



Appointment, Re-Appointment, Resignation and Removal of Independent Director in Listed Entities

As the expression goes, Independent Director (ID) must have special attributes and must not be hit by any of the ineligibility norms prescribed under

- Section 149 (6) of Companies Act, 2013 (the Act) read with Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014 and Schedule IV of the Act.
- Securities and Exchange Board of India (SEBI) under Regulation 16(1)(b) the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) has also specified ineligibility norms. In this respect, LODR almost mimics Section 149(6) of the Act.

Therefore, we are, for a change, writing about the basic provisions relating to appointment and cessation of IDs in listed companies. Appointment must be understood in contradistinction to reappointment. The Nomination and Remuneration Committee (NRC), the Board of Directors (BOD) and the members are the three entities involved in this process.

Cessation may happen due to various reasons such as death, disqualification, resignation, or removal of a director. However, we are confining to cessation by resignation and removal alone in this writeup.

Tenure of ID:

The ID may be appointed for a term not exceeding five years. He / she is eligible for re-appointment to another term which shall not exceed five years. After a cooling period of 3 years, he / she may be appointed as ID of the same company provided, he/she fulfils the requisite criteria as per the provision. [Section 149(10) and (11) of the Act]

Appointment / Re-appointment of Independent Director:

The entire process and procedural aspects relating to appointment / re-appointment have been explained hereunder:

I – NRC	II – BOD	III - Members at General Meeting
The NRC shall evaluate the balance of skills, knowledge, and experience on the Board and based on such evaluation, prepare a description of the role	Appointing the person recommended by NRC as an Additional Director in the category of ID subject to the approval of shareholders. (Sec 161) and place the appointment	Special Resolution: Though an ordinary resolution at general meeting is enough for appointment of director as per Companies Act, 2013.



and capabilities required of an ID. The person recommended for being appointed / reappointed as an ID shall have capabilities identified in such description.

[Section 178 of the Act and Para A, Part D, Schedule II and Para C(2)(H) of Schedule V of LODR]

for approval by members at a general meeting to be called and held within 3 months as required under Section 152 of the Companies Act, 2013 read with Regulation 17 and 25 of LODR. Board may directly consider appointment / reappointment at a general meeting or through a postal ballot process.

For benefit of members, Board shall provide necessary information to members of the proposed director as per Regulation 36(3) of LODR.

In the case of Re-appointment

The reappointment shall be based on performance evaluation of the ID [Section 149(8) r/w Para V Schedule IV of the Companies Act, 2013]

- The Board shall evaluate the performance of the ID [Sec 134(3) of the Act r/w Regulation 17(10) of LODR].
- When Board recommends re-appointment of the ID, the explanatory statement annexed to the Notice of general meeting or postal ballot shall give justification for

For listed entities, LODR stipulated the passing of Special Resolution for approving the appointment of an ID. (Reg. 25 of LODR).

Concept of Dual Majority:

However, where a special resolution for the appointment of an ID does not get passed but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an ID shall be deemed to have been approved.

The concept of Dual Majority is not available for re-appointment of ID as the Companies Act specifies the approval by way of Special Resolution. Hence, reappointment cannot happen unless shareholders approve the same by a special resolution.



	such reappointment. (Section 152, 110 of the Act, & Regulation 25 of LODR) in addition to providing requisite information about the ID as per Regulation 36(3) of LODR.	
IV - Actions by the ID	V - To Stock Exchanges	VI - To Registrar of Companies
<p>Prior to Appointment / Re-appointment</p> <ul style="list-style-type: none"> ➤ Written Consent to hold the office as director in Form DIR-2 on or before the appointment. [Sec 152(5) r/w Rule 8] ➤ Furnish Director Identification Number (DIN). [Sec 154(4)] ➤ Declaration in Form DIR-8 that the director is not disqualified. [Sec 154(4)] ➤ Declaration that he/she meets the criteria of independence. [Sec 149(7)] <p>After Appointment / Re-appointment</p> <ul style="list-style-type: none"> ➤ Disclosure of interest in Form MBP-1 [Section 184 read with Rule 9 of Companies (Meetings of Board and its Powers) Rules, 2014] 	<ul style="list-style-type: none"> ➤ Intimate Stock Exchange about the appointment in board meeting within 24 Hours of the occurrence of event i.e., conclusion of the meeting. [Regulation 30 r/w Part A of Schedule III of LODR] ➤ Within 2 working days update the appointment in the company's website. [Regulation 46 of LODR] ➤ Within 24 Hours disclose the proceedings of general meeting to the stock exchange. [Regulation 30 of LODR] ➤ Submit the voting results of the general meeting within 2 working days. [Regulation 44 of LODR] 	<ul style="list-style-type: none"> ➤ File Form DIR-12 within 30 days from the date of appointment in the Board Meeting and again within 30 days from the date of approval by shareholder for change in designation. [Section 170 of the Act & Rule 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014] ➤ Make an entry in the Register of Directors and Key Managerial Personnel forthwith. [Section 170 of the Act read with Rule 17(1)(j) of Companies (Appointment and Qualification of Directors) Rules, 2014 read with non-mandatory Secretarial Standard on Registers and Records] ➤ File Form MGT-14 within 30 days of passing Special Resolution [Section 117(1) r/w Rule 24 Companies (Management and Administration) Rules, 2014] ➤ Disclose details of director appointed / reappointed in the Board's Report forming part of Annual Report of the company. [Sec 134 of the Act r/w Rule 8 of Companies (Accounts) Rules, 2014 and Regulation 34 read with Schedule V of LODR]



