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Corporate: Independent Directors in the Board

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Corporate: Independent Directors in the Board

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I. INTRODUCTION

The board provides "balance" between the key managers and the shareholders. The law imposes fiduciary duties on the directors. The Directors have to perform the duty of care (due diligence in decisions) and the duty of loyalty (to the shareholders). Their conducts add business judgment will be judged by courts accordingly, Boards of directors are vital for the success of companies. In today's world, nobody can afford the "luxury of unilateral mistakes, sleepy companies and isolationism". "If companies cannot compete, they perish". Regarding the powers of the board, the American Bar Associations Model Business

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Corporation Act states that "all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation. In other words, authority resides in the board of directors as the representatives of the stockholders. The board delegates authority to management to implement the company's mission". Solomon and Solomon (2004) felt that, for a company to be successful, it must be well governed. A well-functioning and effective board of directors is sought by every ambitious company. "A company's board is its heart and as a heart it needs to be healthy, fit and carefully nurtured for the company to run effectively. The advantages of having a strategic board are compelling. It allows a company to gain valuable expertise, enables strategic relationships, and facilitates financing, serves as a think tank for strategic thinking, establishes accountability, attracts the best employees, facilitates exposure to new ideas, balances stockholders interests, helps to avoid mistakes and proactively manages change. The smaller the board, the greater the director involvement.

II. CONTROLLING BY OUTSIDE DIRECTORS

One way to supervise managers is by the use of the board of directors. The board is mainly seen as a "control mechanism". This has several effects on the composition of the board. Since the board of directors is used to control managerial activities, it should be independent of the company's executing management. The number of outside directors should be large and CEO should not act as a chairperson of the board. According to Lorsch (2002), empowerment means that outside directors have the capability and independence to monitor the performance of top management and the company. Most of the directors should come from outside the company and have no other relationship with it. The board is small enough to be a cohesive group. Members represent a range of business and leadership experience, which are pertinent to understanding the issues the company faces. Audit committees made up of outside directors in all public companies ensure that financial reports are accurate. However, Rowe and Rankin (2002) are in favour of equal representation from outside and inside directors. They have opined that insiders and outsiders should have equal power because both groups help to preserve strategic control. Outsiders need sufficient power or keep insiders from engaging in inappropriate diversification; insiders need sufficient power to ensure that the board has the necessary amount of sensitive, firm-specific information. Reiter and Rosenberg (2003) are of the opinion that independent directors will bring the sort of rigor and critical analysis required to limit recurrences of debacles. Independent directors can be valuable to the companies they serve, but only if those companies take their responsibilities seriously to provide appropriate, useful and timely information. Conkin and Lesage (2002) feel that "boards of directors today must act as adjudicators, standing guard between managements day-to-day operations and the longer-term interests of shareholders". About expectations of investors the authors commented that, "the rise of new, better-informed class of investors is forcing companies to comply, increasingly, with what is publicly perceived as ethical governance behavior". Salmon (2000) states that, "personal attributes like integrity and the ability to listen with an open mind are essential requirements for good board members". The board as a whole must be able to spot problems early and blow the whistle, exercising what I and others like to call constructive dissatisfaction". According to Pound (2000), "corporate governance is not about power but about ensuring that decisions are made effectively". He advised senior managers and the board to take advice of shareholders in decision-making. "Most performance crises are the result of errors that arise not from incompetence but from failures of judgment" John S. McCallum (2003)

advised directors to adopt the Socratic method of asking questions in the boardroom. "If truth, honesty, clarity, precision,, focus and performance are the goals, then Socrates is the man: a scourge to bad executives, a dream to shareholders". McCallum commented, "Boardrooms that do not function sarcastically are fertile grounds for the Enrons and WorldCom of this world.

