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Bachelor of Business Administration (BBA) | Semester 4 | UK4DSCMGT203

Corporate Regulations

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Corporate Management and Administration

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1. The Board of Directors: Legal Position, Stewardship, and Governance

The institutional architecture of a joint stock company is characterized by the fundamental separation of ownership from managerial control. While shareholders provide equity capital, the operational stewardship, strategic direction, and fiduciary custody of enterprise resources are vested in a representative collegial body designated as the **Board of Directors**. Under Section 2(34) of the Companies Act 2013, a "director" means a director appointed to the Board of a company. Under Section 149(1), every company must have a Board of Directors consisting of individual human beings only; no body corporate, association, or firm can be appointed as a director.

The legal position of a director in corporate jurisprudence is multifaceted and cannot be captured by a single legal category. In landmark rulings, courts have defined directors across three complementary legal dimensions:

- **Directors as Agents:** In *Ferguson v. Wilson (1866)*, the court established that a company cannot act in its own person because it has no biological existence; it can only act through directors. Consequently, the relationship between a company and its directors is that of principal and agent governed by the Indian Contract Act 1872. Contracts entered into by directors within the scope of their corporate authority bind the company and create no personal liability for directors. However, if directors act ultra vires their authority, they incur personal liability for breach of implied warranty of authority.
- **Directors as Trustees:** In *Percival v. Wright (1902)* and *Great Eastern Railway Co. v. Turner (1872)*, the judiciary established that directors stand in the position of trustees regarding company funds, investments, and physical assets. Misapplication or unauthorized dissipation of corporate assets is treated as a breach of trust, entitling the company to trace and recover the misapplied property. Crucially, directors are trustees for the company as an institutional whole, not for individual shareholders.
- **Directors as Managing Partners:** Directors are elected representatives of the shareholder community, entrusted with managing collective commercial investments in a manner akin to managing partners in an expansive commercial enterprise.

Statutory Board Composition Thresholds (Section 149)

Under Section 149(1) of the Act, every company must maintain minimum and maximum board thresholds:

Company Typology	Minimum Directors	Maximum Directors	Special Composition Mandates
Public Limited Company	3 Directors	15 Directors	May exceed 15 directors by passing a Special Resolution; 1/3 Independent Directors if listed.

Company Typology	Minimum Directors	Maximum Directors	Special Composition Mandates
Private Limited Company	2 Directors	15 Directors	May exceed 15 directors by passing a Special Resolution; minimum 1 Resident Director.
One Person Company (OPC)	1 Director	15 Directors	Sole member may act as sole director; nominee assumes control upon death.

2. Comprehensive Classification of Directors under the Companies Act 2013

The Companies Act 2013 establishes a clear taxonomy of director typologies to ensure professional balance, executive oversight, and ethical accountability:

Managing Director and Whole-Time Directors (Executive Directors)

Under Section 2(54), a **Managing Director** is a director who, by virtue of the Articles of a company, or an agreement with the company, or a resolution passed in its general meeting or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company. A **Whole-Time Director** (Section 2(94)) is a director who devotes their entire working time and attention to the managerial operations of the company. A company cannot appoint or employ at the same time a Managing Director and a Manager (Section 196(1)). Appointments cannot exceed five years at a time, and candidates must be between 21 and 70 years of age (appointment beyond 70 requires a Special Resolution with explanatory justification).

Independent Directors (Section 149(6))

An **Independent Director** represents a non-executive director who possesses no material pecuniary relationship with the company, its holding, subsidiary, or associate companies, or their promoters and directors. Under Section 149(4) read with the Companies (Appointment and Qualification of Directors) Rules 2014, every listed public company must have at least one-third of its total number of directors as independent directors. Furthermore, unlisted public companies having paid-up share capital of ₹10 Crore or more, or turnover of ₹100 Crore or more, or outstanding loans/debentures exceeding ₹50 Crore must appoint a minimum of two independent directors.