Resignation of ID:

An ID may resign the position of directorship before the expiry of his/her tenure by giving notice to the company in writing. As per section 168(2) of the Act, the resignation of director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

When such ID resigns from a listed entity, he/she shall not be appointed as an executive / whole time director on the Board of the listed entity, its holding, subsidiary, or associate company or on the Board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an ID. [Regulation 25(11) of LODR]

I – NRC	II – BOD	III - Members at General Meeting
<p>NRC does not have a role in case of resignation.</p> <p>However, it is incumbent upon NRC to study the reasons for resignation so that proper remedial action if any could be taken. NRC is entitled to recommend remedial measures to BOD</p>	<p>On receipt of letter or communication about resignation of an ID, the Board shall take note of the same. Board may study the reasons for resignation and take remedial measures if necessary.</p> <p>If the listed company does not fulfil the requirement of ID after the resignation, the vacancy arising due to resignation shall be filled by another ID at the earliest but not later than 3 months from the date of such vacancy. [Section 168 of the Act r/w Para 6 Schedule IV to the Companies Act, 2013 & Regulation 25(6) of LODR]</p> <p>The Board shall place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company. [Section 168(1) of the Act]</p>	<p>There is nothing that members have to do in respect of resignation unless the reasons reveal any misgovernance.</p> <p>Such resignation shall be placed at the general meeting through the report of directors at immediately following general meeting. [Section 168(1)]</p> <p>If the Company does not fulfil the requirements of ID after the resignation of the ID, the vacancy shall be filled by another ID at the earliest but not later than 3 months from the date of such vacancy. (Regulation 25(6) of LODR)</p>



IV – Actions by the ID	V - To Stock Exchanges	VI – To Registrar of Companies
<p>The resigning ID may forward a copy of resignation along with detailed reason for the resignation within 30 days of his/her resignation in Form DIR-11 along with the fees to Registrar of Companies. [Section 168(1) r/w Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014]</p> <p>If the resigning director is a foreign director, he/she may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation to the Registrar of Companies. [Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014]</p> <p>Within 7 days from the date of resignation, the resigning director shall confirm in writing to the stock exchanges, along with the detailed reason of his resignation, that there are</p>	<p>Disclosure of resignation be intimated to stock exchange as soon as possible or within 24 Hours. [Reg. 30]</p> <p>Update the resignation in the company's website within 2 working days. [Regulation 46 of LODR]</p> <p>Disclosure to the stock exchange about the resignation of ID along with the letter of resignation and the detailed reasons of resignation as given by the said ID within 7 days from the date of resignation. [Regulation 30 r/w Clause 7B Para A Part A of Schedule III of LODR]</p>	<p>File Form DIR-12 within 30 days from the receipt of notice of resignation from the ID. [Section 168(1) r/w Rule 15 of the Companies (Appointment and Qualification of Directors) Rule, 2014]</p> <p>Update the Register of Directors and Key Managerial Personnel forthwith with the date of cessation and reasons therefor. [Section 170 r/w Rule 17 of the Companies (Appointment and Qualification of Directors) Rule, 2014] read with non-mandatory Secretarial Standard on Registers and Records)</p> <p>Such resignation of ID shall be mentioned in Board's Report and Corporate Governance Report forming part of Annual Report. [Section 134 of the Act & Regulation 34 r/w Part C of Schedule V of LODR]</p>



no other material reasons.
 [Clause 7B Para A Part A of
 Schedule III of SEBI LODR]

Removal of ID:

