into force with effect from 22nd May, 2019.

➤ As per Rule 3 of National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019:

(1) The meetings of the Authority shall ordinarily be held at its head office situated in New Delhi for the purpose of discharging its functions:

Provided that the Authority may also hold meetings at its other offices or at any other place in India, whenever, in the opinion of the Authority, it is expedient to do so.

(2) The chairperson shall decide in advance, the date, time, place and the agenda for each meeting of the Authority.

(3) The Secretary, and such other officers and persons as permitted by the chairperson, shall attend a meeting of the Authority.

(4) If the chairperson, for any reason, is unable to attend a meeting of the Authority, the senior-most full-time member present at the meeting, shall preside at the meeting.

(5) The Authority may grant leave of absence to a member not present in the meeting and such leave of absence shall be recorded in the minutes of the meeting.

(6) Any member unable to be present in a meeting for any reason may choose to participate in the said meeting through video conferencing.

(7) Wherever considered necessary, a business may be transacted by a resolution passed by circulation of an agenda to the members:

Provided that a resolution passed through circulation of the agenda to the members shall be placed before the next meeting of the Authority for ratification.

- (8) Matters placed for consideration of the Authority shall be decided by a majority of the members present and voting, and in the event of equality of votes, the chairperson or in his absence, the member presiding, shall have a second or casting vote.
 - (9) The quorum for a meeting of the Authority shall be four Members, of which at least one member shall be a full-time member.
 - (10) The Authority shall cause the minutes of all the proceedings to be maintained in the books kept for the purpose which may be in the form of binders containing loose leaves, duly numbered.
 - (11) A copy of draft minutes of the proceedings of each meeting of the Authority shall be circulated as soon as possible for confirmation by the members.
 - (12) The confirmed minutes shall be signed by the chairperson or the member presiding at the succeeding meeting, and taken on record thereafter.
 - (13) A member, who has any pecuniary interest, direct or indirect in any matter that is brought up for consideration at a meeting of the Authority, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and such member shall not take any part in any deliberation or decision of the Authority with respect to that matter.
 - (14) If any doubt arises in the procedure to be adopted in a meeting, the same shall be placed before the chairperson or in his absence, the member presiding, whose decision in this regard shall be final.
- The link of the aforesaid notification is as under:
http://www.mca.gov.in/Ministry/pdf/Rules1_23052019.pdf

SEBI UPDATES

A. SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2019:

- SEBI vide Notification No. SEBI/LAD-NRO/GN/2019/12 dated 7th May, 2019 notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2019, which shall come into force on the date of their publication in the Official Gazette.
- In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, –
- (1) in regulation 52, which deals with Financial Results–
 - (i) after sub-regulation (1), following proviso shall be *inserted*, namely, -

“Provided that in case of entities which have listed their equity shares and debt securities, a copy of the financial results submitted to stock exchanges shall be provided to Debenture Trustees on the same day the information is submitted to stock exchanges.”

(ii) sub-regulations (5) shall be *substituted* with the following, namely, -

“(5) The listed entity shall, within seven working days from the date of submission of the information required under sub- regulation (4), submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.”

➤ The link for the aforesaid notification is mentioned below:

https://www.sebi.gov.in/legal/regulations/may-2019/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2019_42977.html

B. SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE AND LISTING OF DEBT SECURITIES) (AMENDMENT) REGULATIONS, 2019:

➤ SEBI vide Notification No. SEBI/LAD-NRO/GN/2019/13 dated 7th May, 2019 notified the Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2019 which shall come into force on the date of their publication in the Official Gazette.

➤ In the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, –

(1) in regulation 15, after sub-regulation (1), following sub-regulations shall be *inserted*, namely, -

“(1A) Where an issuer fails to execute the trust deed within the period specified in the sub-regulation (1), without prejudice to any liability arising on account of violation of the provisions of the Act and these Regulations, the issuer shall also pay interest of at least two percent per annum to the debenture holder, over and above the agreed coupon rate, till the execution of the trust deed.

(1B) A clause stipulating the requirement under sub-regulation (1A) shall form part of the Trust Deed and also be disclosed in the Offer Document.”