III. EXECUTIVE DIRECTORS VS. INDEPENDENT DIRECTORS

Empirical evidence on the association between outside independent directors and firm performance is mixed. Some studies have found that having more outside independent directors on the board improves firm performance (Barnhart et al. 1994; Daily and Dalton, 1992; Schellenger et al., 1989) while other studies have not found a link between outside independent directors and improved firm performance (Hermalin and Weisbach, 1991; Fosberg, 1989; Molz, 1988). However, other empirical evidence does suggest that outside independent directors do play an important role of shareholder advocate. Shareholders benefit more when outside independent directors have control of the board in tender offers for bidders (Byrd and Hickman, 1992), Beasley (1996) found that outside independent directors reduce the likelihood of financial statement fraud." Bhagat and Black (2007) opined that Enron (with eleven independent directors on its 14-member board) could not prevent wealth destruction. As such, highly independent boards may not be justified. A board should contain a mix of inside, independent, and affiliated directors. Inside directors are conflicted, but well-informed whereas, the independent directors are relatively ignorant about the company. Han and Wang (2004) investigated the relationship between board structure and firm performance using a sample of 490 publicly listed, firms in China. They found significant relationship between firm performance and three characteristics: the rewards to directors, the stock holdings of directors and the existence of independent directors.

Effect of Independent Directors on Firm Performance: Choi, Park and Yoo (2005) examined the relationship between board independence and firm performance for South Korea and found that the effects of independent outside directors on firm performance are strongly positive. Huang, Hsu, Khan and Yu (2003) examined the stock market reaction to the announcement of outside director appointments in Taiwan. The empirical findings indicate that there exists a significantly positive reaction to the announcements. The appointments of outside directors appear to be more beneficial for a country with poor corporate governance mechanisms. Panasian, Prevost and Bhabra (2004), investigated the impact of the Dey Committee guidelines that boards in Canada comprise

a majority of independent directors. They found evidence that adoption of this recommendation positively affected performance, not only for firms that became compliant, but also for those firms that were always compliant and increased their proportion of outsiders on the board. According to Bhagat and Blade (1999), there is no convincing evidence that greater board independence correlates with greater firm profitability. Brown and Caylor (2004) created a broad measure of corporate governance, Gov-Score, a composite measure of 51 factors encompassing eight corporate governance categories: audit, board of directors, charter/ bylaws, director education, executive and director compensation, ownership, progressive practices, and state of incorporation. They found that better-governed firms are relatively more profitable, and pay out more cash to their shareholders. Block (1999) stated that the importance of outside directors is widely debated. Bhagat, Brickley, and Coles (1987); Fama (1980); Fama and Jensen (1983); Gibbs (1993) and others argue that outside directors promote the interest of shareholders. However, others argue that the reverse is true. Their study indicated that the announcement of the appointment of an outside director (up to a critical mass) is still viewed as supportive of stockholder interests and likely to produce positive abnormal returns.

Independent Directors - Shareholder's Preference: The failures of corporate boards only show that outside independent directors need to do more to protect shareholders' interests. Public scepticism of the performance of outside independent directors is tempered by the finding that institutional investors are willing to pay a premium to own shares in a company that demonstrates good corporate governance practices, including having a majority of outside directors on its board (McKinsey and Co., 2000). The market does believe that a well-governed company offers some protection for investors.

Empirical Evidence in India: A good deal of research has been conducted on the role of IDs in ensuring good governance in corporations in different countries. However, 'much work has not been done in the context of corporate governance issues in the Indian companies. Results of some of the studies as available on board independence and firm performance in Indian companies are quoted below. Banaji and Mody (2001) highlighted the ineffectiveness of boards in the Indian companies, lack of transparency surrounding transactions within business groups, and divergence of Indian accounting practices from International standards. The researchers argue that regulatory intervention needs a much stronger definition of independence for directors, in line with best practice definitions now adopted in the US and the U.K. Kumar (2003) reported that the firms with weaker corporate governance mechanisms tend to have a higher level of

debt. Firms with higher foreign ownership or with low institutional ownership tend to have lower debt level. Overall, the findings presented in the paper provide evidence of the definite role of corporate governance mechanisms in firm financing decisions in India. Patibandla (2001) found that foreign investors contribute positively to corporate performance in terms of profitability while the government financial institutions contribute negatively; Reducing the role of government financial institutions and opening up of the equity markets to foreign investors under effective regulatory mechanisms should improve corporate governance in terms of increasing transparency in developing economics. This, in turn, contributes positively to economic growth. Decision and policy-making is still taken mostly as a routine matter. Among the institutional investors, it seems that the FIIs are the most consistent, whereas the performances of the domestic institutional investor? Are sporadic. There are also serious shortcomings on the part of the capital market not being able to enforce better governance on the part of the directors or performance on the part of the managers.

