

INDEPENDENT BOARD MEMBER

1. Introduction

The term 'Independent Director or independent Board Member' came into existence in context to Corporate. As per Clause 49 of the Companies Act 2013 which provides the listing agreements on corporate governance 'Independent Director' is defined as follows:

“For the purpose of this clause the expression ‘Independent Directors’ means Directors who apart from receiving Director’s remuneration do not have any other material pecuniary relationship or transactions with the Company, its promoters, its management or its subsidiaries, which in judgment of the Board may affect independence of judgment of the Directors.”

In the voluntary sector, most of the Directors are expected to be independent. The Board Members of every voluntary organization should comprise of at least 40% independent directors. The purpose of appointing independent directors is to ensure that the Board includes directors who can effectively exercise their best judgment for the exclusive benefit of the organization and take decisions that are not clouded by real or perceived conflicts of interest.

Thus, Independent Directors should be free of material relations with respect to the organization’s management and other interests that might reasonably interfere with the independent exercise of their best judgment for the exclusive interest of the organization.

2. Tenure of Independent Directors

The tenure of an independent director is same as rest of the Board members. Further, one third of the Board retires in every two years based on the provision in the bye-laws of the organization.

3. Restriction on the number of Independent Directors that can serve on the Board

There is no upper limit for independent directors in the Board of a voluntary organization as directors of all NPOs are not supposed to take any kind of benefit or privilege from the organization. Hence, in letter and spirit, all the directors are independent in nature.

4. Performance Evaluation of Independent Directors:

It is mandatory to conduct the performance evaluation of independent directors. The evaluation should be done by the whole Board except the directors being evaluated. The decision to extend/ continue the terms of the independent directors are made on the basis of such performance evaluation.

5. Exclusion of certain Board members from the definition of Independent Director

Ideally, the following Board members should be excluded from acting as independent directors:

- Representatives of employees, who become Board member
- Predefined Executive Heads like CEO, Executive Director who is ex-officio member of the Board
- Elected Board members who are in whole time service in terms of the bye-laws
- Nominee directors

Including these Board members within the pool of independent directors may hamper the overall accountability of the organization.

6. Meeting of Independent Committee

Independent Directors should take part in Board meetings conducted as per the provision of the bye-laws. However, it is a good practice for the independent directors to meet periodically in executive session outside the presence of non-independent directors and senior management.

7. Key characteristics of an Independent Director

An independent director is a person:

- Who is not compensated as an employee of the organization
- Who does not receive compensation or other payments from the organization as an independent contractor (other than reimbursement of expenses or reasonable compensation for services provided in the capacity of serving as a member of the governing body)
- Who does not receive, directly or indirectly, material financial benefits from the organization
- Who is not a spouse, sibling, parent, or child of any individual who is employed by, or receives compensation or other material benefits from, the organization

Hence, there should be no financial or familial relationships between the director and the organization. It is utmost important for organizations to consider whether such relationships affect the ability of the director and the board to act in the best interests of the organization.

8. Role of Independent Director on the Board

The roles of independent directors should be dictated by the size and needs of an organization. Even if majority of board directors of an organization are not independent, the few independent directors can play more specific roles. Ideally an organization should have only independent directors serving on the Audit Committee and Compensation Committee. All members of such committees should be independent of any outside consultants and/or advisors selected or recommended to the board. It also makes sense to always include a majority of independent directors on the Governance or Nominating Committees and in any other Board decisions in which there may be the perception of undue influence on those directors with a financial or familial relationship.

9. Conclusion

The need for “independent directors” is much broader than dealing with conflicts of interest. It also touches on principles and practices involving accountability, fiduciary duties, and transparency. Hence a voluntary organization should have majority of its Board comprised of independent directors to avoid cases such as – where a director who provides services to the organization may be overly deferential to management’s actions for fear of losing an important customer, or directors related to employees of the organization may be less critical of actions or recommendations made by such employees, etc. There is no size that fits all so all organizations should evaluate their needs to determine how an organization can be best served by the independent directors. The idea is to always consider the best interests of the organization when creating an effective decision-making process.