

# SEBI rationalizes ID appointment and removal process for first term

Re-appointment process to be rationalized post amendment in CA, 2013

[w.e.f November 14, 2022](#)

SEBI, in its Board Meeting held on [September 30, 2022](#) deliberated on insertion of a new optional provision relating to appointment (*not re-appointment*) of Independent Directors and related provision for removal (*not for the second term*) of Independent Directors in listed entities, which are now notified in the [LODR 6<sup>th</sup> Amendment](#), Further, our snippet on the outcomes of the board meeting can be accessed [here](#).

## Appointment of Independent Director

- Current requirement – Special Resolution (‘SR’) is to be passed.
- In case Special Resolution **fails**, appointment will deemed to be made if:
  - Ordinary majority of votes cast by all shareholders; and
  - Ordinary majority of votes cast by public shareholders.
  - Section 149 (10) of CA, 2013 mandates SR for re-appointment
    - **No alternate mechanism prescribed in case SR not passed**
    - **Present amendment applicable only for first time appointment**
    - **To be extended for re-appointment only after amendment in CA, 2013**

## Removal of Independent Director

- If appointed by SR - removal by SR
- If appointed by ordinary majority of all shareholders and public shareholders - removal to be approved in same manner.
  - ID re-appointed can be removed only by passing SR
    - As per proviso to Section 169 (1) of CA, 2013
    - **To be extended for removal during second term only after amendment in CA, 2013**

### Illustrations: Case 1

Voting by	Promoters	Public Institutional	Public - SG/CG	Public - Non-Institutional	Total
% of total valid votes in favor	50%	11%			<b>61%</b>
% of total valid votes against	0	25%	5%	9%	<b>39%</b>
Whether resolution passed u/r 25 (2A)?	<ul style="list-style-type: none"> <li>•SR not passed;</li> <li>•OR passed by all shareholders;</li> <li>•OR not passed by public shareholders (11% in favor, 39% against)</li> <li>•<b>Resolution not passed.</b></li> </ul>				

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**Illustrations: Case 2**

Voting by	Promoters	Public Institutional	Public - SG/ CG	Public - Non-Institutional	Total
% of total valid votes in favor	8%	42%			<b>50%</b>
% of total valid votes against	15%	10%	5%	20%	<b>50%</b>
Whether resolution passed u/r 25 (2A)?	<ul style="list-style-type: none"> <li>•SR not passed;</li> <li>•OR not passed by all shareholders;</li> <li>•OR passed by public shareholders (42% in favor, 35% against)</li> <li>•<b>Resolution not passed.</b></li> </ul>				



**Illustrations: Case 3**

Voting by	Promoters	Public Institutional	Public - SG/ CG	Public - Non-Institutional	Total
% of total valid votes in favor	10%	39%			<b>49%</b>
% of total valid votes against	5%	26%	10%	10%	<b>51%</b>
Whether resolution passed u/r 25 (2A)?	<ul style="list-style-type: none"> <li>•SR not passed;</li> <li>•OR not passed by all shareholders;</li> <li>•OR passed by public shareholders (39% in favor, 46% against)</li> <li>•<b>Resolution not passed.</b></li> </ul>				

Our resources on 6<sup>th</sup> LODR Amendments, 2022:

- For a detailed analysis of the amendments read our article [here](#).
- Snippet on other changes made through the amendment can be viewed [here](#)

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# Comparison of provisions relating to appointment, re-appointment and removal of IDs

Companies Act, 2013	SEBI LODR, 2015
<b>Appointment of Independent Directors</b>	
<ul style="list-style-type: none"> <li>• Ordinary Resolution to be passed</li> </ul>	<ul style="list-style-type: none"> <li>• Special resolution to be passed, if no SR, then OR of all shareholders and public shareholders</li> <li>• <b>Stricter requirement.</b></li> <li>• Complying with LODR will not result in CA, 2013 violation.</li> </ul>
<b>Re-appointment of IDs</b>	
<ul style="list-style-type: none"> <li>• Special Resolution to be passed [Sec. 149 (10)]</li> <li>• <b>CA, 2013 is stricter.</b></li> <li>• There is a <b>deadlock</b></li> <li>• Amendments will be meaningful only where parallel amendments are made in CA, 2013</li> </ul>	<ul style="list-style-type: none"> <li>• Special resolution to be passed, if no SR, then OR of all shareholders and public shareholders</li> <li>• Complying with LODR will <b>contravene</b> CA, 2013 and vice versa</li> </ul>
<b>Removal of IDs</b>	
<ul style="list-style-type: none"> <li>• First term – OR</li> <li>• Second term – SR [Sec. 169 (1)]</li> <li>• <b>Removal during second term - CA, 2013 is stricter.</b></li> <li>• Complying with CA 2013 will contravene LODR</li> <li>• Amendments will be meaningful only where parallel amendments are made in CA, 2013.</li> </ul>	<ul style="list-style-type: none"> <li>• If appointed by SR - removal by SR</li> <li>• If appointed by OR of all S/H and public S/H - removal in the same manner</li> <li>• <b>Removal during first term - LODR is stricter</b></li> <li>• Complying with LODR, in case of removal during second term, where no SR is passed, will contravene CA, 2013.</li> </ul>

Our resources on 6<sup>th</sup> LODR Amendments, 2022:

- For a detailed analysis of the amendments read our article [here](#).
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