

The Role and Responsibilities of Independent Directors: Insights from Mehta & Mehta Webinar

Independent Directors (IDs) play a pivotal role in ensuring corporate governance, integrity, and compliance within boardrooms. In a recent webinar hosted by **Mehta & Mehta**, several questions were raised by professionals across industries.

1. Becoming an Independent Director: Challenges and Pathways

Despite many professionals being certified as IDs, several attendees expressed concerns over not being placed. While certification is mandatory (via the IICA databank), placement depends on visibility, networking, and industry reputation. Engaging with governance forums and consulting firms can enhance opportunities.

2. Legal Protection and Liability of Independent Directors

One of the top concerns was liability. To address this, **Directors & Officers (D&O) Insurance** provides a safety net for decisions made in good faith. IDs may also take personal indemnity coverage for broader protection. It was clarified that IDs are generally not liable for acts outside their tenure, but diligence and documentation are critical to defending oneself legally.

3. Eligibility and Appointment-Related FAQs

- **Age Criteria:** The minimum age to become an ID is 21. There is no maximum age limit.
- **Public Sector Employees:** They may serve as IDs in private companies, subject to service rules.
- **Reappointment:** Requires a **special resolution** and performance evaluation.
- **Post-Term Appointment:** After completing two terms as an ID, a person can be reappointed only after a 3-year cooling-off period.

4. Conflicts of Interest and Independence

Questions were raised about the real-world independence of IDs:

- IDs should **not be substantial shareholders**, promoters, or related to promoters.
- **Partners from the same firm** cannot serve as IDs in the same company or its group entities.
- Receiving profit-based commissions may **erode perceived independence**, even if legally permitted.

5. Board Dynamics and Role in Committees

IDs are expected to contribute to board and committee functions with an **independent mind**. They should not interfere in **day-to-day management** but must monitor risk, performance, and governance compliance. Questions also explored:

- **Differential sitting fees** – permitted based on expertise.
- **Minutes of ID meetings** – to be kept confidential and ideally recorded by the CS, shared only with the Chairman.
- **Participation in Audit/NRC Committees** – required for listed and large unlisted companies.

6. Appointment Procedures and Regulatory Compliance

- **Appointment as Additional Director:** IDs may be appointed by the board and later regularised at the AGM with shareholder approval.
- **Form DIR-12:** Must be filed upon appointment and regularisation.
- **Proficiency Test:** Required within 2 years of registration with the IICA databank. Certain senior government officials are exempt.

7. Policy and Remuneration Considerations

- **Sitting Fees:** No prescribed minimum. Must comply with overall caps under the Companies Act.
- **ESOPs & Sweat Equity:** Not allowed for IDs to ensure true independence.
- **D&O Insurance:** Recommended for all IDs, not restricted to listed companies. Individual policies can supplement company-provided coverage.

8. Special Cases and Governance Gaps

- **Group Companies:** Serving as an ID across group entities may create a dependence perception, even if technically compliant.
- **PSUs:** Several public sector companies are still non-compliant in appointing IDs—a regulatory gap needing urgent attention.
- **Cheque Dishonour (Sec 138):** IDs not involved in daily operations can usually defend against such cases with proper documentation.

9. Familiarisation & Continuous Learning

A robust **familiarisation programme** is essential and should include:

- Company overview
- Governance structure
- Key business risks
- Financial fundamentals
- Regulatory expectations

Resources like **books**, **workshops**, and training from **Mehta & Mehta**, IICA, or IOD can help potential and serving IDs stay updated.

10. Way Forward: Addressing the ID Deficit in India

Several attendees expressed frustration about lack of appointments despite certification. It was acknowledged that:

- The ID ecosystem in India still leans heavily on **personal networks**.
- Companies must look beyond familiar circles and tap into the **vast databank of trained IDs**.
- Transparency in ID selection will strengthen India's corporate governance fabric.

Conclusion

The role of Independent Directors is evolving rapidly. While the Companies Act and SEBI LODR lay out the framework, real-world challenges—from appointment to liability—remain significant. Sessions like this webinar help decode complexities and bring clarity to aspiring and serving IDs.

To stay informed or access the webinar recording, visit the YouTube channel:
□ **"Decoding Corporate Laws with Mehta & Mehta"**