



LAXMI ORGANIC INDUSTRIES LTD.

FAMILIARISATION PROGRAMME

INDEPENDENT DIRECTORS

By: Aniket Hirpara

Company Secretary





- ***History & Evolution***
- ***Corporate Structure in India***
- ***Who can be Independent Director***
- ***Key Ingredients of Independence***
- ***Key Role of an Independent Director***
- ***Key Duties of an Independent Director***
- ***Applicable provisions relating to ID : Companies Act, 2013***
- ***Applicable provisions relating to ID : SEBI LODR Regulation, 2015***
- ***Applicable provisions relating to ID : SEBI PIT Regulation, 2015***
- ***Liabilities of Independent Directors***

History & Evolution



1999

The term Independent Director” (ID) was first introduced in the Indian corporate arena through the Kumar Manglam Birla Committee, formulated by SEBI

2000

Introduction of Clause 49 (Corporate Governance Norms) in the Listing Agreement

2003

Constitution of Narayan Murti Committee. Report focused more stress on the (i) qualification and remuneration of ID; (ii) performance evaluation of NED and (iii) audit committee and its role and responsibilities

2009

The concept of independent directors was proposed in the legislation by means of the Companies Bill, 2009.

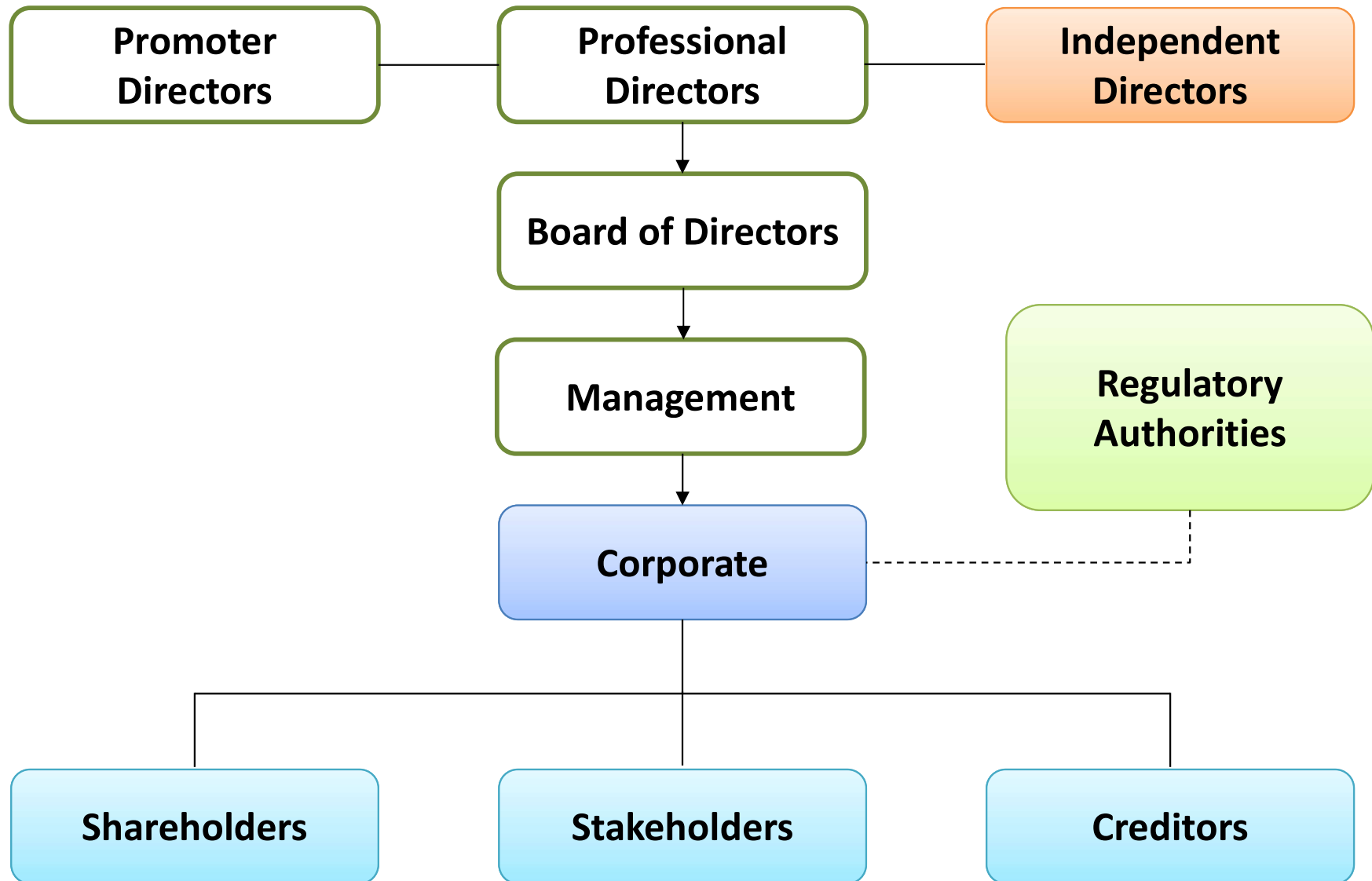
2013

Introduction of New Companies Act, 2013 wherein the ID was defined, and relevant Rules were made for ID. Schedule IV has been prescribed which contains the “Code for Independent Directors” for the first time.

2015

Introduction of SEBI (Listing Obligation & Disclosure Requirements) Regulations, 2015.

Corporate Structure In India



Who can be is Independent Director...(1/2)



(1) Qualitative Requirements

- Person shall not be less than 21 years of Age
- Person of Integrity with relevant expertise and experience;
- Balance of skills, experience and knowledge in fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the Co's business.

(2) Restriction on Relationships

- Neither be a promoter nor related to promoters or directors of Co., its holding, subsidiary or associate.
- Neither him nor his relatives should be KMP or employee in Co. or its holding, subsidiary or associate in 3 preceding FY.
- He should not be an employee or proprietor or a partner of a firm of auditors or legal consultants of the Co. or its holding, subsidiary or associate in 3 preceding FY.
