

Preparing Boards For the 21st Century

(In collaboration with Department of Public Enterprise, GoI, New Delhi)

By

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Presentation Path

- Objectives**
 - Public Enterprise and Private Sector Boards**
 - Functions**
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 - Types of Boards**
 - Employee or Labour Representation**
 - Recommendations**
 - Tenure**
 - Remuneration of Board Members**
 - Legal and Regulatory Framework**
 - Suggestions**
 - Mishra's Approach for Board Excellence**
 - Value Driven Boards**
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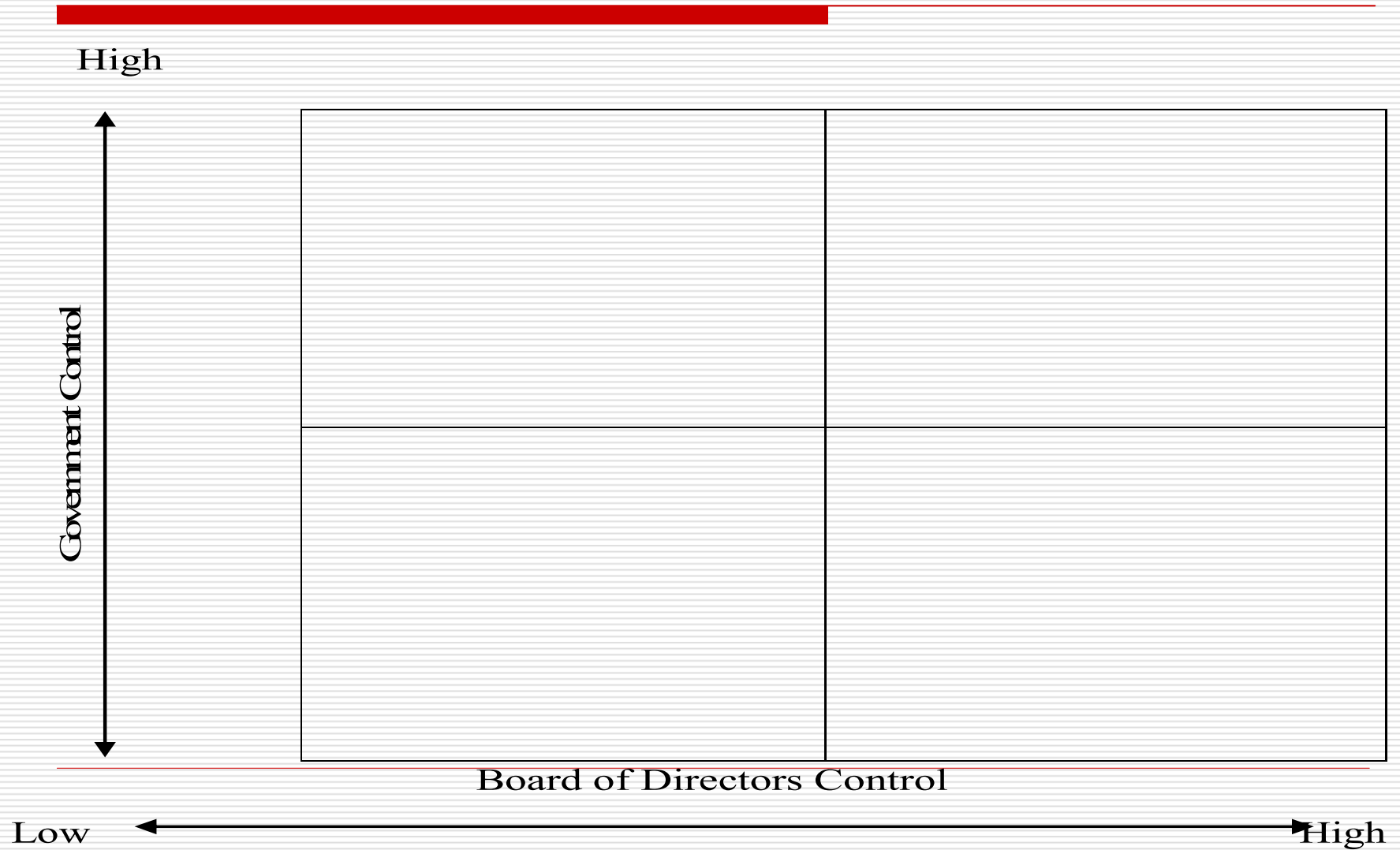
Objectives