[Note: Regulation 15 (1) states that “A trust deed for securing the issue of debt securities shall be executed by the issuer in favour of the debenture trustee within three months of the closure of the issue.”]

(2) in Schedule I, in paragraph 3, in Part B,

(i) in clause (a), in the table, in the column with respect to Security (where applicable), after the words "replacement of security" and before the symbol ")" the following words shall be inserted, namely –

", interest to the debenture holder over and above the coupon rate as specified in the Trust Deed and disclosed in the Offer Document"

(ii) clause (b) shall be omitted.

- The link for the aforesaid notification is as mentioned below:

https://www.sebi.gov.in/legal/regulations/may-2019/securities-and-exchange-board-of-india-issue-and-listing-of-debt-securities-amendment-regulations-2019_42976.html

C. SECURITIES AND EXCHANGE BOARD OF INDIA (DEBENTURE TRUSTEES) (AMENDMENT) REGULATIONS, 2019:

- Securities and Exchange Board of India (“SEBI”) vide Notification No. SEBI/LAD-NRO/GN/2019/14 dated 7th May, 2019 notified the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2019 which shall come into force on the date of their publication in the Official Gazette.
- Pursuant to the aforesaid Regulations, SEBI has further amended the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

(1) in regulation 7A, -

(i) after the words "net worth of" and before the words "crore rupees", the word "two" shall be substituted with the word "ten";

(ii) following proviso shall be *inserted*, namely: -

“Provided that a debenture trustee holding certificate of registration as on the date of commencement of the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2019 shall fulfil the net worth requirements within three years from the date of such commencement.”

(2) in regulation 15(2), after clause (b), following provisos shall be *inserted*, -

“Provided that a debenture trustee may seek the consent of debenture holders through e-voting, wherever applicable;

Provided further that the requirement to convene a meeting of all debenture holders in case of a default in payment obligation by the issuer, shall not be applicable in case of debentures issued by way of public issue.”

- The link for the aforesaid notification is as mentioned below:

https://www.sebi.gov.in/legal/regulations/may-2019/securities-and-exchange-board-of-india-debenture-trustees-amendment-regulations-2019_42975.html

D. FRAMEWORK FOR THE PROCESS OF ACCREDITATION OF INVESTORS FOR THE PURPOSE OF INNOVATORS GROWTH PLATFORM:

- SEBI earlier launched ‘Institutional Trading Platform’ for a listing of shares of start-ups.
- While there has been a growing interest among the start-ups to get listed, their intention has failed to convert into actual listing due to difficulties in meeting the compliance requirements.

- So, now SEBI has come up with revised version along with relaxing norms for listing of new-age venture start-ups operating in e-commerce, data analytics, biotechnology, sectors to raise funds and get their shares traded on stock exchanges.
- The name of the platform is changed from 'Institutional Trading Platform' to '**Innovators Growth Platform**'. This platform shall be accessible by institutional investors, non-institutional investors and retail individual investors.
- SEBI vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2019/67 dated 22nd May, 2019, provided a framework for the process of accreditation of investors for the purpose of Innovators Growth Platform.
- For the purpose of Innovators Growth Platform (“IGP”), Accredited Investors (“AIs”) are investors whose holding in the Issuer Company, is eligible for the computation of at least 25% of the pre-issue capital in accordance with Regulation 283(1) of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”).
- The following entities shall be **eligible** to be considered as AIs:
 - (i) Any individual with total gross income of ₹ 50 lakhs annually and who has minimum liquid net worth of ₹ 5 crores; or
 - (ii) Anybody corporate with net worth of ₹ 25 crores.
- For accreditation as an AI for the purpose of IGP, the investor having a demat account with a Depository shall **submit an application along with certain documents** with the Exchanges/Depositories. (list of documents required are mentioned in the link given below)
- The **accreditation** granted by the Stock Exchange/Depository shall be **valid for a period of 3 years from the date of issue of such accreditation** unless the AI becomes ineligible due to change in his/her/its financial status in which case such AI shall inform the Stock Exchange/Depository of such ineligibility.
- The link for the aforesaid Circular is as mentioned below:

https://www.sebi.gov.in/legal/circulars/may-2019/framework-for-the-process-of-accreditation-of-investors-for-the-purpose-of-innovators-growth-platform_43056.html

