



To,
General Manager,
Corporation Finance Department, CMD-II
Securities and Exchange Board of India,
Via email to: consultationcmd2@sebi.gov.in ;

31st March, 2021

**Sub: CONSULTATION PAPER ON REVIEW OF REGULATORY PROVISIONS RELATED TO INDEPENDENT
DIRECTORS**

At the outset, we, at Indian Association of Investment Professionals (IAIP), a member society of the CFA Institute, appreciate the opportunity to submit our comments to the **Consultation Paper on Review of Regulatory Provisions related to Independent Directors**

IAIP is an association of over 2000 local investment professionals who are CFA charterholders and about 4000+ professionals who have cleared exams, eligible and awaiting charter. The Association consists of valuation professionals, portfolio managers, security analysts, investment advisors, and other financial professionals that promote ethical and professional standards within the investment industry, facilitate the exchange of information and opinions among people within the local investment community and beyond, and work to further the public's understanding of the CFA designation and investment industry.

CFA Institute is a global non-profit association of investment professionals with over 164,000 members in over 165 countries. In India, the community of CFA charterholders is represented by the Indian Association of Investment Professionals (CFA Society India).

Through our global research and outreach efforts, CFA Societies around the world endeavour to provide resources for policy makers, financial services professionals and their customers in order to align their interests. Our members engage with regulators in all major markets.

Some of the recommendations put forth in Consultation Paper on Review of Regulatory Provisions related to Independent Directors are commendable and shall bring a good change in functioning of Independent Directors and improve the Corporate Governance and protection of rights of minority shareholders. However we have a few differences of opinion on some proposals and would like to highlight the same along with our justification on the same.

A. Details of our Organisation:

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C. Suggestions / Comments:

Sl .No.	Proposals	Suggestions / Comments	Rationale
1	<p><u>Proposal 4.1</u></p> <p>It is proposed that KMPs or employees of promoter group companies, cannot be appointed as IDs in the company, unless there has been a cooling-off period of 3 years. The said restriction shall also extend to relatives of such KMPs for the same period</p> <p>The prescribed cooling-off period for eligibility condition at 3(b) above shall be harmonized to 3 years.</p>	<p>There should be uniformity of cooling period.</p> <p>However, we may revisit the concept of independence.</p> <p>Once you have been a KMPs or employees of promoter group companies, the element of Independence cannot be maintained irrespective of cooling period.</p>	<p>A person cannot be deemed independent once they/their relative have spent time in an executive role in an organisation (either as a KMP or otherwise) .</p> <p>If the person indeed brings value to the table and is so necessarily required on Board, they can always be appointed as a Non-Independent Director</p>
2	<p><u>Proposal 4.2</u></p> <p>Appointment and re-appointment of IDs shall be subject to “dual approval”, taken through a single voting process and meeting following two thresholds: –</p> <p>i. Approval of shareholders</p> <p>ii. Approval by ‘majority of the minority’ (simple majority) shareholders. ‘Minority’ shareholders would mean shareholders, other than the promoter and promoter group. The approval at point (i) above, shall be through ordinary resolution in case of appointment and special resolution in case of re-appointment.</p>	<p>We do not agree to the proposal</p> <p>Instead of Dual approval, it is suggested that the Majority should not be eligible to vote on the resolution at all and instead be just allowed to nominate Independent Directors for minority voting.</p> <p>The vote of the majority shareholder is implied when Board approves the candidature.</p> <p>This would preserve more independence.</p>	<p>Typically, the Majority Group has representation on the Board itself.</p> <p>The Nomination and Remuneration Committee first recommends a Director to the Board and only after Board approval is the resolution put for vote in front of minority.</p> <p>The vote of the majority shareholder is implied when Board approves the candidature so at the shareholder level only minority should vote.</p>



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3	<p><u>Proposal 4.3</u></p> <p>Removal of IDs shall be subject to “dual approval”, taken through a single voting process and meeting following two thresholds: –</p> <p>i. Approval of shareholders.</p> <p>ii. Approval of ‘majority of the minority’ (simple majority) shareholders. ‘Minority’ shareholders would mean shareholders, other than the promoter and promoter group.</p>	<p>- same as proposal 4.2 -</p>	<p>- same as proposal 4.2-</p>
4	<p><u>Proposal 4.6</u></p> <p>It is proposed that there should be a cooling-off period of 1 year before a director can transition from an ID to a whole-time director.</p>	<p>We do not agree to the proposal.</p> <p>1 year is too short a cooling period for an Independent Director to be re-eligible for appointment as Whole time Director.</p> <p>The cooling period can be 5 years instead</p>	<p>One-year cooling off period would merely normalize what is a questionable practice. This could create a conflict situation wherein Independent Directors may not exercise their full responsibilities in hope of getting appointed as a Whole Time Director later on.</p> <p>A 5-year cooling off period is long enough to not create such expectations on the part of IDs.</p>



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5	<p><u>Proposal 4.7</u></p> <p>Considering the importance of the Audit Committee with regard to related party transactions and financial matters, it is proposed that audit committee shall comprise of 2/3rd IDs and 1/3rd Non-Executive Directors (NEDs) who are not related to the promoter, including nominee directors, if any.</p>	<p>We do not agree to the proposal</p>	<p>We need people with more knowledge about the operations of the company so that relevant questions can be asked to KMP/Auditors etc.</p> <p>This proposal reduces the flexibility for companies to include qualified insiders who could reduce the information deficit within the audit committee.</p>

Thank you again for the opportunity to comment on this important regulatory framework. If you or your staff have questions or seek further clarification, please do not hesitate to contact Mr. Rajendra Kalur, CFA at +91 98196 30042 or at advocacy@iaipirc.org.

Sincerely yours,
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 Director - Research and Advocacy Committee
 Indian Association of Investment Professionals, Member Society of CFA Institute