- ❑ To ensure that a PE is managed properly at the technocratic level to secure efficient resource use and profitability
 - ❑ Conform that the society's objectives and values, and
 - ❑ Achieve a proper balance among various interest groups.
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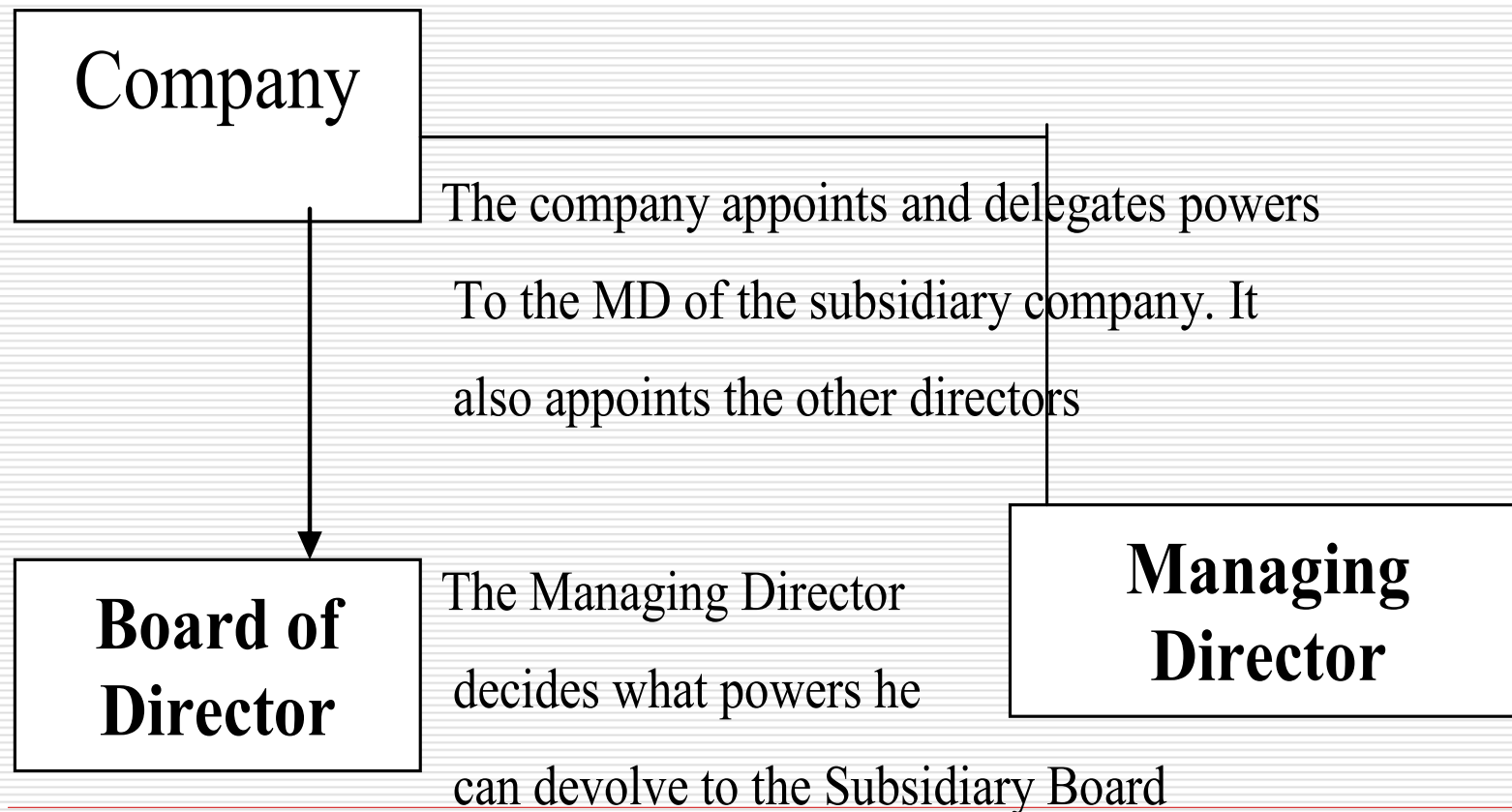
Public Enterprise and Private Sector Boards