IV. INDEPENDENT DIRECTORS AND THE COMPANY PERFORMANCE

The Board has two types of director namely executive and non-executive. Executive directors are responsible for the day-to-day management of the company. They have the direct responsibility for the aspects such as finance and marketing. They help to formulate and implement the corporate strategy. The key strength are the specialized, expertise and wealth of knowledge that they bring to the business. They are full time employees of the company and should have defined roles and responsibilities. Executive directors are the subordinates or the CEO; they are not in a strong position to monitor or discipline the CEO. It is important to have a mechanism to monitor the actions of the CEO and the executive director to ensure that they pursue shareholder interest. Cadbury (1992) identifies the monitoring role of non executive directors as their key responsibility. Dare (1993) maintains that non executive directors are effective monitors when they question the company strategy and ask awkward questions. In addition, they are able to provide independent judgment when dealing with the executive directors in areas such as pay awards, executive director appointments and dismissals. Effective monitoring requires that the non-executive directors are independent of the executive director who is a retired ex-director or who works for a firm that provides services to the company, and may be perceived as less than wholly independent. A non-executive director's independence may increase with the passage of time. But this is subject to the independent directors making conscious efforts to contribute to the board process.

Duality and performance: This occurs when one individual holds both the positions, namely, CEO & chairman, The CEO is the full time post and has the responsibility for day-to-day running of the company obliging implementing the strategy, and is responsible for the company's performance. The post of the chairman is part-time. The Chairman's main responsibility is to ensure that the board works effectively; hence the role involves the monitoring and evaluating the performance of the executive directors involving the CEO. According to the Cadbury report, the chairman has the responsibility for looking after the board room affairs, and ensuring that the non-executive directors have the relevant information for the board meetings, as also other company information. The Cadbury committee recommended that the posts of CEO & chairman should be separated. Independent non-executive directors are likely to provide sound opinions on proposals and to become more effective decision monitors and likely to promote the interest of the shareholder

V. STATUS OF INDEPENDENT DIRECTOR

The difference between the independent director and his duties is far from the real issues of the business. The managing director or chairman of the board has the power to take decisions. Directors collect their fees for attending the board meetings and enjoying a good lunch. An independent director adds value to the board process by his expertise and strategic business insights. The independent director represents the larger shareholders within the company, now; shareholders want to approve the board decisions before they are taken. The importance has been given to the independent director by the regulator as well. The audit committee and remuneration committee consists of independent director as chairman. Independent director needs to "Whistle Blow" or resign when companies are not willing to address the concerns raised by shareholders. Independent director should help the board in this regard. The shareholder's interest is to be seen by all the directors not just by the part-time directors. Independent directors are being considered as a peer group and changes are recommended to enable them to play a dominant role. So it is suggested that the workload of independent director is expanded to make the board effective. Board reforms are being taken place the fast pace in that direction. Independent directors are considered as peer group to control the management.

VI. INDEPENDENT DIRECTORS EMERGING AS A PEER GROUP

The company board provides leadership, directions and strategic guidance, and exercises Control over the company, and is thus accountable to the shareholders. Independent directors are emerging as per group to play a dominant role the scandals in the organization like Enron, Satyam Computers, World Com and Xerox shout a warning message to all company boards, as companies have been the victims of serious fraud committed by the executives, sometimes with the knowledge of the auditors. The three groups which can exercise control over management are shareholders, auditors, and the board of directors.

