

SES View on Transition of directors from IDs to NIDs within the same /Group Companies

SES Proxy Policy Change #2/ 2021-22

Background:

SEBI LODR (Third Amendment) Regulations, 2021 (w.e.f. 1st Jan, 2022) have introduced a new Restriction on IDs –

- From 1st January, 2022, in terms of Regulation 25(11), a director resigning from ID position, will have to serve a mandatory cooling off period of 1 year before being appointed as ED in the same Company or Group Entities.
- This shall ensure that both the office of director as ID and as ED are distinct from each other. Otherwise, such a transition of a director from ID to ED, raises question over the independence of the director during his term as ID of the Company.
- In view of the above rationale, SES is of the opinion that the 1 year cooling off period must also extend to transition of a director from ID to NE-NIDs position as well, since NE-NID is also a Non-Independent position.
- Till now, cases of transition of directors from IDs to ED / NE-NID were very rare, however, off late it is observed that such cases have been rising, necessitating a relook at policy.
- While SES maintains that independence is a personal trait and can neither be legislated nor be ensured by scrutiny, as a result, all individuals must be treated with same policies even though their conduct can be different.
- Further, SES would apologise to them, SES express its inability and practical difficulty in making any carve out for individuals who stand out in their independent conduct despite not fitting into SES independent parameters. In order to discourage such practice in its infancy, SES has decided to formulate a policy in this regard.

Therefore, in order to uphold the spirit behind the above amendment of SEBI, SES shall recommend **AGAINST the appointment of IDs to NID (including NE-NIDs and EDs) positions in the same / Group Companies, unless a gap of at least 1 year is served. Such transition shall also include all forms of cessation (including retirement).**

Effective Date: With immediate effect (i.e. 8th September, 2021)

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