E. ENHANCED DISCLOSURE IN CASE OF LISTED DEBT SECURITIES:

- With a view to secure the interests of investors in listed debt securities, enhance transparency and to enable Debenture Trustees (DTs) to perform their duties effectively and promptly, and after taking into consideration the public comments the following guidelines are issued by SEBI vide Circular No. SEBI/ HO/ MIRSD/ DOS3/CIR/P/2019/68 dated 27th May, 2019:

1. Disclosure of compensation arrangement with clients by DTs on their websites.

- (a) DTs shall disclose the nature of compensation arrangement with its clients on their websites, including the minimum fee to be charged (in absolute terms or as a percentage of the issue size) and factors determining the same.

2. Calendar of interest/ redemptions, due and paid, to be displayed on the website of DT(s) for the financial year.

- (a) DTs shall display on their website the ISIN wise details of interest/ redemption due to the debenture holders in respect of all issues during a financial year within 5 working days of start of financial year. DTs shall also update such details for any new issues handled during the financial year within 5 days of closure of the Issue.
- (b) DTs shall also update the status of payment ISIN-wise against such issuers not later than 1 day from the due date. In case the payment is made with a delay by the issuer, DTs shall update the calendar specifying the date of such payment, with a remark 'delayed payment'.

3. Furnishing of updated list of debenture holders to the DTs by Issuers/ Registrars to an Issue and Share Transfer Agent (RTA).

- (a) RTA / Issuers shall henceforth forward the details of debenture holders to the DT at the time of allotment and thereafter by the seventh working day of every next month in order to enable DTs to keep their records updated and to communicate effectively with the debenture holders, especially in situations where events of default are triggered.

4. Additional covenants in case of privately placed issues

- (a) In privately placed issues, additional Covenants as under, shall be included as part of the Issue Details in the summary term sheet, as per the agreement between the issuer and investor:

- (i) Default in Payment: In case of default in payment of Interest and/or principal redemption on the due dates, additional interest of at least @ 2% p.a. over the coupon rate shall be payable by the Company for the defaulting period.
- (ii) Delay in Listing: In case of delay in listing of the debt securities beyond 20 days from the deemed date of allotment, the Company shall pay penal interest of at least @ 1 % p.a. over the coupon rate from the expiry of 30 days from the deemed date of allotment till the listing of such debt securities to the investor.

- (b) It is clarified that amendments may be made, to incorporate the aforesaid additional covenants in the summary term sheet issued and/or agreement executed on or after May 7, 2019.

- The link for the aforesaid Circular is as mentioned below:

https://www.sebi.gov.in/legal/circulars/may-2019/enhanced-disclosure-in-case-of-listed-debt-securities_43118.html

A. RISK MANAGEMENT SYSTEM- APPOINTMENT OF CHIEF RISK OFFICER (CRO) FOR NBFCs:

- RBI vide notification RBI/2018-19/184 DNBR (PD) CC. No.099/03.10.001/2018-19 dated 16th May, 2019 has directed that NBFCs with asset size of more than Rs.50 billion shall appoint a CRO with clearly specified role and responsibilities. The CRO is required to function independently so as to ensure highest standards of risk management.
- Further, the NBFCs are directed to strictly adhere to the following instructions in this regard:
 - (a) The CRO shall be a senior official in the hierarchy of an NBFC and shall possess adequate professional qualification/ experience in the area of risk management.
 - (b) The CRO shall be appointed for a fixed tenure with the approval of the Board. The CRO can be transferred/ removed from his post before completion of the tenure only with the approval of the Board and such premature transfer/ removal shall be reported to the Department of Non-Banking Supervision of the regional office of the Bank under whose jurisdiction the NBFC is registered. In case the NBFC is listed, any change in incumbency of the CRO shall also be reported to the stock exchanges.
 - (c) The Board shall put in place policies to safeguard the independence of the CRO.
 - (d) The CRO shall be involved in the process of identification, measurement and mitigation of risks.
- In NBFCs that follow committee approach in credit sanction process for high value proposals, if the CRO is one of the decision makers in the credit sanction process, the CRO shall have voting power and all members who are part of the credit sanction process, shall individually and severally be liable for all the aspects, including risk perspective related to the credit proposal.
- Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 has been modified accordingly.
- The link of the above notification is as under:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11557&Mode=0>
- The link of the aforesaid Master Direction is as under:
https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10586