VII. GOBLE PRACTICES

The idea of the entire board reviewing its own activities annually is sound because it enables all directors, both insiders and outsiders, to contribute their ideas for improvement and thus be committed to any changes in the process. Conger, Finegold and Lawler (2001) commented that companies periodically review the performance of its key contributors like individuals, work teams, business units, or senior managers, but rarely evaluate the performance of the corporate board. A survey of Corporate governance conducted by Russell Reynolds Associates in 1997 showed that investors feel strongly that boards need to be more aggressive in weeding out under-performing directors. Yet until recently, formal appraisals of individual directors have been relatively rare. There is a strong body of opinion that urges a process of self-evaluation by the board and the establishment of standards of performance. Boardroom self-evaluation schemes under which the competence of the directors is reviewed annually by fellow board members are making rapid headway in the US. Appraisals in the boardroom are a recent and not yet widespread phenomenon.

VIII. PRACTICE IN USA

It is reported that over two-thirds of the largest US corporations had boards with majority of independent directors by 1991. By 2001, the proportion of companies with such boards had reached 75 percent; Boards of Fortune 500 companies appoint a substantial majority of outside directors, who are unconnected with the company or the management. These outside directors occasionally meet among themselves separately from the executives in special sessions. Over the last two decades, America's boardrooms have witnessed a remarkable growth in the power of independent outside directors. The potential of independent directors was hardly realized when they were inducted into the boardroom about forty years ago. The independent directors first appeared as showpieces

in the board. In 1971, Myles Mace, Professor of Harvard Business School conducted a landmark study of boards, and concluded that independent directors were like "ornaments on a corporate Christmas tree". His description echoed one company chairman who once described independent directors as "the parsley on the fish". However, in 2002, Walter J. Salmon (How to Gear up Your Board) went to the extent of advocating that a company may have only three inside directors in the board. According to him, only three insiders belong on boards: the CEO the COO, and the CFO. Based upon his experience, Salmon informed that in 1961 most boards had majority directors from management. However, in the mid-1970s, the average number of insider directors was five and outsider directors eight. Now, the average consists of about nine outside directors and three inside directors,

IX. PRACTICE IN UK

A survey was conducted by KPMG about the performance of non-executive directors in selected corporations in the UK. The report of KPMG Survey (2002/3) states that good non-executive directors are a vital element of the UK governance framework. However, they cannot be expected to provide meaningful protection for shareholders unless they are independent of mind, diligent, knowledgeable and in possession of relevant and reliable information. They must be able to challenge management and draw sufficient attention to dubious practices—even in apparently successful companies. The main recommendations of the KPMG Survey are that the non-executive directors should (i) possess adequate knowledge and expertise of finance to work in the audit committee, (ii) acquire adequate knowledge of the industry, (iii) devote sufficient time to the company, (iv) seek out information they require, (v) undergo formal training and education about their role, (vi) acquire qualification in directorship and compulsory post-qualification experience, and (vii) attend board meetings regularly, (viii) Further, the board should evaluate its own performance.

X. SELECTION OF THE INDEPENDENT DIRECTOR

According to Ganguly Committee Report (2002) the appointment and nomination of independent/non-executive directors to the boards of banks for both public and private sector should be from a group of professional people to be trained and maintained by RBI. In case of any deviation in this procedure, prior permission of RBI is required. Identification of people requires extensive and time consuming networking as most of the appointments are done on the basis of networking. The management consultants, business journalists and public relations specialists can provide

the suggestions for such vacancies. Other networks can be industry federations, charities, and training and enterprise councils and so on.

XI. LEGAL RESPONSIBILITIES OF INDEPENDENT DIRECTORS

According to the law, the independent director has the same responsibilities and liabilities as any other director.

Civil Liability: The duties of a director are to act honestly and in good faith in the best interests of the company. These liabilities apply to independent directors as well as to the executive director.

Criminal Liability: The criminal liability depends on the nature of the offence. Some of the requirements under the law constitute, in their non-performance or performance, a criminal offence, and attract the liability. Proof of any knowledge and or complicity is not required. The offence basically requires proof of failure to exercise the due care (negligence) or of dishonesty.

