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Databank and exam of independent directors - Critical analysis



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on 03 December 2019

In many Indian corporate frauds, it is found that independent directors either were just mute spectators or failed to detect an early signs of fraud. In some companies, it was found that watchmen, drivers, maids and other assorted individuals lent their name, identity and consent to become an independent director without aware of their roles and responsibilities. Now, Government came out with the examination for appointment of an independent director to have only genuine, educated, informed and qualified independent directors.



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Databank of Independent Director

The latest rules i.e The Companies (Creation and Maintenance of databank of Independent Director) Rules, 2019 and The Companies (Appointment and Qualification of Director Rules), 2019 issued on October 22, 2019 requires that from December 1 on, those who have been appointed as an independent directors of companies or intend to get appointed, must apply online to the Indian Institute of Corporate Affairs (IICA) to have their name included in a databank within 3 months from 1st December, 2019. They must also ensure that their name remains in the databank so long as she intends to remain an independent director.

The data bank will contain detailed information of independent director like DIN, PAN, Occupation, Qualification, Expertise, Pending criminal proceedings, Name of Company/LLP in which he/she is a director/designated partner etc.

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The said information can be accessed by companies after paying reasonable fees to the institute.



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Online Proficiency Self-Assessment Test

Every individual whose name is included in the data bank has to pass an 'online proficiency self-assessment test' conducted by the institute (IICA) within a period of 1 year from the date of inclusion of his/her name. Individual has to obtain 60% in aggregate in the test to pass the test. Individual can give multiple attempts to clear the test. The test will cover company law, securities law, basic accountancy and other relevant subjects.

However, individual who has served for a period of more than 10 years as on the date of inclusion of his/her name as a Director or Key Managerial Person like CEO, CFO, CS etc. in a listed public company or in a unlisted public company having a paid up capital of Rs. 10 Crore or more shall be exempted from the said test.

Some Key Issues

Whether the knowledge of Corporate specific Laws, Securities Laws and accountancy helps in mitigating corporate frauds? For e.g: Pharmaceutical company appoints some medical expert as an Independent Director and it is



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but obvious that his/her knowledge of corporate specific legislation may be minimal.

There are doubts that how many numbers of times a person may attempt the test. Is Govt. allowed to take the test every single day until they actually pass?

There is exemption for this test. If one has been an independent director of a company (listed or one that has a share capital of Rs 10 crore) for ten years as on December 1, 2019, that person would not need to pass to an online test. In this context, it is not inconceivable that a driver or a gardener has been an independent director of a shady company for over ten years and now got exemption in new rules which defeat the vary purpose of this new rules.

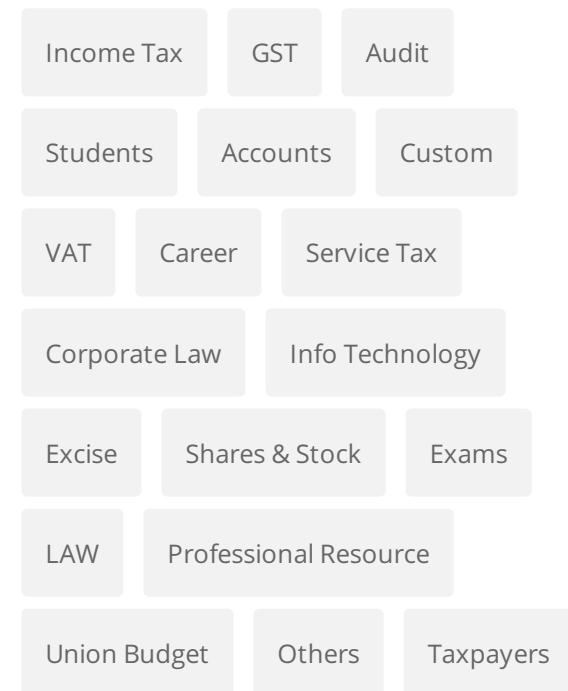
It is also required that all persons designated as an independent director comply with the requirement within one year. In India, large companies have crashed with eminent persons on their board – people eminently qualified and skilled and looked up to professionally. Whether those people give this so-called examination to prove his/her knowledge?

The larger question is will this be effective? Will it actually make a difference and help to prevent corporate fraud or will this simply be another failed attempt? It is the only time will answer all this questions.

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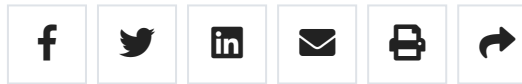
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SHRIRAJ PATIL

[3 months ago](#)

How can you say that uneducated people do more corporate frauds? The people who know more loopholes about laws can also make frauds.

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BHAGAT CHAUHAN

[2 months ago](#)

@Shriraj Patil u r right friend , that a person make fraud who knows how to make fraud but simultaneously every educated person is not fraud person, in case of uneducated we agree that will not make fraud but how that uneducated person identify and apply control when that person does not know anything about Business knowledge and law compliance so better to go with educated person but really a educated person must hold ethical values. Thanks CA Bhagat Singh Chauhan

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