B. VOLUNTARY RETENTION ROUTE (VRR) FOR FOREIGN PORTFOLIO INVESTORS (FPIs) INVESTMENT IN DEBT:

- RBI vide notification RBI/2018-19/187 A.P. (DIR Series) Circular No.34 dated 24th May, 2019 has revised the directions with respect to the Voluntary Retention Route (“VRR”) for Foreign Portfolio Investors (FPIs) investment in debt. The changes include:
 - (a) Introduction of a separate category, viz., VRR-Combined
 - (b) The requirement to invest at least 25% of the Committed Portfolio Size within one month of allotment has been removed
 - (c) FPI are provided with an additional option at the end of the retention period, viz., continue to hold their investment until the date of maturity or the date of sale, whichever is earlier.
- FPIs that were allotted investment limits under the ‘tap’ open during March 11, 2019 - April 30, 2019 may, at their discretion, convert their full allotment to VRR-Combined.
- The link of the above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11561&Mode=0>

C. REAL TIME GROSS SETTLEMENT (RTGS) SYSTEM – EXTENSION OF TIMINGS FOR CUSTOMER TRANSACTIONS:

- RBI vide notification RBI/2018-19/189 DPSS (CO) RTGS No. 2488/04.04.016/2018-19 dated 28th May, 2019 directed to extend the timings for customer transactions (initial cut-off) in RTGS from 4:30 pm to 6:00 pm. Accordingly, the RTGS time window with effect from June 01, 2019 will be as under:

Sr. No.	Event	Time
1.	Open for Business	08:00 hours
2.	Customer transactions (Initial Cut-off)	18:00 hours
3.	Inter-bank transactions (Final Cut-off)	19:45 hours
4.	IDL Reversal	19:45 hours - 20:00 hours
5.	End of Day	20:00 hours

- The time-varying charges for transactions in RTGS from 13:00 hours to 18:00 hours shall be ₹ 5 per outward transaction. The time varying charges structure is as under:

Sr. No.	Time of Settlement at the Reserve Bank of India		Time varying charge per outward transaction (in addition to flat processing charge) (exclusive of tax, if any)
	From	To	
1	08:00 hours	11:00 hours	Nil
2	After 11:00 hours	13:00 hours	₹ 2.00
3	After 13:00 hours	18:00 hours	₹ 5.00
4	After 18:00 hours		₹ 10.00

- The link of the above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11564&Mode=0>

IBBI UPDATES

A. INSOLVENCY PROFESSIONALS TO ACT AS INTERIM RESOLUTION PROFESSIONALS AND LIQUIDATORS(RECOMMENDATION) GUIDELINES, 2019:

- Insolvency and Bankruptcy Board of India (“Board”) vide its notice dated 14th May, 2019 released the Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019
- In the interest of avoiding administrative delays, it is necessary to have guidelines to prepare a Panel of Insolvency Professionals (“IPs”) for appointment of Interim Resolution Professionals (“IRPs”) and Liquidators therefrom.
- The Board will prepare a common Panel of IPs for appointment as IRPs and Liquidators and share the same with the Adjudicating Authority (“AA”). The AA may pick up any name from the Panel for appointment of IRP or Liquidator, as the case may be, for a CIRP or Liquidation process, respectively. The Panel will have Bench wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months. For example, the first panel under these Guidelines will be valid for appointments during July - December, 2019, the next panel will be valid for January – June 2020 and so on.
- An IP will be eligible to be in the Panel of IPs if –
 - (a) there is no disciplinary proceeding, whether initiated by the Board or the IPA of which he is a member, pending against him;
 - (b) he has not been convicted at any time in the last three years by a court of competent jurisdiction;
 - (c) he expresses his interest to be included in the Panel for the relevant period; and
 - (d) he undertakes to discharge the responsibility as IRP or Liquidator, as he may be appointed by the AA.
 - (e) he has made the compliance under Regulation 7(2) (ca) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 for the year 2018-19.
- An IP will be included in the Panel against the Bench under whose jurisdiction his registered office (his address as registered with the Board) is located.
- These guidelines will be reviewed by the Board from time to time.