Statutory qualifications under Section 149(6) require that an independent director:

- Must be a person of integrity possessing relevant industrial expertise, experience, and knowledge;
- Is not or was not a promoter of the company, holding, subsidiary, or associate;
- Has no pecuniary relationship (other than remuneration as director) exceeding 10% of their total income during the two immediately preceding financial years;
- None of whose relatives hold securities or indebtedness exceeding prescribed statutory thresholds;
- Has not been an employee, auditor, or legal consultant of the company in the preceding three financial years; and

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- Has passed the online proficiency self-assessment test conducted by the Indian Institute of Corporate Affairs (IICA) and registered in the Independent Directors Databank.

Independent directors are appointed for a term up to five consecutive years, eligible for reappointment for a second term upon passing a special resolution. No independent director can hold office for more than two consecutive terms (maximum 10 years), following which a mandatory three-year cooling-off period must elapse before any re-engagement.

Specialized Director Categories

- **Woman Director (Section 149(1) Second Proviso):** At least one woman director is mandatory for: (i) every listed company; and (ii) every public company having paid-up capital of ₹100 Crore or more, or turnover of ₹300 Crore or more. Any intermittent vacancy must be filled at the earliest, but not later than the immediate next Board meeting or three months from the date of vacancy, whichever is later.
- **Resident Director (Section 149(3)):** Every company must have at least one director who stays in India for a total period of not less than 182 days during the financial year.
- **Small Shareholders Director (Section 151):** A listed company may, upon notice of not less than 1,000 small shareholders (shareholders holding shares of nominal value not exceeding ₹20,000) or one-tenth of total small shareholders, whichever is lower, elect one director representing small shareholders. The tenure is restricted to three consecutive years, without eligibility for rotational retirement or reappointment.
- **Additional Director (Section 161(1)):** The Board may appoint any individual as an additional director if authorized by the Articles, holding office only up to the date of the next Annual General Meeting (AGM).
- **Alternate Director (Section 161(2)):** Appointed by the Board to act for a director during their absence for a period of not less than three months from India. The alternate director cannot hold office for a period longer than permissible to the original director.
- **Nominee Director (Section 161(3)):** A director nominated by a financial institution, banking corporation, or government under the terms of a loan agreement or special statutory enactment to safeguard institutional investments.

3. Director Identification Number (DIN) and Appointment Architecture

Under Section 152(3), no individual can be appointed as a director of a company unless they possess a valid **Director Identification Number (DIN)** allotted under Section 154 by the Ministry of Corporate Affairs (MCA). A DIN is an 8-digit unique alphanumeric identifier that maintains a centralized lifelong electronic record of an individual's directorships across all companies. An individual can hold only one DIN (Section 155); holding duplicate DINs attracts heavy penal sanctions under Section 159.

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DIN Procurement and Mandatory Annual Compliance

1. **Electronic Application:** For proposed directors in a new company, DIN is applied for within the integrated SPICe+ Part B form (up to three directors). For existing companies appointing a new director, application is submitted in **Form DIR-3** accompanied by proof of identity (PAN for Indian nationals, Passport for foreigners), proof of residence, digital photo, and digital signature certificate (DSC).
2. **Allotment:** The Central Government verifies the application and communicates the allotted DIN within one month. The director intimates their DIN to all companies where they act as director within one month in Form DIR-3B.
3. **Mandatory Annual DIR-3 KYC:** Every individual who has been allotted a DIN must submit an annual electronic KYC verification in **Form DIR-3 KYC** (or web-service DIR-3 KYC Web) on or before 30th September of each financial year. If a director fails to file the KYC, the MCA deactivates the DIN with the status 'Deactivated due to non-filing of DIR-3 KYC', rendering the individual legally incapable of executing corporate filings or signing financial statements until reactivated upon payment of a ₹5,000 default fee.

