

Testing times for independent directors

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Mandatory examination could ensure a level of competence, at a time when the law expects them to play a crucial role. The independent director of a company, until a few years ago, was probably one of the more non-exciting roles in the larger scheme of things in corporate India. However, with the recent paradigm shift with respect to greater governance in Indian businesses, thanks to increased regulatory scrutiny and compliance pressure, the role of an independent director is now in the spotlight.

The latest development with respect to a mandatory examination that all candidates chosen to be independent directors must appear for, reinforces the increased scrutiny that this role now faces. The expectations one has from an independent director have undergone a massive transformation.

Perhaps the sea change in the life of an independent director is best demonstrated through my own experience. Years ago, at one of the first boards that I was appointed to as an independent director (where I did not continue for very long), I remember the board meetings being

centred around *samosas*, *chai* and gossip. There were no papers presented, no files for review and no strategic business discussions held.

However, a board meeting today in most companies is far removed from this. Sometimes there are heaps of files and information to be reviewed and discussed, requiring all members to do prior research and prepare adequately before the meeting.

Earlier, there was no concept of an “independent director” in the laws governing Indian listed companies. It was back in 1992 that the recommendations of the Cadbury Committee on corporate governance in the UK mentioned appointing “non-executive directors” who would bring independent views to the table.

Closer home, the recommendations of the Kumar Mangalam Birla Committee constituted by SEBI in 1999 too featured the appointment of such directors to the board. But what followed was far from ideal. Most promoters filled board seats meant for independent directors from a pool comprising of family, friends, trusted advisors, mentors, confidants and people with connections who could help open doors for the company.

Raising a flag

As per the Companies Act 2013, the duties of independent directors include providing equitable and independent judgment to the board, to secure and promote the interests of all stakeholders, especially minority investors and also to report concerns about any unethical behaviour, suspected fraud or violation of code of conduct.

The role of an independent director today is, hence, twofold. Firstly, one must positively contribute to the company’s strategic growth by employing one’s expertise to advise and consult the decision-makers of the company on crucial and strategic matters. And, secondly, one must

act as a watchdog of sorts, providing the appropriate checks and balances to the system of key decision-making within the company.

One must note that the current business environment is marked by regulators calling for greater emphasis on corporate governance in the wake of certain frauds/scams, proxy advisory firms influencing important decisions for which shareholder approval is required, foreign players demanding greater hygiene checks for deals and global standards trickling down into India Inc. In such a scenario, the independent director's role as a watchdog of sorts gains even more prominence.

India has come a long way. The independent director's right to speak up is deemed sacrosanct in many boardrooms (and is indeed required by law).

The mandatory examination captures the spirit of ensuring that independent directors of companies are competent enough to take on a role which, wasn't very demanding earlier but is a rather challenging one today. However, the way that this step is implemented will determine whether it will actually result in an overall improvement in the quality of independent directors appointed. Another criticism of the move is that the requirements from an independent director vary, based on sector, jurisdiction, global trends, etc. These complexities may not be addressed by a standardised self-administered online test.

With December being the first time that we will see such a test conducted, only time will tell if we have moved any closer to the goal motivating this move.

The writer is a senior partner at Khaitan & Co. The views are personal