BY WHOM TO APPOINT

Every listed public company

At least 1/3rd of the total number of directors.

[Section 149(4) of The Companies Act, 2013]

Audit Committee is must shall consist of a minimum of 3 directors ***with independent directors forming a majority***.

[Section 177(2) of The Companies Act, 2013]

Audit Committee is must and shall consist of 2/3rd of members be independent directors.

[Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

Public company

Paid up capital ≥ Rs. 10 Crores

OR

Turnover ≥ Rs. 100 Crores

OR

Aggregate, outstanding loans, debentures and deposits > Rs. 50 Crores

At least 2 Directors as independent directors.

[Rule 4 of The Companies (Appointment and Qualifications of Directors) Rules, 2014]

Section 149(6) of the Companies Act, 2013

An independent director in relation to a company, means a director *other than a managing director or a whole-time director or a nominee director*, —

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b)
(i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or
(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

(e) who, neither himself nor any of his relatives—
(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
(f) who possesses such other qualifications as may be prescribed.

- **QUALIFICATIONS OF INDEPENDENT DIRECTOR**

Rule-5 of The Companies (Appointment and Qualifications of Directors) Rules, 2014

(1) An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149, -

(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or

(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company,

for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.]

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Relevant definitions

Section 2(47) of The Companies Act, 2013
"Independent director" means an independent director referred to in sub-section (6) of section 149.

Section 2 (54) of The Companies Act, 2013
"Managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

Section 2(94) of The Companies Act, 2013
"Whole-time director" includes a director in the whole-time employment of the company.

Section 161 (3) of The Companies Act, 2013
Nominee Director

Subject to the articles of a company, the Board may appoint any person as a director *nominated by* any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

- **COMPLIANCES REQUIRED BY A PERSON ELIGIBLE AND WILLING TO BE APPOINTED AS AN INDEPENDENT DIRECTOR.**

Rule 6 of The Companies (Appointment and Qualifications of Directors) Rules, 2014

(1) Every individual –
(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 [Amendment rule commenced from 1st December 2019], shall within a period of five months from such commencement;
or
(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,

apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period up-to which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.

(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.

(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than ten years, as on the date of inclusion of his name in the databank, in one or more of the following, namely: -
(a) listed public company; or
(b) unlisted public company having a paid-up share capital of rupees ten crore or more; or
(c) body corporate listed on a recognized stock exchange:]

Provided further that for the purpose of calculation of the period of ten years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more 4[companies or bodies corporate] at the same time shall be counted only once.

Explanation: For the purposes of this rule, -

(a) the expression "institute" means the 'Indian Institute of Corporate Affairs at Manesar' notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

(b) an individual who has obtained a score of not less than sixty percent. in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;

(c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.

"Empanelment of Independent Directors on Databank"