Appointment and Rotational Retirement of Directors (Section 152)

The appointment of directors follows structured statutory principles:

- **First Directors:** Named in the Articles of Association; in the absence of articles provisions, the individual subscribers to the Memorandum who are individuals are deemed to be the first directors until directors are duly appointed in the first general meeting.
- **Appointment at General Meetings:** Save as otherwise provided, every director must be appointed by the company in general meeting by passing an ordinary resolution. Before appointment, the candidate must furnish their DIN, a declaration that they are not disqualified under Section 164, and written consent to act in **Form DIR-2**. The company files the consent with the ROC in **Form DIR-12** within 30 days of appointment.
- **Rotational Retirement in Public Companies:** In a public company, unless the Articles provide for retirement of all directors at every AGM, not less than **two-thirds (2/3)** of the total number of directors must be persons whose period of office is liable to determination by retirement by rotation. At every subsequent AGM, **one-third (1/3)** of these rotational directors (or if their number is neither three nor a multiple of three, then the number nearest to one-third) must retire from office. The directors who have been longest in office since their last appointment retire first; between persons who became directors on the same day, retirement is determined by mutual agreement or by lot. Retiring directors are eligible for re-election. Independent directors, nominee directors, and small shareholder directors are excluded from rotational calculations.

4. Disqualifications, Vacation of Office, Resignation, and Removal

The Companies Act 2013 imposes rigorous governance checks preventing compromised, negligent, or fraudulent individuals from holding executive directorships:

Statutory Grounds for Disqualification (Section 164)

Under Section 164(1), an individual is ineligible for appointment as a director if:

1. They are of unsound mind and stand so declared by a competent court;
2. They are an undischarged insolvent;
3. They have applied to be adjudicated as an insolvent and their application is pending;
4. They have been convicted by a court of any offense involving moral turpitude or otherwise and sentenced to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of sentence (if sentenced to seven years or more, permanently disqualified);
5. An order disqualifying them for appointment has been passed by a court or tribunal and is in force;
6. They have not paid calls in respect of shares held for six months from the last date fixed for payment;
7. They have been convicted of an offense dealing with related party transactions under Section 188 during the last five years; or
8. They have not been allotted a Director Identification Number (DIN).

Under **Section 164(2)** (the corporate governance accountability clause), no person who is or has been a director of a company which has:

- Failed to file financial statements or annual returns for any continuous period of **three financial years**; or
- Failed to repay deposits, pay interest thereon, redeem debentures on due date, or pay declared dividend for **one year or more**;

shall be eligible to be re-appointed as a director of that company, or appointed in other companies, for a period of **five years** from the date on which the company fails to do so. This provision prompted the mass deactivation of hundreds of thousands of defaulting directors by the MCA.

Vacation of Office (Section 167) and Resignation (Section 168)

Under Section 167(1), the office of a director becomes automatically vacant if they incur any disqualification specified in Section 164; or if they absent themselves from all meetings of the Board of Directors held during a period of **twelve months** with or without seeking leave of absence; or if they act in contravention of Section 184 regarding disclosure of interest in contracts; or if they become disqualified by order of a court or tribunal.

Under Section 168, a director may resign by giving notice in writing to the company. The Board must place such resignation on record, intimate the ROC in **Form DIR-12** within 30 days, and report it in the Directors' Report. The director may also forward a copy of their resignation along with detailed reasons to the ROC in **Form DIR-11** within 30 days. The resignation takes effect from the date on which the notice is received by the company or the date specified in the notice, whichever is later, but the resigning director remains liable for offenses committed during their tenure.

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Removal of Directors (Section 169)

A company may, by passing an **Ordinary Resolution** in general meeting, remove a director before the expiration of their term of office, after giving them a reasonable opportunity of being heard. Special notice of 14 clear days is required for a resolution to remove a director under Section 115. Upon receipt of notice, the company must forward a copy to the concerned director, who has a statutory right to make written representations and speak at the general meeting. However, a company cannot remove: (i) a director appointed by the NCLT under Section 242; or (ii) a director appointed under the principle of proportional representation under Section 163.

5. Fiduciary Duties and Statutory Powers of Directors

The Companies Act 2013 formally codified the fiduciary duties of corporate directors under Section 166, converting general common law equitable standards into binding statutory mandates. Every director is legally bound to:

1. Act in accordance with the Articles of Association of the company (Section 166(1));
2. Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community, and for the protection of environment (Section 166(2) - embedding ESG principles);
3. Exercise their duties with due and reasonable care, skill, and diligence, and exercise independent judgment (Section 166(3));
4. Avoid involving themselves in situations in which they have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (Section 166(4));
5. Not achieve or attempt to achieve any undue gain or advantage either to themselves or to their relatives, partners, or associates; if found guilty of making undue gain, they are liable to pay an amount equal to that gain to the company (Section 166(5)); and
6. Not assign their office; any assignment of office made by a director is completely void ab initio (Section 166(6)).