- He should not be a CEO or director of any non-profit organization that receives twenty-five per cent or more of its receipts from the Co., any of its promoters, directors or its holding, subsidiary or associate or that holds 2% or more of the total voting power of the Co.

Who can be is Independent Director...(2/2)



(3)

No Pecuniary Relationships

- Apart from the Directors Remuneration or having transaction not exceeding 10% of his total income or other amount as may be prescribed, the person should not have or had any pecuniary relationship with the Co., its holding, subsidiary or associate, or their promoters, or directors during the year or the 2 preceding FY.
- None of the relatives should have any pecuniary relationship that has been prohibited under Section 149(6)(d)
- Neither himself nor his relatives, is a material supplier, service provider or customer or lessor or lessee of the Company or holds or held the position of KMP or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed.
- Who is not a non-Independent Director of another Company on the board of which any non-Independent Director of listed entity is an Independent Director .

(4)

Restriction on Voting Powers

- He should not hold, together with his relatives, two or more than two per cent of the total voting power of the company

Key Ingredients of Independence



Balanced Approach to achieve highest level of Governance

Director's Attribute

- ❖ Work well with others
- ❖ Expertise, Skills and Ability
- ❖ Available when needed
- ❖ Attends Meetings
- ❖ Devote Quality Time
- ❖ Alter & Inquisitive
- ❖ Asks hard questions
- ❖ Challenges Management assumption

Company's Attribute

- ❖ Have a diversity policy
- ❖ Appointment through independent and objective process
- ❖ Establish Board Committees
- ❖ Share timely & Accurate Information
- ❖ Develop & Follow Code of Conduct
- ❖ Adopt Consultative Approach
- ❖ Record & Share Minutes
- ❖ Transparency

Key Role of an Independent Director



- ❖ Board structure and objectivity of the Board
- ❖ Protection of minorities
- ❖ To build up shareholder's confidence in the company
- ❖ To improve relations with investors
- ❖ To make coordinated strategic decisions
- ❖ To resolve conflicts
- ❖ To enhance management transparency
- ❖ To increase company's value
- ❖ Role of other stakeholders in management
- ❖ System of reporting and accountability
- ❖ Audit and internal control
- ❖ Effective supervision and enforcement by regulators
- ❖ To encourage Sustainable Development of the Company and its stakeholders.