The liability of the independent director depends upon the level of involvement and knowledge. Thus the independent director is more liable when the necessary step to avoid a breach of the criminal code has not been taken.

XII. LIABILITIES INDEPENDENT DIRECTORS

Wrongful disclosure by the chairman and members of the audit committee in company's annual report should attract: disqualification and penalties. If the non-executive director had the knowledge of unlawful acts by the management or the board and fails to act according to the law, then the said director should be made legally liable for such ignorance. The different liabilities of the executive directors and non-executive or independent counterpart should be considered. The persons considered responsible for the contravention committed by the company are: (i) The managing director; (ii) Executive or whole-time director; (iii) Managers; (iv) The company secretary; (v) any person in accordance with whose instructions the board is accustomed to act; (vi) any person who has been entrusted and charged by the board to be an officer in default subject to his or her consent. Non-executive directors are far less liable for the ignorance of the provisions in the Companies Act than their executive counterparts.

XIII. ROLE OF INDEPENDENT DIRECTOR IN UNITED STATE

There has been major evidence of ignorance in corporate governance around the world particularly in the United States, resulting in tragedies like Enron and WorldCom. Organizations therefore need, have holistic

approach to adapt to the corporate governance model. To realize the full value of board of directors and non-executive directors, there is a need, bring about corporate changes. The unique challenge for NED is to identify and satisfy the needs and wants of the different stakeholders. NED's can increase the corporate social performance by effectively performing their role. In United States, there were a number of cases, legislation, court battles and shareholder reform actions to protect shareholder rights and boost the concept of corporate governance. In U.S., corporate directors are not elected through democratic process. According to the Securities Exchange Commission rules, the names of the candidates for the directorship appear on the proxy ballot. The candidate nominated by the shareholders has to go through a lengthy selection process. In the 1970s, there were few independent directors on company boards, and many of them were related to the CEO. The corporation was dominated by the CEO. The factors like compensation and expenses were matters of grave concern for shareholders. According to Lear (1997), by the end of the 1970s, boards realized that overall, management had weakened, products were outdated, manufacturing plants were decrepit and there was a decrease in the market share. Dailey (1993) suggested that a high proportion of outside directors have a positive impact on corporate financial performance. Shareholders realized that they could change the corporate culture and started to use annual meetings to push shareholder proposals. By 1980s, there was a shift to more independent directors in the composition of the boards. IBM elected its first woman to the corporate board and General Motors established a nominating committee for board members.

There was a substantial increase in the number of women on boards between 1987-1996. The number of Inside directors as executives, was less than one percent between 1987-1996. In 1990s, the Securities Exchange Commission started supervising and penalizing the directors who were not carrying out their duties to make shareholders the true owners of their corporation (Pitt 2002). In December 1999, Levits recommendations were adopted and stock exchanges started requiring all the registered companies to have the audit committee comprising only of independent directors (Levitt, 2002). The independent directors are not periodically evaluated, or self evaluation is done, which leads to reduced board effectiveness. There are several benefits which can be realized with the board performance appraisal such as clarifying the roles and responsibilities of the directors and improving the relationship between directors and managers. This evaluation has become important, as investors have started to demand it. The corporate governance framework ensures monitoring, strategic guidance, and accountability of the management to the board. The board is supposed to work with diligence, good faith

and in the best interests of the company and its shareholders.