Breach of duties under Section 166 is punishable with a fine which shall not be less than ₹1,00,000 but which may extend to ₹5,00,000.

Statutory Powers Exercised Exclusively at Board Meetings (Section 179)

The Board of Directors is entitled to exercise all such powers and do all such acts as the company is authorized to do. However, under Section 179(3), the following core powers must be exercised **only by passing resolutions at formal meetings of the Board**, and cannot be passed via circular resolutions:

- Making calls on shareholders in respect of money unpaid on their shares;
- Authorizing buy-back of securities under Section 68;
- Issuing securities, including debentures, whether in or outside India;
- Borrowing monies; investing the funds of the company; granting loans or giving guarantees;

- Approving financial statements and the Board's Report;
- Diversifying the business of the company; approving amalgamations, mergers, or acquisitions;
- Taking over a company or acquiring a controlling or substantial stake in another enterprise; and
- Formulating Corporate Social Responsibility (CSR) policies under Section 135.

Key Managerial Personnel (KMP) Architecture (Section 203)

Under Section 203 of the Act, every listed company and every unlisted public company having a paid-up share capital of ₹10 Crore or more must appoint full-time **Key Managerial Personnel (KMP)** consisting of: (i) Managing Director, or Chief Executive Officer (CEO), or Manager, and in their absence, a Whole-Time Director; (ii) Company Secretary (CS); and (iii) Chief Financial Officer (CFO). KMPs manage day-to-day administrative machinery and shoulder primary statutory compliance liability under penal provisions as "officers in default" under Section 2(60).

6. Board Committees, Corporate Governance, and Related Party Transactions

To ensure rigorous internal oversight, prevent executive overreach, and elevate financial credibility, the Companies Act 2013 mandates the constitution of specialized **Board Committees** staffed predominantly by non-executive independent directors.

The Audit Committee (Section 177)

Under Section 177 read with the Companies (Meetings of Board and its Powers) Rules 2014, every listed public company and all public companies having paid-up share capital of ₹10 Crore or more, or turnover of ₹100 Crore or more, or outstanding loans/debentures exceeding ₹50 Crore must constitute an **Audit Committee**. The committee must consist of a minimum of **three directors**, with independent directors forming the majority. The chairperson and members must possess the ability to read and understand financial statements, with at least one member having specialized accounting or financial management expertise.

The statutory charter of the Audit Committee encompasses:

- Recommending the appointment, re-appointment, terms of engagement, and audit fees of statutory and internal auditors;
- Reviewing and monitoring the auditor's independence, objectivity, and effectiveness of the audit process;
- Examining financial statements and auditor's reports prior to submission to the Board for formal approval;
- Scrutinizing inter-corporate loans, investments, and enterprise valuations;
- Evaluating the robustness of Internal Financial Controls (IFC) and enterprise risk management systems; and
- Establishing and monitoring the **Vigil Mechanism (Whistle-Blower Policy)** under Section 177(9), providing direct access to the Audit Committee Chairman for reporting fraudulent conduct

and protecting whistle-blowers against victimization.

Nomination and Remuneration Committee (NRC - Section 178)

Companies meeting the Audit Committee financial criteria must also establish a **Nomination and Remuneration Committee** comprising three or more non-executive directors, with at least one-half being independent directors. The chairperson of the company cannot chair this committee. The NRC is tasked with identifying individuals qualified to become directors or KMPs, formulating criteria for determining qualifications, positive attributes, and independence, evaluating board performance, and recommending a balanced remuneration policy that aligns executive incentives with long-term corporate growth without encouraging reckless risk-taking.