Key Duties of an Independent Director



- ❖ Induction and regularly update skills, knowledge and familiarity with the Company
- ❖ Seek appropriate clarification or amplification of information and take professional advice and opinion of experts, if required.
- ❖ Attend all meetings of the Board or Committees of Board of which he is a member.
- ❖ Participate constructively and actively in the meetings.
- ❖ Attend the general meetings of the Company.
- ❖ To highlight all the concerns to the Board, to insist that their concerns are recorded and to ensure that they are addressed by the Board.
- ❖ Keep themselves well informed about the Company and the external environment in which it operates.
- ❖ Not to unfairly obstruct the functioning of Board or committee of the Board.
- ❖ Pay sufficient attention and ensure that adequate deliberations are held before approving RPT transactions and assure themselves that the RPT are in the interest of the Company.
- ❖ Ascertain and ensure that adequate and functional vigil mechanism are in place and are not prejudicial to the user.
- ❖ Report unethical behaviour, actual or suspected fraud or violation of the Company's code of conduct or ethics policy.
- ❖ Assist in protecting the legitimate interests of the Company, shareholders and its employees.
- ❖ Not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

Applicable Provisions relating to ID



Companies Act 2013 & Rules



SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015

SEBI (Prohibition of Insider Trading) Regulation, 2015

- ▶ **Section 149:** Mandatory Appointment of ID:
 - ▶ if the paid-up share capital exceeds Rs.10 crores;
 - ▶ if the turnover exceeds Rs.100 crores;
 - ▶ if the aggregate of all the outstanding loans, debentures and deposits exceeds Rs 50 crores.
- ▶ Maximum two term of 5 years post that cooling-off period of 3 years.
- ▶ **Section 177:** Constitution of Audit Committee with majority ID.
- ▶ **Section 178:** Constitution of Nomination & Remuneration Committee with 50% ID.
- ▶ **Section 135:** Constitution of CSR Committee with at least 1 ID.
- ▶ Once in a year all the Independent Directors shall meet separately.
 - ▶ To review the performance of non-independent directors and the Board as a whole;
 - ▶ To review the performance of the Chairperson of the company.
 - ▶ To assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.
- ▶ Act expressly disallows ID from obtaining stock options and remuneration other than sitting fees and reimbursement of travel expenses for attending the board and other meetings
- ▶ ID shall submit a declaration of independence annually at the start of the FY.

Applicable Provisions relating to ID



Companies Act 2013 & Rules



SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015

SEBI (Prohibition of Insider Trading) Regulation, 2015

- ▶ Any vacancy in the office of ID shall be filled in the very next Board Meeting or within 3 months of such vacancy, whichever is later.
- ▶ ID shall not retire by rotation and shall not be included in the 'total number of directors' for the purpose of computation of rotational directors.
- ▶ If the Board meeting is called at shorter notice so as to transact some urgent business, then the presence of at least 1 ID is mandatory. In absence of any ID, a decision shall be circulated to all the directors and later approved by at least 1 ID.

Applicable Provisions relating to ID



Companies Act 2013 & Rules

SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015



SEBI (Prohibition of Insider Trading) Regulation, 2015

- ▶ **Reg 17(1)(a): Composition of Board**
 - ▶ 50% NED with one Woman Director
 - ▶ If Chairman is ED: 1/2 of the Board should be ID
 - ▶ If Chairman is NED: 1/3 of the Board should be ID
 - ▶ Top 500 Listed Entities shall have Independent Woman Director
- ▶ **Reg 17(2A): Quorum of Board meeting**
 - ▶ 1/3 or 3 directors whichever is higher, with at least 1 ID
- ▶ **Reg 17(5): Code of Conduct for Board & IDs**
- ▶ **Reg 17(6)(d):** ID shall not be eligible for stock options.
- ▶ **Reg 17A(1): Maximum Directorship**
 - ▶ Person can not serve as an ID in more than 7 listed entities.
 - ▶ If person is MD/CEO, he cannot server as an ID in more than 3 listed entities.
- ▶ **Reg 18(1)(b):** Constitution of Audit Committee with 2/3 ID
- ▶ **Reg 19(1)(c):** Constitution of NRC Committee
 - ▶ 50% of the Committee shall consist of ID
 - ▶ Chairman of the Board can not chair NRC Committee meeting
 - ▶ 1/3 or 2 directors whichever is higher, with at least 1 ID
- ▶ **Reg 20(2A):** Constitution of Stakeholders Relationship Committee with 1 ID
- ▶ **Reg 21(2):** Constitution of Risk Committee with 2/3 ID if SR is outstanding
- ▶ **Reg 24(1):** 1 ID of the Board shall be on the board of unlisted material subsidiary

Applicable Provisions relating to ID



Companies Act 2013 & Rules

SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015



SEBI (Prohibition of Insider Trading) Regulation, 2015

▶ Reg 25: Obligation of ID/Company

- ▶ No person can be appointed or continue as alternate director to ID
- ▶ Max term of ID shall 2 term of 5 years followed by 3 years cooling-off
- ▶ Separate meeting of ID
- ▶ If ID is resigned or removed, then vacancy should be filled before next BM or 3 months, whichever is later.
- ▶ Company should familiarize ID about listed obligations
- ▶ ID shall submit a declaration of independence annually at the start of the FY.
- ▶ Company shall obtain D&O Policy for ID
- ▶ Company website shall have terms and conditions of appointment of ID and details of familiarization programs imparted to IDs.
- ▶ Company shall intimate SEs about the resignation of ID within 7 days along with detailed reasons.

