

Handbook for

INDEPENDENT DIRECTORS

Upholding the moral compass by

Kaushik Dutta

Handbook for INDEPENDENT DIRECTORS is a refreshing eye opener for practising professionals, Top Management and Chairmen in the Corporate Sector.

Kaushik Dutta, the author, is eminently suited to write this valuable ensemble, a challenging contribution to the literature on the subject with his distinguished long background of having been a Senior Partner of PWC and close interaction with Indian and International Bodies/Committees on Corporate Governance. His hands on insight as an

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Independent Director on the Boards of Companies adds practical flavour to this much awaited publication.

The author has succinctly highlighted the background of East India Company — Dutch and English - the role played in ushering in India the Corporate system of doing business that eventually led to the passing of the Indian Companies Act 1913. The separation of ownership and management created the agency gap in public companies in the western world where a large number of shareholders scattered widely own a corporate but do not manage them. This led to the emergence of the institution of Independent Directors.

While the arrival of independent director in the Western World has been well debated, the Indian scenario appears to be of recent origin. The Author has explained how India followed the developments in US & UK The Cadbury Committee Report of 1991 which even today constitutes the

world's first code of best practices in Corporate Governance spearheaded the debate on the composition of Board, and the role of non executive directors who have a special role to play in the Board deliberations and decision making. The SOX Committee 2002 in the US took the debate further and SEBI was quick to emulate them in listed companies.

Following the Satyam episode, there was widespread hue and cry on the role of Corporate Boards and the special role of the Independent Directors.

The Indian Companies Act 2013 for the first time accords statutory status to INDEPENDENT DIRECTOR by stipulating that every listed company shall have at least one-third total number of directors as independent director, and the Government shall prescribe the ceiling on number of independent directors on the board of other public limited companies. The Act further prescribes the Code and duties of independent directors — additional to the duties prescribed for directors under the law. A very specific provision for Independent Directors meeting has been specified while safeguarding the liability of Independent Directors. The Listing agreement under clause 49 of SEBI Listing Agreement (2014) supports these provisions.

The concept of Independent Directors gained recognition in the US when the US Securities Exchange Commission (SEC) made it mandatory for all corporations to label their directors as either independent OR affiliated leading to the NYSE mandating in their listing requirement of 1977 that Audit Committee should comprise only of independent directors.

Kaushik Dutta must be complimented for introducing the concept of LEAD Independent Director which is the crying need of the hour if the institution has to function effectively as ordained in the new Law. This stems from the fact, as so ably articulated in the Cadbury Report that the office of the Chief Executive and Chairman should not be combined, and that the chairman should be an Independent Director.

The Handbook comes as a boon to the Corporate Sector presently grappling with a number of issues relating to the Independent Directors specifically stipulated in the Companies Act 2013 as well as the Listing Guidelines (2014) under clause 49 of SEBI. It is a monumental timely contribution to the Corporate World

R. Krishnan

Founder President, The ICSI