Stakeholders Relationship Committee (Section 178(5))

Every company having more than **one thousand shareholders, debenture-holders, or other security-holders** at any time during a financial year must constitute a Stakeholders Relationship Committee chaired by a non-executive director. The committee resolves grievances regarding transfer of shares, non-receipt of dividends, annual reports, and new share certificates, safeguarding retail investor rights.

Governance of Related Party Transactions (Section 188)

A **Related Party Transaction (RPT)** represents a contract between a company and its related entities (directors, KMPs, holding/subsidiary entities, or firms in which directors hold interests under Section 2(76)). To prevent promoter tunneling and asset stripping, Section 188 mandates that contracts relating to sale/purchase of goods, property leasing, or availing services with related parties require prior approval of the Board of Directors. Where transaction values exceed prescribed statutory thresholds (e.g., sale of goods exceeding 10% of annual turnover), prior approval of shareholders by passing an **Ordinary Resolution** is mandatory, and no member who is a related party can vote on such resolutions.

Crucially, Section 188(1) third proviso exempts transactions entered into by the company in its **ordinary course of business on an arm's length basis** (transactions conducted between two willing, unrelated parties with no conflict of interest). Contracts entered in breach of Section 188 are voidable at the option of the Board, and defaulting directors are liable to indemnify the company for resulting losses and face disqualification under Section 164(1)(g).

Statutory Restrictions on Loans to Directors and Inter-Corporate Investments

- **Loans to Directors (Section 185):** A company is strictly prohibited from advancing any loan, book debt, or providing guarantee/security to its directors, directors of holding companies, or partners/relatives of such directors. Limited exemptions apply to loans made to Managing or Whole-Time Directors as part of employee service conditions, or loans made in the ordinary course of banking business.
- **Inter-Corporate Loans and Investments (Section 186):** A company cannot directly or indirectly give loans to any body corporate, give guarantees, or acquire securities exceeding **60% of its paid-up share capital, free reserves, and securities premium**, or **100% of free**

reserves and securities premium, whichever is more, unless prior approval is obtained by passing a **Special Resolution** in general meeting. All loans must carry interest not lower than the prevailing yield of Government Securities matching the tenure.

Comparative Directorship Typologies

Directorship Category	Executive / Non-Executive	Statutory Basis	Key Independence & Fiduciary Traits
Managing Director (MD)	Executive	Section 2(54) & 196	Entrusted with substantial powers of operational management; salaried KMP.
Whole-Time Director (WTD)	Executive	Section 2(94) & 196	Devotes whole time to company service; executive employee status.
Independent Director (ID)	Non-Executive	Section 149(6)	Zero pecuniary ties; max 2 terms of 5 years; objective external oversight.
Nominee Director	Non-Executive	Section 161(3)	Nominated by lenders/financial institutions to safeguard institutional loans.
Alternate Director	Non-Executive	Section 161(2)	Acts during principal director's absence from India (>3 months); temporary tenure.

Corporate Social Responsibility (CSR) Architecture (Section 135)

India became the first jurisdiction to statutorily mandate corporate philanthropy through Section 135 of the Companies Act 2013. The statutory mandate applies to every company having:

- Net worth of **₹500 Crore or more**; or
- Turnover of **₹1,000 Crore or more**; or
- Net profit of **₹5 Crore or more** during the immediately preceding financial year.

Qualifying companies must constitute a **CSR Committee** consisting of three or more directors, including at least one independent director. The committee formulates and recommends a CSR Policy indicating activities to be undertaken as specified in **Schedule VII** (eradicating hunger, poverty, and malnutrition; promoting healthcare, education, gender equality, environmental sustainability, national heritage protection, and contributions to the PM CARES Fund). The Board must ensure that the company spends, in every financial year, at least **two percent (2%) of the average net profits** of the company made during the three immediately preceding financial years.

Under Section 135(5) and (6), any unspent CSR amount relating to an ongoing multi-year project must be transferred within 30 days of the end of the financial year to a special bank account titled the **Unspent CSR Account** and spent within three financial years, failing which it must be transferred to a national fund specified in Schedule VII within 30 days. Non-compliance attracts severe monetary penalties: the company is liable to a penalty of twice the unspent amount or ₹1 Crore (whichever is less), and every defaulting officer is liable to a penalty of one-tenth of the unspent amount or ₹2 Lakh.