- These Guidelines shall come into effect for appointments as IRPs and Liquidators with effect from 1st July, 2019.
- These Guidelines replace the Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) (Second) Guidelines, 2018.
- The link of the aforesaid notice is as under:

[https://ibbi.gov.in/webadmin/pdf/legalframework/2019/May/IPs%20to%20act%20as%20IRPs%20and%20Liquidators%20\(Recommendation\)%20Guidelines%202019_2019-05-14%2020:09:47.pdf](https://ibbi.gov.in/webadmin/pdf/legalframework/2019/May/IPs%20to%20act%20as%20IRPs%20and%20Liquidators%20(Recommendation)%20Guidelines%202019_2019-05-14%2020:09:47.pdf)

AMITA DESAI & CO.

ARTICLE OF THE MONTH

Brief article in newsletter of May 2019 on
Board Room –Collated from business newspapers and online news websites

I N D E X

Sr. No	PARTICULARS
	INDIA'S BEST BOARD The Economic Times round table discussion. May 3, 2019
1	Remarks & Views of distinguish members of ET round table discussion.
	1.1 Board Room Challenges 1.2 Free Boards. 1.3 Democracy of Boards. 1.4 Tiffs between promoters and CEOs. 1.5 Quality of directors. 1.6 How do Indian Boards fare in comparison to offshore boards? 1.7 Risk Management. 1.8 Key takeaways - ET round table discussion on board room
2	Key challenges Board Faces.-Economic Times March 2019
3	Key steps Board must take.-Economic Times March 2019
4	Board Room Challenges-What makes an effective group-Economic Times May 23, 2019

INDIA'S BEST BOARDS - The Economic Times round table discussion.

1. Remarks & Views of distinguish members of ET round table discussion.

1.1 BOARD ROOM CHALLENGES

(Remarks & Views of distinguish members of Economic Times round table)

- Devoting enough time to the things that really matter such as strategy and risk management and not getting bogged down by various compliances is important- **NAINA LAL KIDWAI**- Ex-Country Head, HSBC.
- Forecasting and risk management from technology and business disruption point of view is most critical.-**ANIL CHAUDHARY**, Zonal President & MD, Schneider Electric.
- There is a generation gap between the Board and the nature of business they govern, so aligning the two is a big challenge-**SIRAJ CHAUDHARY**-Advisor, Cargill India.
- Lack of transparency is the biggest challenge. If someone doesn't want to tell you something, you will never figure it out.-**SANJAY KAPOOR**, Senior Advisor and Independent Director.
- The Law makes it mandatory for companies to put forward several key risks before the board. But is that really happening? -**JYOTI SAGAR**, Chairman and Founder, J.Sagar & Associates.
- The Board should play a more active role in understanding the challenges faced by the health care industry. Because of various government initiatives there's a fear psychosis that is going on- **Dr. ARVIND LAL**, Chairman & Managing Director, Dr. Lal Path labs.
- The current regulations and Liabilities as per me is the biggest challenge that Boards face today. It's extremely onerous and keeps many good people from joining boards.- **SAURABH SRIVASTAVA**, Co-Founder & Director, Indian Angel Network.

- The distance that still remains between the Board and the CEO is an issue. The Board needs to be engaged more and should be kept interested in the company. -**ASHWANI WINDLASS**, Director, Max India.
- Enough time should be devoted to understand the company well, while keeping your eyes on governance at the same time.-**INDRAJIT BANERJEE**, Independent Management Consultant.
- The ability to see what is coming next globally and locally is big challenges as Boards mostly function in silos.-**SANJEEV AGGARWAL**, Senior Managing Director, Helion Venture Partners.
- How do you build a culture of innovation in an organization and what can the Board do at that level is a key issue.-**MANINDER SINGH JUNEJA**, MD & CEO, National Bulk Handling Corporation.
- The role of the Chairman and how he/she leverages the Board is going to be the biggest challenge going forward.-**PREETY KUMAR**, Managing Partner, Amrop India.