INDIA

- In India, the board can delegate powers to the whole-time or executive director. The obligations of the board are diligence, care, loyalty, avoidance of conflicts and skills in performing the duties. There should be same standards of care for executive and independent directors, except where executive directors' act in a management function delegated to them by the board and is separated from the board functions. Directors should have access to training, to fully understand their rights, responsibilities, duties and liabilities.
- Board members have an obligation to treat all shareholders fairly. Shareholders have the right of appeal to SEBI if they feel treated unfairly. At least two-thirds of the board of directors should be rotational. One-third consists of permanent directors, which include promoters, executive directors and nominee directors. Section 53, IA, Clause 49 requires issuers to have at least one-third independent directors, if the functions of chairman of the board and CEO are decoupled and 50 percent otherwise. (Sec. 54): An independent director is defined as a non-executive director who, inter alia, has no material pecuniary relationship or transactions with the company, its promoters, senior management or its holding company, its subsidiaries and associated companies, which in the judgment of the board may affect the independence of judgment of the director, [...] and is not related to promoters or management at the board level, or at one level below the board, their relatives, lawyers, consultants, employees of associated companies, etc. Policy recommendations: It has been argued that the institutional nominee directors representing DFIs do not bring specialized knowledge and hence, contribute little to the deliberation of the boards. An alternative would be for DFIs to nominate expert independent directors on their behalf. This would make them more independent. Such directors would not face the same conflicts of interest in situations where the repayment of loans is discussed as do current and former DFI employees. The maximum term of independent directors should be capped.
- The board should ensure compliance with applicable law and take into account the interests of stakeholder. The company secretary ensures that the board complies with its

statutory duties and obligations. The board reports annually on company activities, including company performance on environmental issues labour issues, tax compliance and provisions of the Competition Act.

- The board should be able to exercise objective judgment on corporate affairs independent, in particular, from management (i) Boards should consider assigning a sufficient number or non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination, and executive and board remuneration. (ii) Board members should devote sufficient time to their responsibilities.

Audit, nomination and remuneration/compensation committees are common. The audit committee should have at least three members, all non-executive, with a majority being independent and at least one director having financial and accounting expertise. Its chairman should be independent. The audit committee's role, composition, functions, powers and attendance requirements are detailed, in Clause 49 (2000), Section II, The audit committee's recommendations are binding on the board. Reportedly, in some companies, audit committee meetings take place hurriedly before the full board meeting. A director may be a member of up to 15 company boards. Clause 49 (2000) caps the number of committee chairmanships to five and the number of committee memberships to ten. Independent director compensation has two components: a small sitting fee and a commission of up to one percent of net profits. Loss-making companies, banks and public sector companies cannot pay commissions except with the express authorization of the pertinent regulatory authority.

Policy recommendations: Given that multiple board memberships held by the same person can interfere with the performance of directors. Companies and shareholders should consider whether such a situation is desirable. Audit committee members have sufficient financial and accounting knowledge to understand financial information, ask informed questions to the internal and external auditors and conduct meaningful meetings. Special training courses should be developed, including possibly a certification programme. Adequate across-the-board compensation for independent directors will help ensure that they devote sufficient time to their responsibilities and will increase the supply of high quality candidates. Compliance with the audit committee requirements should be monitored closely by regulators.

