

SES View on re-appointment of Independent Directors

SES Proxy Advisory Guideline Note: #1/2021

Issue:

At present, while re-appointing Independent Directors, companies are adopting different procedures. Some companies are re-appointing IDs as Additional Directors and seeking shareholders approval on *post facto* basis from a retrospective date, whereas some are re-appointing IDs from prospective dates and seeking approval of shareholders prior to re-appointment. In both the cases, the resolution proposed is a special resolution.

SES has been debating for a long time, whether SES in its policy should take a view in accordance with letter and spirit of the law or continue to ignore misreading/ misinterpretation of the law by companies while re-appointing IDs. SES after deliberation has come to conclusion that as already 6 years have passed since the law came into force and one cannot take a shelter under transitory period or teething troubles.

Hence, for the reasons explained hereunder, SES will not be voting FOR, in case reappointment is through route of Additional Director.

LAW:

Section 149 deals with the provision relating to appointment of Directors (including Independent Directors ('IDs')) on the Board of a Company.

Section 149(10) more specifically lays down **eligibility for re-appointment** of IDs on the Board. Its states that:

*(10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be **eligible for reappointment on passing of a special resolution** by the company and disclosure of such appointment in the Board's report.*

Interpretation of Law:

It is important to note that an existing ID becomes **eligible** for re-appointment as ID only upon 'passing of special resolution' by the shareholders of the Company. Therefore, any re-appointment of ID, first as Additional Director and thereafter *post facto* approval vide Special Resolution is not legally tenable as the ID is not eligible for re-appointment for a second term without shareholders' approval.

Dictionary meaning of the term 'eligible' means something that is a pre-requisite or a pre-condition.

Conclusion:

SES is of the opinion that re-appointment of IDs is beyond the powers of the Board of Directors. Hence, re-appointment must be only through special resolution passed by shareholders and not as additional director.

Effective Date: With immediate effect (that is 19th Feb, 2021)

Circulation: All Listed Companies in SES coverage and all SES clients