- ❑ Appointed by Government and not by share holders
 - ❑ Allegiance to political entity
 - ❑ Governed by special provisions in Indian Constitution and Company Act
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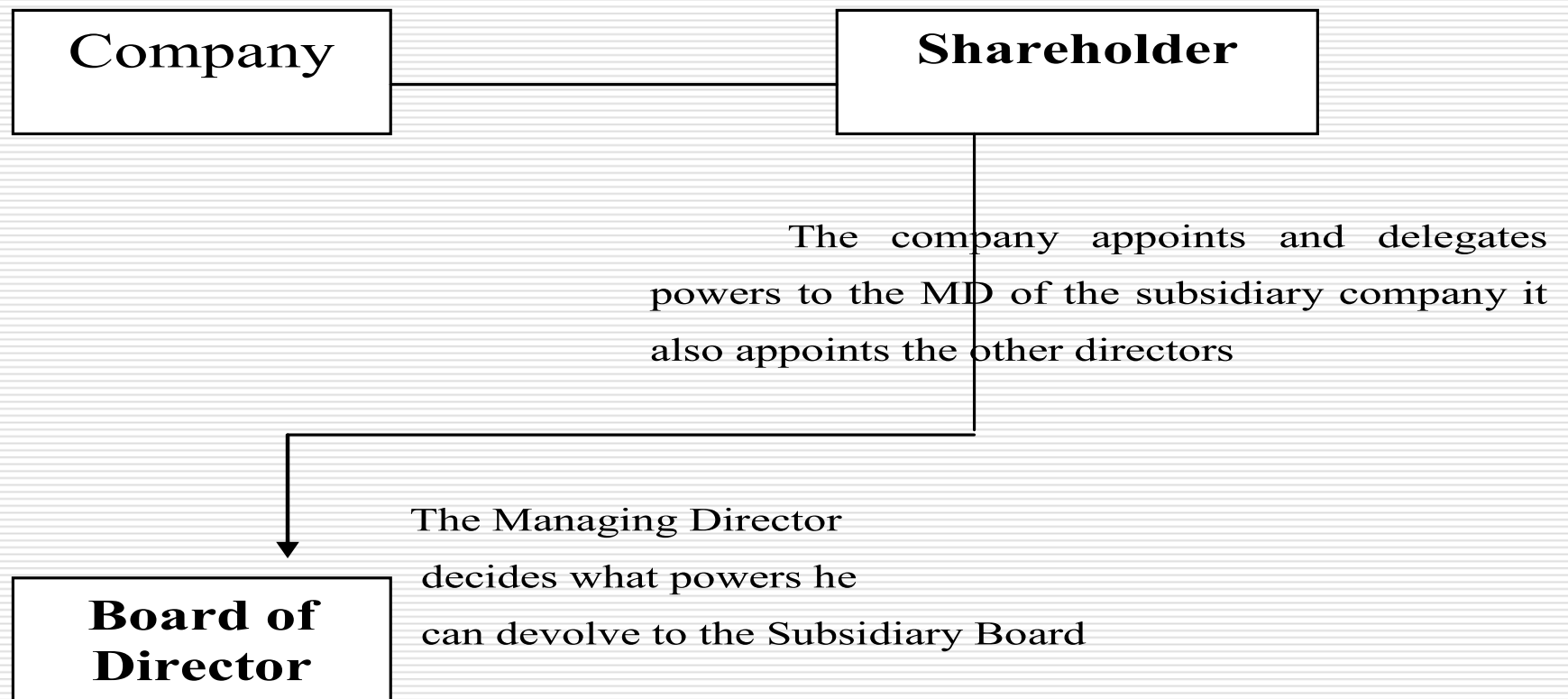
Control in PE Boards



Government Sector Boards



Private Sector Boards



Functions

- ❑ **Trusteeship**
 - **Efficient operation satisfying stakeholders**
 - ❑ **Entrepreneurial**
 - **Efficient Decision making-contriving, discovering and promoting innovation**
 - **Executive: Carrying out policies**
 - ❑ **Four Categories of functions**
 - **Establishment of basic policies including questions of general strategy**
 - **Decisions on major financial matters**
 - **Selection of key personnel and**
 - **Receiving reports on the working of the enterprise and passing judgment upon them**
 - ❑ **Mishra's mix**
 - **Providing strategic direction and values**
 - **Approval of planning**
 - **Monitoring and control of performance**
 - **Ensuring organizational capability**
 - **Awareness and compliance with legal responsibility**
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Selection Process

- PESB: Full-Time Chairman, Three Full-Time members
 - Ministry
 - ACC
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Types of Boards

- Functional
 - Policy
 - Mixed
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Employee or Labour Representation

- Consumer
- Various Academic Disciplines
- Various Expertise

Qualifications for Appointment

- Negative Qualifications
- 'Best man for the job'
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Recommendations

- ❑ Krishna Menon Committee
 - ❑ ARC
 - ❑ Jha Commission
 - ❑ Arjun Sengupta Commission
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Tenure