XIV. ROLE OF INDEPENDENT DIRECTORS IN INDIAN PUBLIC ENTERPRISES

Several measures have been initiated to professionalize the management of Public Enterprises. Induction of professionals on the Boards of PSEs as non-official part-time Directors is being done. As per the guidelines issued, by Department of Public Enterprises (DPE) in March 1992, the number of such non-official part-time Directors should be at least 1/3rd of the actual strength of the Board. The guidelines also envisage that the number of Government Directors on the Boards should not be more than one-sixth of the actual strength of the Board and in any case should not exceed two. Apart from this, there should be some functional Directors on each Board whose number could be up to 50% of the actual strength of the Board. As per SEBI's guidelines on corporate governance, in the cases of the listed companies headed by non-executive Chairman at least 1/3rd of the Board should comprise Independent Directors and in the cases of companies headed by an executive Chairman, at least half of the Board should comprise Independent Directors. Appointment of non-official part-time Directors on the Boards of PSEs is made by the administrative Ministries/Department from the panel prepared in consultation with the Department of Public Enterprises. In so far as Navratna and Miniratna PSEs are concerned, the panel of non-official part-time Directors is prepared by a Search Committee consisting of Chairman (PESB), Secretary (DPE), Secretary of the administrative Ministry/Department of the concerned PSE, and four non-official Members. According to the Navratna and Miniratna schemes, the Boards of these companies should be professionalized by inducting a minimum of four non-official Directors in the case of Navratnas and three non-official Directors in the case of Miniratnas before the Board exercise the enhanced powers. Non-official part-time Directors have been appointed on the Boards of all the nine Navratna PSEs. In July, 1997 the Government had identified nine Public Sector Enterprises that had comparative advantages and potential to emerge as global giants as Navratnas. These PSEs are given enhanced autonomy and delegation of powers to incur capital expenditure, to enter into technology Joint Ventures/Strategic Alliances, to effect organizational restructuring, to create and wind up below Board level posts and to raise capital from domestic and international market. Restructuring of Board by inducting at least four non-official Directors is a pre-condition for exercise of the enhanced powers. The nine Navratna PSEs are BHEL, BPCL, GAIL, HPCL, IOC, MTNL, NTPC, ONGC and SAIL. The committee has identified 42 Miniratnas. The criteria for conferring the status of Miniratna are (i) the PSE should be profit making for the last three years continuously and should have positive net worth, (ii) should not have defaulted in

repayment of loans/interest payment on loans due to government, (iii) should not depend upon budgetary support or government guarantee and (iv) its Board is restructured by inducting at least three non-official Directors. PSEs which have made pre-tax profit of Rs30 Crore or more in at least one of the three years, will be given Category I, while others are given Category II status. The administrative Ministries are empowered to declare a PSE as a Miniratna if it fulfils the eligibility conditions. The enhanced powers given to Miniratna PSEs include the power to incur capital expenditure, enter into joint ventures, set up technological and strategic alliances and formulate schemes of human resources management. Presently, there are 42 Miniratna PSEs (29 Category I and 13 Category II). The names of Miniratna PSEs are given in Annexure-II. Exercise of enhanced powers by these PSEs is subject to the condition that adequate number of non-official Directors are inducted on their Boards. The Search Committee has made selections in another 17 cases, which are under process in the concerned Ministries/Departments.

XV. PERFORMANCE MEASUREMENT OF INDEPENDENT DIRECTORS

The output of the teams and individuals are measured. In most of the organizations, measurement is not done at the board level. Most of the organizations don't know what is to be measured at the board level. Moreover, the director's efforts yield results that are spread over the years, and are not limited to the current year itself. It may be so because directors do not want to expose themselves to the appraisal. The criteria for measuring efforts or inputs of the director should be measured by soft method (not rigorously) to reveal to the independent director how his contribution is being perceived. It has been suggested that the independent directors should appraise themselves with the use of a matrix that shows the effectiveness in each role against the importance of that role. To have the effective use of self-appraisal, the independent director should discuss with the board members as to what are their important roles. The matrix can be used to assess skills or competencies in terms of importance and effectiveness. This kind of analysis can reveal the area which is important to the board and an area of weak contribution by the independent director should encourage the discussion among the board and the remedial action should be thought of. With the use of appraisal technique, an area of the problem can be identified and solution like training, access to key information and greater availability of time can be worked out. The appraisal also helps in identifying the cause of resignation or dismissal. This would reveal whether the independent director was ineffective or he was forced to resign because he was too challenging to the

executive management. There are other techniques like appraisal by the chairman, team members, shareholders, confidential feedback, etc.

XVI. LIMITATIONS OF INDEPENDENT DIRECTORS

We discuss some of the major limitations of the role and functions of independent directors in particular and other categories of directors in general. Let us mention at the outset that the limitations arise on account of two sources; one is an internal source; personality factors of an individual director; while the second is the external source; ownership of a firm; board composition and structure; board process; board strategies; among others. It is pertinent to note that the mere presence of independent directors on a company's board is not enough. We have significant evidence world-wide of corporate failures and poor board performance even with adequate number of experienced independent directors. It is not, therefore, their mere presence on the board but the value they add to the board process which will ensure effective corporate governance.

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