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Disclosure of Directors' Interest in Commercial Contracts (Section 184)

To eliminate covert self-dealing and conflicts of interest, Section 184 mandates that every director must disclose their concern or interest in any company, body corporate, firm, or association by giving a notice in writing in **Form MBP-1**:

1. At the first Board meeting in which they participate as a director;
2. At the first Board meeting of every financial year; and
3. Whenever there is any change in disclosures already made.

Furthermore, an interested director cannot participate or vote in Board discussions concerning contracts in which they hold personal interests, nor can their presence count toward the quorum for that agenda item. Contracts entered into in contravention of Section 184 are voidable at the option of the company, and the defaulting director is punishable with imprisonment up to one year, or a fine up to ₹1,00,000, or both.

The Fiduciary Dilemma: Duty Owed to Company vs Individual Shareholders

A classic principle of Anglo-Indian corporate jurisprudence, established in *Percival v. Wright (1902)*, holds that directors owe fiduciary duties strictly to the company as a whole and not to individual shareholders. In this case, shareholders approached the chairman and two directors asking if they would purchase their shares. The directors purchased the shares at £12.10s each. At the time of purchase, directors were secretly negotiating a sale of the entire company's undertaking at a much higher price, which later fell through. When the selling shareholders discovered the secret negotiations, they sued to set aside the transaction for breach of fiduciary duty. The court held that directors were not trustees for individual shareholders; their fiduciary obligation was owed solely to the company. However, modern jurisprudence in *Peskin v. Anderson (2001)* qualified this rule: where directors place themselves in a direct factual relationship of agency or trust with specific shareholders (such as giving personal investment advice), a special fiduciary duty arises.

Statutory Ceiling on Managerial Remuneration (Section 197)

To preserve corporate capital and ensure equitable executive compensation, Section 197 of the Act establishes strict statutory caps on total managerial remuneration payable by a public company to its directors, managing directors, whole-time directors, and managers in respect of any financial year:

- **Overall Maximum Ceiling:** Total managerial remuneration payable to all directors and managers cannot exceed **eleven percent (11%)** of the net profits of the company for that financial year, computed in accordance with Section 198.
- **Individual Executive Limits:** Remuneration payable to any one Managing Director, Whole-Time Director, or Manager cannot exceed **five percent (5%)** of net profits. If there is more than one such director, remuneration cannot exceed **ten percent (10%)** for all of them together.
- **Non-Executive Directors:** Remuneration payable to directors who are neither managing directors nor whole-time directors cannot exceed **one percent (1%)** of net profits if the company has an MD or WTD, or **three percent (3%)** if the company has no MD or WTD.

- **Inadequacy of Profits:** If in any financial year a company has no profits or its profits are inadequate, managerial remuneration must comply with the tiered limits prescribed in **Schedule V (Part II)** based on the effective capital of the company, ranging from ₹60 Lakh to ₹120 Lakh plus 0.01% of effective capital in excess of ₹250 Crore, unless shareholder approval via Special Resolution is obtained.

Director's Responsibility Statement in the Board's Report (Section 134(5))

Under Section 134(5), every Annual Report presented to shareholders must contain a dedicated **Director's Responsibility Statement** signed by directors affirming that:

1. In the preparation of the annual accounts, applicable accounting standards have been followed along with proper explanations relating to material departures;
2. The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
3. The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
4. The directors had prepared the annual accounts on a going concern basis;
5. The directors, in the case of a listed company, had laid down internal financial controls (IFC) to be followed by the company and that such internal financial controls are adequate and were operating effectively; and
6. The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Independent Director Evaluation and Governance Integrity

To prevent independent directorships from devolving into decorative or rubber-stamp positions, Schedule IV of the Companies Act 2013 (Code for Independent Directors) mandates that the performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director. Furthermore, independent directors must hold at least one separate meeting in a financial year without the attendance of non-independent directors and members of management to review the performance of non-independent directors, assess the quality and flow of information between management and the Board, and maintain independent judgment.

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