1.2 THE FREE BOARD

Freedom at work is directly linked to one's performance, and it holds true in case of our Boards as well.-(Remarks & Views of distinguish members of Economic Times round table)

- The construct and culture of the company determines how free the board is. Also, a lot depends on the quality of the chair and the nature of independence- **NAINA LAL KIDWAI**- Ex-Country Head, HSBC.
- I represent a major shareholder as a nominee director on the board of an MNC I have never faced any issues in terms of freedom of speech nor have been asked to protect any one's rights. .-**SANJAY KAPOOR**, Senior Advisor and Independent Director.
- By and Large members who come from good background know where to convey what. Sometimes, they may convey their thoughts after or before the board meeting as well to avoid conflicts. - **ASHWANI WINDLASS**, Director, Max India.
- In the Boards of new economy companies, you either die or take it to the top. And as board members we help them navigate inflection points which are around capitisation, strategy and pace of growth.-**SANJEEV AGGARWAL**, Senior Managing Director, Helion Venture Partners.

1.3 DEMOCRACY OF BOARDS

Remarks & Views of distinguish members of Economic Times round table.

- As evident in this discussion Indians are a noisy lot so democracy clearly is not much of an issue. I cannot think of one company whose culture was the same as the other and democracy on Board depends a lot on that; it also depends on the quality of the chair and the nature of independence **NAINA LAL KIDWAI**- Ex-Country Head, HSBC.
- As **JYOTI SAGAR** Chairman & founder of J. Sagar & Associates puts it, "Democracy of Boards, laughable."
- The Composition of the board also determines how democratic it is.-**ANIL CHAUDHARY**, Zonal President & MD, Schneider Electric.
- Sometimes conveying the right thing at the right time is important and sufficiently senior board members know that well. "It is not necessary, everything has to be poured out during the Board meeting, and something can be discussed either before or later."- **ASHWANI WINDLASS**, Director, Max India.
- It's the balance in power that often determines where the power lies-- with the board or with the promoters. My experience has been diverse in this regard; there have been Boards which were very democratic, while few others not so much.'- **SIRAJ CHAUDHARY**-Advisor, Cargill India.

1.4 TIFFS BETWEEN PROMOTERS AND CEOs

Remarks & Views of distinguish members of Economic Times round table

- “I have not had any major differences with my CEO. It is probably because we share a bond and so there are no issues in terms of attitude and maturity. Also, he is many years younger to me, so I mostly get my way (laughs)”. - **Dr. ARVIND LAL**, Chairman & Managing Director, Dr. Lal Path labs.
- “**SAURABH SRIVASTAVA**, Co-Founder & Director, Indian Angel Network. ‘(a Board member of Dr Path Labs) Seconded Dr. Arvind Lal on that – It is a very democratic Board and all members command great respect. In case of any differences, the promoters try to talk it out, but the ultimate baton lies with the Board”.
- We have seen that in consumer and in tech industries we get pretty young CEOs. However, getting them on Board in some cases was a challenge as they got more involved than was required.-**MANINDER SINGH JUNEJA**, MD & CEO, National Bulk Handling Corporation.

1.5 QUALITY OF DIRECTORS

Remarks & Views of distinguish members of Economic Times round table.

- For an independent director one has to have the time to devote as he has to really sink in to be able to participate deeply in the governance of the company--**INDRAJIT BANERJEE**, Independent Management Consultant.
- What are the duties of a director towards a company? What is the role of a nominee director? It needs to be penned down. -**JYOTI SAGAR**, Chairman and Founder, J. Sagar & Associates.
- Business is also getting complex so getting the right mix becomes important. What Boards could look like in 10 years from now may be very different- **ASHWANI WINDLASS**, Director, Max India.
- However times are changing. These days head hunting firms are involved, which specialize in looking for board members. There is also a demand for directors under 50- “We are also looking at people who have never been directors. So we can have a pool of directors who are not very famous or trophy directors. We are advising clients to go for this new pool of directors.”-**PREETY KUMAR**, Managing Partner, Amrop India.