▶ New Proposals by SEBI: (for stakeholders' view):

1. KMP or Employee of promoter group companies or their relatives can not be appointed as ID unless there is a cooling-off period of 3 years.
2. Appointment/re-appointment/removal of ID shall be subject to dual approval.
 - a. Approval of shareholders
 - b. Approval by majority of the minority shareholders.
3. New procedure to be followed by NRC for appointing ID:
 - a. NRC should evaluate balance of skills, knowledge and experience
 - b. NRC should prepare description of role and capability required for post.
 - c. ID should have such roles and capabilities

Applicable Provisions relating to ID



Companies Act 2013 & Rules

SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015



SEBI (Prohibition of Insider Trading) Regulation, 2015

▶ New Proposals by SEBI: (for stakeholders' view): (Contd....)

4. Disclosures to be made to Shareholders:

- ▶ Skills and capabilities required for ID and how proposed candidate is meeting the same
- ▶ Channels used for searching suitable candidate

5. Composition of NRC to be changed from 50% ID to 2/3 ID

6. ID shall be appointed on the Board only after prior approval of shareholders.

7. Resignation of ID:

- ▶ If ID is resigned, his resignation letter should be disclosed
- ▶ In case of reason like "pre-occupation or other commitments or personal reasons" a cooling-off period of 1 year should be there.

8. Composition of Audit Committee to change from 2/3 ID and 1/3 other Director to 2/3 ID and 1/3 NED.

9. Whether ESOP with 5 years vesting be allowed to ID?

10. What could be the maximum limit of remuneration to ESOP

Applicable Provisions relating to ID



Companies Act 2013 & Rules

SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015

SEBI (Prohibition of Insider Trading) Regulation, 2015



- ▶ Regulations are applicable to the Company listed on Stock Exchange/s & to its Designated persons / Insiders:
- ▶ Fundamental is to prohibit any Insiders from getting price advantage over others by dealing in shares of the Company (directly / indirectly) based on Unpublished Price Sensitive Information (UPSI).
- ▶ It is the “sole responsibility of insiders” to follow the Regulations

“Ignorance of Law is no Excuse – Unintentional default is also an offence”

- ▶ **Designated person:**
 - ▶ Persons in Laxmi/subsidiaries who by virtue of being in employment or otherwise may possess confidential information about Laxmi which otherwise is not available with general public.
- ▶ **Examples of UPSI:**
 - ▶ Financial results, Changes in credit rating, major expansion plans / big orders, proposals for acquisitions / takeovers, Changes in KMPs and all such information about subsidiary company(ies).
- ▶ **Disclosure by Insider:**
 - ▶ Annually: Name, PAN, shareholding of self and **Immediate Relatives** or of person with whom he/she has **Financial Relationship**
 - ▶ Onetime: Educational institutes & names of past employers
- ▶ **Immediate Relative:**
 - ▶ spouse, parent, sibling, and child of such person or of the spouse,
 - ▶ any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in Company shares

Applicable Provisions relating to ID



Companies Act 2013 & Rules

SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015

SEBI (Prohibition of Insider Trading) Regulation, 2015



▶ Financial Relationship :

- ▶ a relationship in which 1 person is a recipient of any kind of payment such as by way of a loan or gift from the DP during immediately preceding 12 months, which is at least 25% of annual income of such DP, but shall exclude relationships in which payment is based on arm's length transactions.