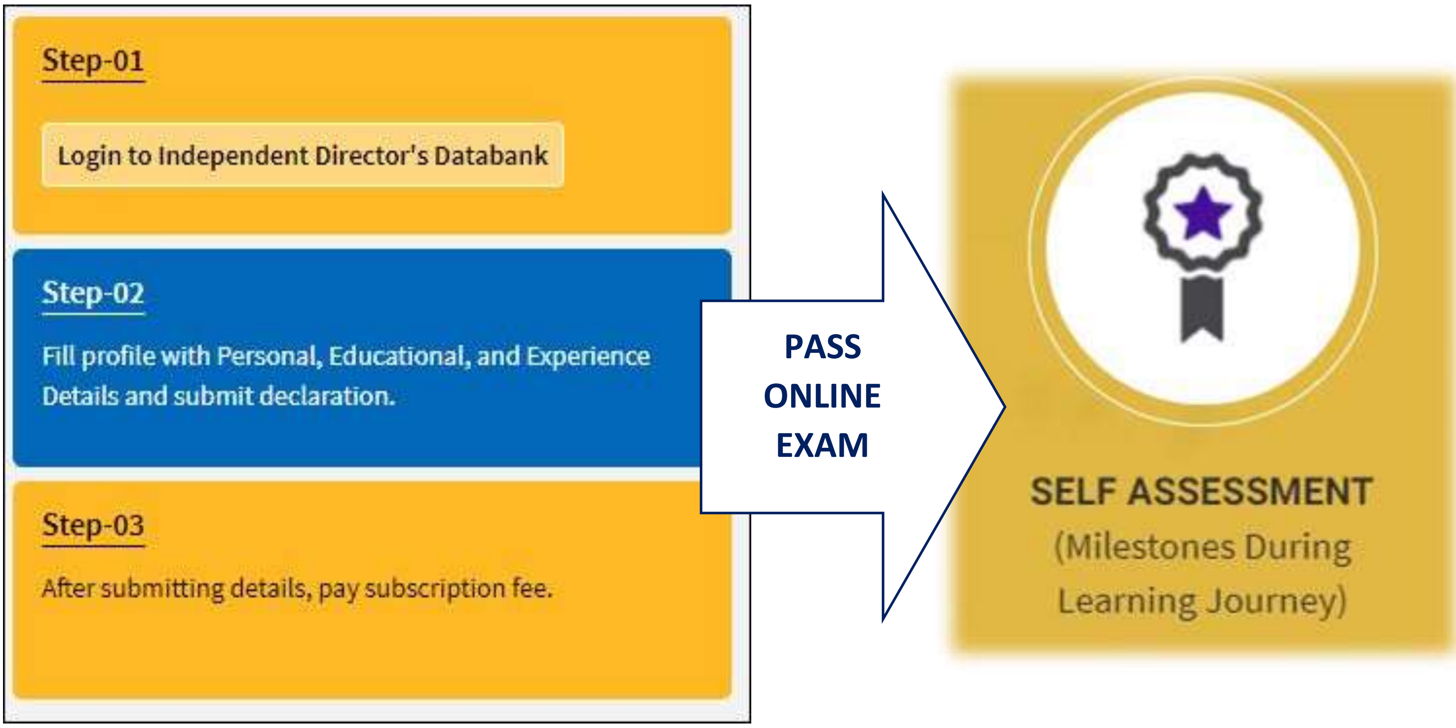
The Ministry of Corporate Affairs and Indian Institute of Corporate Affairs (IICA) have introduced a comprehensive online databank for all existing and aspiring Independent Directors. The empanelment process is quick and simple and it has been divided into three steps:

Process of Empanelment of Independent Directors on Databank

Mandatory Requirements:

- **Valid DIN/PAN/Passport**
- **Registration in MCA Portal using [this link]**
  - **Process in MCA Portal**

- **Process in ID Databank at [this link]**



Fee Structure for individual empanelment

Rs. 5,000 + 18% GST for 1 Year subscription
Rs. 15,000 + 18% GST for 5 Years subscription
Rs. 25,000 + 18% GST for Lifetime subscription

- **NUMBER OF INDEPENDENT DIRECTORS**

Section 149(4) of The Companies Act, 2013

Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Explanation. —For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

Rule 4 of The Companies (Appointment and Qualifications of Directors) Rules, 2014

(1) The following class or classes of companies shall have *at least two directors as independent directors* -

(i) the Public Companies having paid up share capital of ten crore rupees or more; or
(ii) the Public Companies having turnover of one hundred crore rupees or more; or
(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

Provided that in case a company covered under this rule is **required to appoint a higher number of independent directors due to composition of its audit committee**, such higher number of independent directors shall be applicable to it:

Section 177 of Companies Act, 2013
Audit Committee
(1) The Board of Directors of ***every listed public company*** *and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.*
(2) The Audit Committee shall consist of a minimum of three directors ***with independent directors forming a majority****.*

Rule 6 of The Companies (Meetings of Board and its Powers) Rules, 2014
Committees of the Board.
The Board of directors of every listed public company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'.

Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
Audit Committee
(1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:
(a) The audit committee shall have minimum three directors as members.
(b) Two-thirds of the members of audit committee shall be independent directors.
(c) ……….
(d) The chairperson of the audit committee shall be an independent director and he shall be present at Annual general meeting to answer shareholder queries.
(e)……….
(f)…………

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:

Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely: -.
(a) a joint venture;
(b) a wholly owned subsidiary; and
(c) a dormant company as defined under section 455 of the Act.

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- **NO BAR ON PRACITISING CAs TO BE INDEPENDENT DIRECTORS**

Clause (11) of Part I "Professional misconduct in relation to chartered accountants in practice" of "The First Schedule" of The Chartered Accountants Act, 1949 (No. 38 of 1949)

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –
engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage:

> Provided that *nothing contained herein shall disentitle* a chartered accountant from being a director of a company *(not being a managing director or a whole time director)* unless he or any of his partners is interested in such company as an auditor.

X

PRADEEP GOYAL
FCA