

# **All listed companies must insure independent directors from liability: CII**

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**CII's guidelines on appointment & evaluation of Independent Directors advises appropriate insurance to be obtained by companies to protect independent directors from liabilities.**

**While directors and officers 'Liability Insurance' is mandatory for the Top 1,000 entities by market cap as per the SEBI LODR, it would be advisable for all listed to consider this protection for their directors – especially Independent Directors and be formalised through appropriate written agreements, CII report says**

The Confederation of Indian Industry (CII) has outlined guidelines for safeguarding Independent Directors, emphasising the need to protect them from liabilities for their appointment and evaluation. This can enhance the talent pool of independent directors and attract quality directors to the boards of Indian companies.

While SEBI's Listing Obligations and Disclosure Requirements (LODR) norms mandate 'Liability Insurance' for the top 1,000 entities by market cap, CII proposes extending this to all listed companies for a robust corporate governance ecosystem. The guidelines stress formalising

indemnity and/or insurance through written agreements for improved board quality.

Sanjiv Bajaj, Chairman of CII's Corporate Governance Council and Bajaj Finserv's leader, emphasises the crucial aspect of liability differentiation between non-executive directors and independent directors. He stresses the importance of holding independent directors accountable for the right matters to attract high-quality talent. The CII committee proposes clarity on Directors & Officers (D&O) availability even post-resignation, minimizing exclusions and de-minimus limits, and protecting actions taken in good faith.

The exclusions and the de-minimus limits for claims in the D&O policy ought to be minimized. Also, action taken in good faith needs to be protected with a clear understanding of when liability arises and the difference between civil and criminal liability.

Corporate lawyer Zia Mody, chairing CII's Committee on Regulatory Affairs, advocates continued protection for independent directors after their term, expressing concerns about their vulnerability to regulatory scrutiny.

"Independent Directors ought to be much more insulated than they are from SEBI and other institutions but the fact is that they are often dragged in," she said, adding that often regulators tell independent directors "you ought to have known and that is a very difficult position for an independent director to be in."

Zia adds that decriminalisation of many offences is a relief but the industry is unable to attract good talent here and those available have too many boards to serve.

Apart from the protection of the directors, the guidelines also say that their compensation may be commensurate to the heightened roles and responsibilities to attract quality resources in this space.

In a ten-point guideline for strengthening the participation and role of independent directors, the report suggests a more evolved and involved role by the directors to actively participate in the decision-making process of the board, it emphasises continuity by way of two 5-year terms and also succession planning when a term is about to expire in 12 months.

The guidelines place significant emphasis on enhancing diversity within Indian company boards, encompassing not only women directors but also directors from diverse backgrounds to bolster the ESG journey and foster varied perspectives for effective decision-making.

The guidelines stress the importance of a thorough evaluation process for board members, with timely disclosures to shareholders. It is recommended that companies outline the purpose, methodology, and objectives of the board review policy regularly.

Sanjeev Krishan, Chairman of PwC India said, "Parameters of evaluation keep changing and we need to work on that." Highlighting the importance of this advisory Bajaj adds, "Variety of corporates in India has grown dramatically and foreign investor participation is also big and this is where the guidelines will play a role for greater transparency."