

Familiarization Program for Independent Directors

Preamble

The enactment of the Companies Act, 2013 (the Act, 2013) has brought to the fore a number of provisions which will help the directors and the companies to ensure better corporate governance. In keeping with the overarching need to synthesize corporate laws, the Equity Listing Agreement has also been revised such that Clause 49 (II) (B) (7) provides that companies should conduct “training programs” for the independent directors so as to provide insights about the background of the company, their roles, responsibilities etc. The Revised Clause 49 as on September 15, 2014 changed the nomenclature of the said training program to “familiarisation program” keeping the other provisions intact. In order to increase the Board’s effectiveness, training needs are identified as being a mandatory requirement now so as to enhance the skills and competencies.

This requirement was part of the “non-mandatory requirements” of the erstwhile Clause 49 of the Equity Listing Agreement which provided for training of the board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors and the best ways to discharge them. The same have now been made compulsory in the revised Clause 49 which came into effect from October 1, 2014 but for the independent directors in particular. Hence, listed companies have to lay down manual for such familiarization programs. Details of such familiarization programs also need to be disclosed on the company's website and a web link thereto should be given in the Annual Report.

Applicability of requirement to training of directors or familiarization program

Provisions under the Act, 2013

Schedule IV

Part III under Schedule IV requires the independent directors to regularly undertake induction for updating and refreshing their skills and knowledge and familiarity with the company. The said Schedule also lays down the roles, responsibilities and the duties to be performed by independent directors.

Section 166

The Section also provides for duties of directors.

Equity Listing Agreement

Clause 49(II)(B)(7) of the revised Equity Listing Agreement requires the company to familiarize the independent directors with the nature of the company, the roles, responsibilities and duties of the independent directors amongst others.

The same does not lay down specific requirements that the same is to be for new director inducted on the board or that there should be a regular familiarization program for the directors.

There is no prescribed periodicity under the Act regarding induction/training of the directors except that it should be regular. Further, under the listing agreement the company is required to disclose the details of such familiarization programs on the company's website.

External facilitator

As enumerated above, the concept of appointing an external facilitator is suggested by the Cadbury Committee and under the survey on Corporate Governance Report of SCCLR. The Act, 2013 and the Equity Listing Agreement do not prescribe anything on similar lines. The familiarization program for Independent Directors may be administered and conducted by such persons as identified by the Board as authorized from time to time. However, the same may be useful to the extent of inducting on background about the company, its nature etc. only.

What is the role of the facilitator? Since induction of the independent directors is being viewed as effective tool for increased performance and ensure adherence to their roles and responsibilities, it is to be ensured that they are well educated about the provisions of law and the implications of non-compliances. With the changes in law being dynamic in nature in India, it may not be possible for the management itself to keep itself abreast with all the changing provisions and therefore there may be lapses while induction. Since, the same also requires ample amount of time, the executive of the company itself may not be able to provide the required time in view of the business needs also. Further, the independent directors may be skeptical about the views and interpretations of the executive directors hence, an external facilitator may be better in approach.

The role of the facilitator may consist of one or more of the following:

- i. To provide regular training on changes in dynamics of law so as to keep the directors updated with all necessary provisions to be fresh with legal provisions at all times.
- ii. To provide legal opinion and advisory as and when the need may arise in relation to corporate and allied laws as applicable to the Company.
- iii. Provide advisory on manner of disclosures required under the various provisions of corporate laws.
- iv. Facilitate in making comments on the draft policies of the company to ensure adherence to law.
- v. To keep abreast with the regulatory changes and the implications thereof.
- vi. Provide brief presentation as and when needed on the regulatory changes.
- vii. Provide training on any specific law requirements.
- viii. Provide insight on regulatory requirements in comparison to laws in other countries as well.

Contents of familiarization program

In this regard, we have enlisted an outline for the familiarization program which is not exhaustive, yet it is intended to give an idea about the correct mix of criteria which should be made a part of the program.

Topics		To be undertaken by
<i>Background of the Company</i>	Nature of business/industry, the Company is engaged in	Executive Director(s)
	Different products of the Company	Senior Management Personnel/Functional Heads
	Business segments in the Company	Executive Director(s)/Senior Management Personnel
	Annual Operating Plan and Performance of the Company	Chief Financial Officer
	Details of other group companies	Chief Financial Officer
	Strategic investments in the Company	Chief Financial Officer
	Downstream investments of the Company	Chief Financial Officer
	Major business customers of the Company	Senior Management Personnel/Functional Heads
<i>Background of the Board of Directors of the Company and the various roles and responsibilities entrusted on them</i>	Background of the other directors of the Company	Company Secretary
	Orientation on Statutory Compliances	Company Secretary/Functional Heads
	Various committees of the Board	Company Secretary
	Roles – i. Role of different committees of Board; ii. Role of Independent Directors;	Company Secretary
	Rights – i. Right to seek legal opinion; ii. Right to information;	Company Secretary

Topics		To be undertaken by
	<ul style="list-style-type: none"> iii. Right to inspect books of accounts of the Company; iv. Right to participate in board meetings; v. Right to receive the notice for attending general meetings of the Company; vi. Right to call board meetings, subject to the Articles of the Company 	
	<p>Responsibilities –</p> <ul style="list-style-type: none"> i. Duties of Directors under Section 166 of the Companies Act, 2013; ii. Duties of the Independent Directors under Schedule IV Part 3 of the Companies Act, 2013; iii. Duties and responsibilities arising from the SEBI's Equity Listing Agreement; iv. General responsibilities of the Directors. v. Penal provisions for non-compliance of the above under various laws applicable to the Company 	Company Secretary
<i>Expectations of the Company from the Independent Directors</i>		Executive Director(s)