- Mr. Henri Fayol, "Much time is needed indeed to get to know men and things in a large concern in order to be in a position to decide on a plan of action, to gain confidence in oneself, and inspire it in others. Hence it has often been recorded that a mediocre manager who stays is infinitely preferable to outstanding managers who merely come and go."
 - Career appointment
 - Appointment till further orders
 - Tenure as per letter of appointment
 - Tenure of part-time directors
 - Size of the Board
 - > 1 or < 8
 - > 8 or < 15
 - 15 and above
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Remuneration of Board Members

- Category-A Rs.27,750-750-31,500
 - Category-B Rs.25,750-650-30,950
 - Category-C Rs.22,500-600-27,300
 - Category-D Rs.20,500-500-25,000
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Laws/Regulations governing Composition of BoD

- **Currently composition not specified under Companies Act excepting that**
 - **Public Company: minimum 3 , maximum 12 directors**
 - **Private company: minimum 2 , maximum 12 directors**
 - **Proposed changes under Companies Amendment Bill, 2003 [Sec.252(1)]**
 - **Public Company: minimum 7 directors (paid up capital >= Rs.5 Cr or turnover >= Rs.50 Cr)**
 - maximum 15 without Central Govt. approval**
 - majority of them shall be independent**
 - women directors shall be prescribed**
 - **New guidelines under Listing Agreement, Clause 49**
 - **Non Executive Directors > 50% of the Board**
 - **Non Executive Chairman: 1/3 of the Board should comprise of Independent Directors**
 - **Executive Chairman: 1/2 of the Board should comprise of Independent Directors**
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Qualifications/Disqualifications of Directors

- Companies Act:**
 - **does not prescribe any educational qualification for a director.**

 - Clause 49 of Listing Agreement (w.e.f. 31st March 2004):**
 - **Audit Committee members shall be *financially literate*, and at least one member shall have *accounting or related financial management expertise*.**

 - Disqualification of Directors U/s 274(1) of the Companies Act.**
 - **has not filed the annual account and annual return for any continuous three financial years commencing on and after 1.04.99 or**

 - **has failed to repay its deposit or interest thereon on due date or redeemed its debenture on due date or pay dividend and such failure continues for one year or more.**

 - Retirement age of 75 years proposed U/s 280, as per the Amendment Bill.**
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Typical Composition of Board of Directors

- Executive or Non Executive Chairman
 - Executive Directors
 - Non Executive Directors – At least 50%
 - Independent Directors
 - Amendment Bill 2003: majority of directors to be independent
 - Clause 49: Min. 50% from 1 January 2006

 - Nominee Directors:
 - Not Independent as per Companies Amendment Bill
 - Independent Director as per clause 49 of Listing Agreement
 - Women Directors
 - As may be prescribed under Companies Amendment Bill, 2003
 - Reservation being talked about
 - Employee/Worker Director
 - Minority Shareholders Director
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Committees of the Board

- Audit Committee**
 - **comprising of minimum 3 Non Executive Directors**
 - **majority of them to be Independent Directors**

 - Shareholders / Investors Grievance Committee, with Non-Executive Director as Chairman**

 - Remuneration Committee (Non mandatory)**
 - **minimum 3 Non Executive Directors**
 - **chairman needs to be an Independent Director**
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Essential qualities of Board of Directors

- **Individual directors should have**
 - **Highest standards of personal integrity**
 - **Excellent judgment and an ability to make informed decisions within time constraints**
 - **Professional credibility**
 - **Capacity to think strategically**
 - **Demonstrate sound communication skills**
 - **Sound interpersonal skills**
 - **Team orientation**

- **The board, as a whole should ideally have**
 - **Strategic thinking**
 - **Analytical skills, appropriate professional experience**
 - **Effective communication skills**
 - **Knowledge of the organization and the industry**

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- Board should have a mix of Directors with skills in**
 - **Law**
 - **Finance, including accounting expertise**
 - **Marketing**
 - **Operations relevant to the Company's activities including other key industries in which the company operates**
 - **Corporate Governance**
 - **Human Resources**
 - **Risk Management**
 - **Merger and Acquisitions**
 - **Other specific matters relevant to the company**
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Independent Director – Definition