1.6 HOW DO INDIAN BOARDS FARE IN COMPARISON TO OFFSHORE BOARDS?

Remarks & Views of distinguish members of Economic Times round table

- Indian boards are complex as they have all sorts of nominees and many of them come with some agenda. Offshore boards are a little disciplined in that regards. -**NAINA LAL KIDWAI**- Ex-Country Head, HSBC.
- Sometimes conveying the right thing at the right time is important and sufficiently senior board members know that well. “It is not necessary, everything has to be poured out during the Board meeting, some things can be discussed either before or later- **ASHWANI WINDLASS**, Director, Max India.
- On Indian Boards, senior members enjoy a lot of respect. On Global boards, a director can be very young and can be held at par with others who are more experienced.-**ANIL CHAUDHARY**, Zonal President & MD, Schneider Electric.

1.7 RISK MANAGEMENT –

Remarks & Views of distinguish members of Economic Times round table.

- It begins with risk awareness, so it is important to know whether the board even understands what risks the company is facing. Also, is risk awareness leading to risk aversion rather than risk management?-**SIRAJ CHAUDHARY**-Advisor, Cargill India.
- Risk Management cannot happen unless the management and the board are in reconciliation- “It is a rarity. Risk management lies in prioritizing and quantifying risks”- **SANJAY KAPOOR**, Senior Advisor and Independent Director.

- As in the case with global boards, Indian boards too should have specific time devoted for discussing risk management. It also can be a good measure to determine whether it is being discussed in detail by the board-**NAINA LAL KIDWAI**- Ex-Country Head, HSBC
- For better risk management, we need to look at the frame work of risks –whether the Board is looking at it narrowly. Also, if future disruptions are being considered when taking such decisions. **AURABH SRIVASTAVA**, Co-Founder & Director, Indian Angel Network.

1.8 KEY TAKEAWAYS OF ET ROUND TABLE DISCUSSION ON BOARD ROOM

- Companies that have gone through transition times(a new CEO taking over or a family run business becoming professional), should be assessed as the role of the Board in such times is critical.
- Boards of new age companies should also be assessed as they are huge contributors to the economy and huge guzzlers of capital.
- Committees should be assessed too as they are the biggest drivers of governance within a company. The way the board relies on the committees means their strength becomes critical.
- There should be more awareness in the board regarding the risks taken by a company. A certain amount of stipulated time should be devoted to risk management by the board.
- Democracy of the Board depends a lot on the promoters and also on the caliber of the board. It's the balance in the power that often determines where the power lies.
- Young CEOs should be encouraged to sit on boards of other companies. It could be a great self-training exercise and also increase the pool of independent directors.

2. Key Challenges Board faces.

- Unwillingness to identify, manage and appreciate risk parameters that a company is facing.
- Managing expectations of Promoters and shareholders.
- Quality of independent directors is a big challenge.
- Directors questioning management is not taken in right spirit.
- Lack of independence of independent directors.
- Coterie management-Group of people wants everybody to say yes.
- Iceberg management –Corporate governance has about 10% that one can see; but the balance 90% of real work is under the iceberg that cannot be seen.
- Difficult for Board to manage regulatory risks and compliances.
- How does one get the best out of the board when board attention gets dissipated over several things?
- Functions of the board are not clearly defined.

3. Key Steps Board must take.

- Board is a custodian of culture, reputation and values of the organization and it should build the organization on these parameters.
- Two meetings of Independent directors are essential and the outcome of these meetings should be conveyed to the Board.
- Assessment of Independent Director by each Board member is important and the report should be shared by each Board member.
- Need a mix of people on the Board/ Diversity in Board
- Risk appetite must be clearly defined independent of a proposal under consideration.
- Missed opportunities decisions to be reassessed.
- Board meetings should focus on agenda, set the calendar what the board will do and not do.
- Understanding of business by Directors is important as far as strategy is concerned.
- Board should give direction based on experience and keep a track.
- Social sector service mandate from shareholder should come through the Board.