“Something which cannot be done directly, it cannot be done indirectly through anyone”

▶ Do's by Insider:

- Maintain confidentiality of all UPSI.
- Handle / share UPSI on a “Need to know basis”
- Be careful in sharing KPIs / other information unless it is in public domain.
- Avoid casual talks about the Company / subsidiaries.
- Every person in Laxmi and subsidiary company(ies) to inform Compliance Officer about UPSI data which is proposed to be shared (within / outside the organisation) to enter it into Structured Digital Database.
- Excel sheet shows the information to be captured in the Structured Digital Database.
- Execute trade within 7 working days of pre-clearance and report the trade details within 2 working days to Compliance Officer
- Disclose transactions like Off market / Gift / Succession / Transposition

Applicable Provisions relating to ID



Companies Act 2013 & Rules

SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015

SEBI (Prohibition of Insider Trading) Regulation, 2015



▶ Don'ts by Insider:

- a. Not to trade during Window Closure Period (WCP) as and when announced by Compliance Officer
- b. ESOPS can be exercised during WCP. However, ESOP can't be sold
- c. Not to trade while in possession of UPSI. (except ESOPs)
- d. Not to trade without obtaining written approval of Compliance Officer.
- e. Not to trade on basis of UPSI / Not to pass on UPSI to any person directly or indirectly by way of making a recommendation for the purchase or sale of shares of the Company.
- f. Even communication of UPSI, whether it is finally used for trading or not is a non-compliance.
- g. Not to engage into Contra (opposite) trade for 6 months – LIFO basis – (ESOPs is an exception)

▶ Penalties:

- ▶ Penalty and other appropriate action as may be decided by Disciplinary Committee, including wage freeze, suspension, recovery, claw back etc.
- ▶ Profits from contra trade to be remitted to SEBI.
- ▶ Additionally, SEBI action may include civil as well as criminal prosecution. Penalty can be 3 times the profit made or Rs 25 crores, whichever is higher.
- ▶ Further SEBI can debar the person(s) involved in Insider trading from trading in / accessing capital markets.



Liability Under the Companies Act, 2013:

- Section 2(60) defines word “Officer in Default” which includes entire Board.
- The scope of liability under S. 2 (60) is narrowed down by Section 149(12) of the Act which states:

*“that liability can be extended to an ID only to the extent of “such acts of omission or commission by a company which had occurred with his **knowledge**, attributable through **Board processes**, and with his **consent or connivance** or where he had **not acted diligently**.”*

Board Process: The interpretation of this term in the Indian context by judgements and orders is “involvement in the decision-making process” as a criteria to hold an ID liable.

Consent or connivance: This term has been interpreted in the SEBI order concerning [Amazan Capital Ltd.](#) Wherein it was held that the liability of a director is “to be rooted on the conduct of the director in knowingly permitting an omission or commission to take place.”

Diligence: The standard of diligence expected from an ID is to be aware of the actions of the Board and take active measures to correct the same. In the SEBI Order concerning [Finserve Ltd.](#), it was held that irrespective of whether an ID is not a part of the day-to-day management of the company, the onus lies on them to remain diligent and take “concrete corrective measures with regards to the violation committed by the board.” This position can be traced back to [Official Liquidator v. P.A. Tendolkar](#), wherein the Supreme Court held that “A Director cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially”. Thus this jurisprudence lays emphasis on the constructive knowledge of an ID on the affairs of the company, as well as the active efforts he makes to resolve potential defaults.

- Unlimited liability u/s 212 in case of fraud.



Under the SEBI LODR Regulations:

- ❖ Under regulation 25(5) “An ID is liable, for omission or commission by listed entities which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently in accordance with these regulations.”
- ❖ Liability under SEBI LODR is similar to liability under the Companies Act, 2013.
- ❖ By reading the LODR Regulations and Companies Act together, the standard of liability of an ID is more extensive in case of listed entities.
- ❖ In case of Unlisted companies on the other hand are subject to merely the corporate governance norms contained in Schedule IV of the Act, which “applies to all public listed companies and certain classes of public companies.”

NEW Development: MCA Circular dated 2 March 2020:

- MCA has provided a clarification on both the prosecution filed as well as internal adjudication proceedings initiated by the Registrar of Companies (Registrar) against IDs, non-promoter and non-Key Managerial Personnel (KMP) NEDs. As per the circular:
 - ❖ Civil or criminal proceedings should not unnecessarily be initiated against IDs or NEDs unless sufficient evidence exists against them, and
 - ❖ Registrars are required to follow a standard operating procedure, as prescribed by MCA while initiating proceedings against ‘officers in default’.



SOP to be followed by Registrar of Companies:

- ❖ Ascertain the nature of the default
- ❖ Ascertain Officer in Default
- ❖ No proceedings against ID unless sufficient evidence exists to the contrary
- ❖ In case of doubt about the liability of person, Registrar to approach MCA for clarification.

“Although circular does not provide a blanket protection to IDs or NEDs, it mandates registrars to follow a principle-based approach and understand the nature of default before indicting IDs and NEDs (non-promoter and non-KMP).”

Thank you!