Under Companies Amendment Bill, 2003	As per Clause 49 of Listing Agreement (effective 31.03.04)
Should not be relative of Chairman or MD or Whole Time Director or Secretary	Should not be related to promoters or management at the Board level or at one level below the Board
Should not have been an auditor, internal auditor or legal advisor or consultant of the company during any of the 3 preceding financial years	Should not have been a partner or an executive of the statutory audit firm or an internal audit firm or legal and consultancy firm, during last 3 years
Should not have been a supplier, vendor or customer	Should not have been a supplier, service provider or customer of the company
Should not hold 2% or more shares of the company, presently or in past	Should not hold 2% or more shares of the company
Should not have hold any position in the Company, i.e. ex-employee	Should not have been an executive of the Company in the immediately proceeding 3 financial years
Should not have been a Director for continuous period of 9 years	Appointment of Non Executive Director beyond continuous period of 9 years not permissible
Nominee Directors of Bank or FIs will not be considered as Independent Directors	Nominee Directors of Bank or FIs will be considered as Independent Directors

Sitting Fees and Managerial Remuneration

□ Sitting Fees [Sec.310]:

- Rs.20,000 per meeting (for companies with paid up capital \geq Rs.10 Cr or Turnover \geq Rs.50 Cr)
- Rs.10,000 per meeting (for other Companies)

□ Commission to NEDs [Sec. 309] :

- Not to exceed 1% of Net Profits if the Company has a MD or WTD or a Manager
- Not to exceed 3% of Net Profits, in any other case

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- Remuneration to Executive Directors [Schedule XIII]:**

 - Shall not exceed 5% of Net Profit if only one ED in the board**
 - **Shall not exceed 10% in aggregate if there is more than one ED**
 - **In case of No profits or inadequate profits, all inclusive remuneration should not**
 - **exceed Rs.2 lac p.m.**
 - **Different slabs based on effective capital of the company**

 - Remuneration in excess of ceiling can be paid only with Central Govt. approval**

 - Compensation for loss of office [Sec.318]:**
 - **Admissible for Managing or Whole Time Directors**
 - **(limited to remuneration of un-expired period or 3 yrs, whichever is less).**
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Key Issues on Composition of Board

- Retirement age of 75 years for Directors
 - Desirability of gender based reservation,
 - Independent directors would lead to promoters losing control of the Company (best managed companies are those having promoter stake)

 - Definition of Independent Directors raises some very fundamental issues
 - Different definition of Independent Director in Companies Amendment Bill and in Listing Agreement
 - Disqualification of any person as Independent Director if he has been a Director or Independent Director of the Company for a consecutive period of NINE years
 - Persons having “any transaction” with the company to not to qualify as an Independent Director – a sweeping disqualification
 - Training related provisions

 - Application of provisions relating to composition of the Board for holding company to subsidiary company
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Suggestions

- ❑ The tenure of the Board members should be five years at a time
- ❑ Dynamic and outstanding performers be continued
- ❑ The existing incumbent be continued till the new appointee takes over
- ❑ New appointee should work as an understudy for one to three months before he takes over the charge.

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- ❑ To avoid 'in-charge' or 'acting' arrangements for long periods, a well-thought out plan is absolutely necessary.
 - ❑ About 50 per cent of the Board should comprise full-time specialists in various areas.
 - ❑ Not more than one or two nominees should be appointed from amongst the government officials
 - ❑ One-third of the Board should comprise outstanding part-time professionals
 - ❑ Sitting MPs and MLAs should in no case be appointed on the Boards
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Mishra's Approach for Board Excellence

- Our People
 - Customer Service
 - Sales Success
 - Risk Management
 - People Management Community Involvement
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Value Driven Boards

- Communication
 - Teamwork
 - Trust
 - Innovation
 - Recognition
 - Growth
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Monitoring and Assessing the Function and Structure of the Board

- ❑ Devolution within the company, corporate vision and strategy
 - ❑ Monitoring, control and risk assessment functions of the board
 - ❑ Board subcommittees:
 - role of the Audit Committee
 - Remuneration Committee and other subcommittees of the board
 - ❑ Shareholder relationships:
 - Keeping key shareholders informed
 - Succession planning for key shareholders
 - ❑ Assessing the performance of the board of directors as a board
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Main Board Responsibilities

- ❑ Approving a corporate philosophy and mission (Providing Strategic Direction and Values)
 - ❑ Selecting, monitoring, evaluating, compensating, replacing the CEO and other senior executives, ensuring management succession (Ensuring Organizational Capability)
 - ❑ Reviewing and approving management's strategic and business plans (Approval of Planning)
 - ❑ Reviewing and approving Financial objectives and material transactions (Approval of Planning)
 - ❑ Monitoring Corporate Performance against strategic and business plans (Monitoring and Control of Performance)
 - ❑ Ensuring ethical behaviour and legal compliance (Monitoring and Control of Performance)
 - ❑ Ensuring that the board is effective (Ensuring Organisational Capability)
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