I – NRC	II – BOD	III - Members at General Meeting
<p>Role of NRC is specified in Section 178 of the Act and Schedule II-Part D-Para A of LODR.</p> <ul style="list-style-type: none"> ➤ NRC shall formulate the criteria for evaluation of performance of ID. ➤ NRC may formulate such criteria based on Code for IDs contained in Schedule IV to the Act. ➤ NRC can recommend the removal of ID on its own. 	<p>The Board may, either on NRC recommendation, or on its own observation or on a receipt of special notice by the member, proceed to call a general meeting to seek approval of members to remove ID.</p> <p>On receipt of special notice under removal of ID, the Board shall;</p> <ul style="list-style-type: none"> ➤ Forthwith send a copy thereof to the concerned director. [Section 169(3) of the Act] ➤ Any written representation from the ID, shall be notified to members as per Section 169(4) of the Act. ➤ General meeting notice calling for such removal shall be made to members as per Section 115 of the Act r/w Rule 23 of the Companies (Management and Administration) Rule, 2015 <p><u>Where a general meeting is already convened:</u></p>	<ul style="list-style-type: none"> ➤ Where Members are willing to remove an ID, a special notice shall be sent by members of the company for removal of director not earlier than 3 months but at least 14 days before the date of general meeting. [Section 115, 169(2) r/w Rule 23 of Companies (Management and Administration) Rule, 2015] ➤ Members approval for removal of the ID at a listed entity can be taken only through special resolution at general meeting. [Section 169 of the Act r/w Regulation 25 of LODR] ➤ Whereas the appointment of ID was through Dual Majority concept, the removal shall also be under the same concept. [Regulation 25 of LODR] ➤ As reasonable opportunity of being heard is required to be given to the director, resolution for removal cannot be passed through Postal Ballot. [Section 169



	<ul style="list-style-type: none"> ➤ On receipt of special notice from the members, the BOD shall circulate the notice to its members at least 7 clear days before the general meeting. ➤ If it is impracticable to circulate the notice, the company shall publish it in at least 1 English Newspaper and 1 Vernacular language Newspaper, at least 7 days before the meeting and post the notice in the company's website. <p><u>Where no general meeting is already convened:</u></p> <ul style="list-style-type: none"> ➤ If the BOD is of the opinion that the performance of the ID is not satisfactory, they may recommend the removal of the ID directly to the members and approve the notice for convening a general meeting along with the explanatory statement [Section 102 of the Act] ➤ In such a situation, the question of receiving a special notice from any member does not arise. 	<p>r/w Section 110(1)(b) of the Act]</p> <ul style="list-style-type: none"> ➤ If the company does not fulfil the requirements of ID after the removal, the vacancy shall be filled by appointing another ID at the earliest but not later than 3 months from the date of such vacancy. [Regulation 25(6) of LODR] ➤ A vacancy created by the removal of a director under section 168 can be done at a general meeting or by the Board. Also, when a director is appointed at the same meeting where the earlier director was removed, procedure of Section 169(5) of the Act must be followed.
<p>IV – Action by the ID</p>	<p>V - To Stock Exchange</p>	<p>VI – To Registrar of Companies</p>
<ul style="list-style-type: none"> ➤ The proposed ID for removal shall receive a copy of such notice of a 	<ul style="list-style-type: none"> ➤ Disclosure of change in director be intimated to stock exchange as soon 	<ul style="list-style-type: none"> ➤ File Form DIR-12 within 30 days from the date of cessation of ID. (Section 170 of the Act r/w Rule 18



<p>resolution to remove forthwith by the company. [Section 169(3 of the Act)]</p> <ul style="list-style-type: none"> ➤ The ID shall be entitled to be heard on the resolution at the meeting. ➤ The ID shall make written representation to the company and request its notification to members. ➤ The company shall if the time permits either send a copy of representation or may without prejudice to his/her right to be heard orally read out the representation at the meeting. [Section 168(4) of the Act] 	<p>as possible or within 24 Hours. [Regulation 30]</p> <ul style="list-style-type: none"> ➤ Disclose the proceedings of general meeting to the stock exchange within 24 Hours. [Regulation 30 r/w Part A of Schedule III of LODR] ➤ Submit the voting results of the general meeting within 2 working days to the stock exchange. [Regulation 44 of LODR] ➤ Update the removal in the company's website within 2 working days. [Regulation 46 of LODR] 	<p>Companies (Appointment and Qualification of Directors) Rules, 2014)</p> <ul style="list-style-type: none"> ➤ File Form MGT-14 within 30 days of passing Special Resolution removing ID at general meeting. (Section 117(1) r/w Rule 24 of Companies (Management and Administration) Rules, 2014) ➤ Update the Register of Directors and Key Managerial Personnel forthwith. (Section 170 r/w Rule 17(1)(k) of the Companies (Appointment and Qualification of Directors) Rule, 2014 and non-mandatory Secretarial Standard on Registers and Records) ➤ Disclose details of director's removal in the Board's Report forming part of Annual Report of the company. (Section 134, r/w Rule 8 of Companies (Accounts) Rules, 2014 & Regulation 34 of LODR)
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