4. BOARD ROOM CHALLENGES-WHAT MAKES AN EFFECTIVE GROUP

Board's effectiveness is mostly determined by its:

- **Composition,**
- **Culture**
- **Character**

Remarks & Views of distinguish members of ET round table discussion-How do Composition, Culture and Character as parameters become the enablers for a perfect board?

- In case of global brands, every year atleast one board member travels to the country where the company has its operations and meets customers, etc. Does any Board member on any Indian Board even know what's its customers-**Vinita Bali**-Chairman, GAIN.
- Character before competence is critical. Board members with the snazziest of CVs can't even squeak in front of a dominating chairman. It is these moments of truth that build the culture of the organization. **Prasad Kumar**-Founder, Human Endeavour Associates.
- When a Board constitutes of independent members, is it really independent if the chairman invites people to join it? Shouldn't it be done through an independent process?-**Krishnan Ganesh**-Chairman, Protea Medical; Promoter, Big Basket, Blue stone, and others.
- Boards have to change from just compliance to making organizations more competitive. Questions such as how I can pick the right person for the executive team or how do I create other foundation elements that constitute a company, should find cognizance with the Board.-**Krishna Kumar Natarajan**- Co-founder & Executive Chairman , Mind Tree.
- Till the basic structure of how directors get appointed to a board is established, there will not be any control on it. Care should be taken that members should not be from the same industry; otherwise you may just get clones and not a diverse board. - **Richard Rekhy**- Board Member, KPMG Lower Gulf.
- To what extent the Board interacts with the auditors needs to be ascertained. The board needs to fundamentally understand a one thing- account is the responsibility of both, the management as well as the board.- **Shekar Viswanathan**-Vice Chairman & Whole time Director Toyota Kirloskar Motors.
- I would like to recommend individual governance rather than corporate governance for boards. If each one of us govern oneself in the right direction, Boards would be what we want them to be.- **Sandeep Miani**-Chairman, Maini Group
- Right Board for the right company is key. A Board should understand a company's strategy and also that if exchange of thoughts doesn't happen between members, it can never take the company towards a singular strategy.-**Vishal Bali**-Co-founder & Chairman, Medwell Ventures.
- I think, agility and continuity in boards are interlinked.By agility, I mean the ability of the Board to switch gears based on a certain situation. When it should take the management's side and when it should advise a different path may decide the future of the company. -**Rituparna Chakraborty**-Co-founder & EVP, Team Lease.
- I have a different view regarding industry knowledge.Companies these days hire CEOs who don't necessarily belong to that sector, so far a Board which is not involved in the day-to-day operations, it is important to have someone from the same industry. - **Arvind Mediratta**-MD, CEO, Metro Cash & Carry.
- The evolution of the organisation and the category, both play a key role in the kind of Boards you need to have. The Board should ensure that acts of commission such as frauds, etc. don't happen. -**Susheel Balakrishnan**-Managing Partner, T20 Transform Consulting.

- Boards are supposed to drive corporate governance, balance shareholders point of view while taking decisions, and also look at risk, management from the governance point of view. The question is, how? - **Preety Kumar** - Managing Partner, Amrop India.

Key takeaway on - What makes effective Boards.

- Composition of the Board is critical. Members from different industries should be made part of a Board to ensure diversity.
- How independent is the Board is key and it starts with a structured inter-view and hiring process for bringing a member on Board as is the case with global Boards.
- Institution building and stewardship are key elements of Boards responsibility.
- Board members should deeply study agenda papers before attending meetings, ● show basic work ethics.
- A dominating CEO or chairman shouldn't stop a Board member from dissenting. A yes-board is a catastrophe for a company.
- Sociometry of the Board is key-members should be encouraged and allowed time to spend together, engage and interact so that they get to know each other and challenge each other.

Link for S.No-4 is given below:

<https://www.facebook.com/teamleaservices/photos/pcb.2471575676209599/2471570356210131/?type=3&theater>

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INSPIRATIONAL QUOTES

**Success doesn't
come from what you do
occasionally, but what you
do consistently.**



**The 3 C's in life:
Choice, Chance,
Change.
You must make the
Choice, to take the
Chance, if you want
anything in life to
Change.**

VLU-CURTAIN.COM

Disclaimer

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