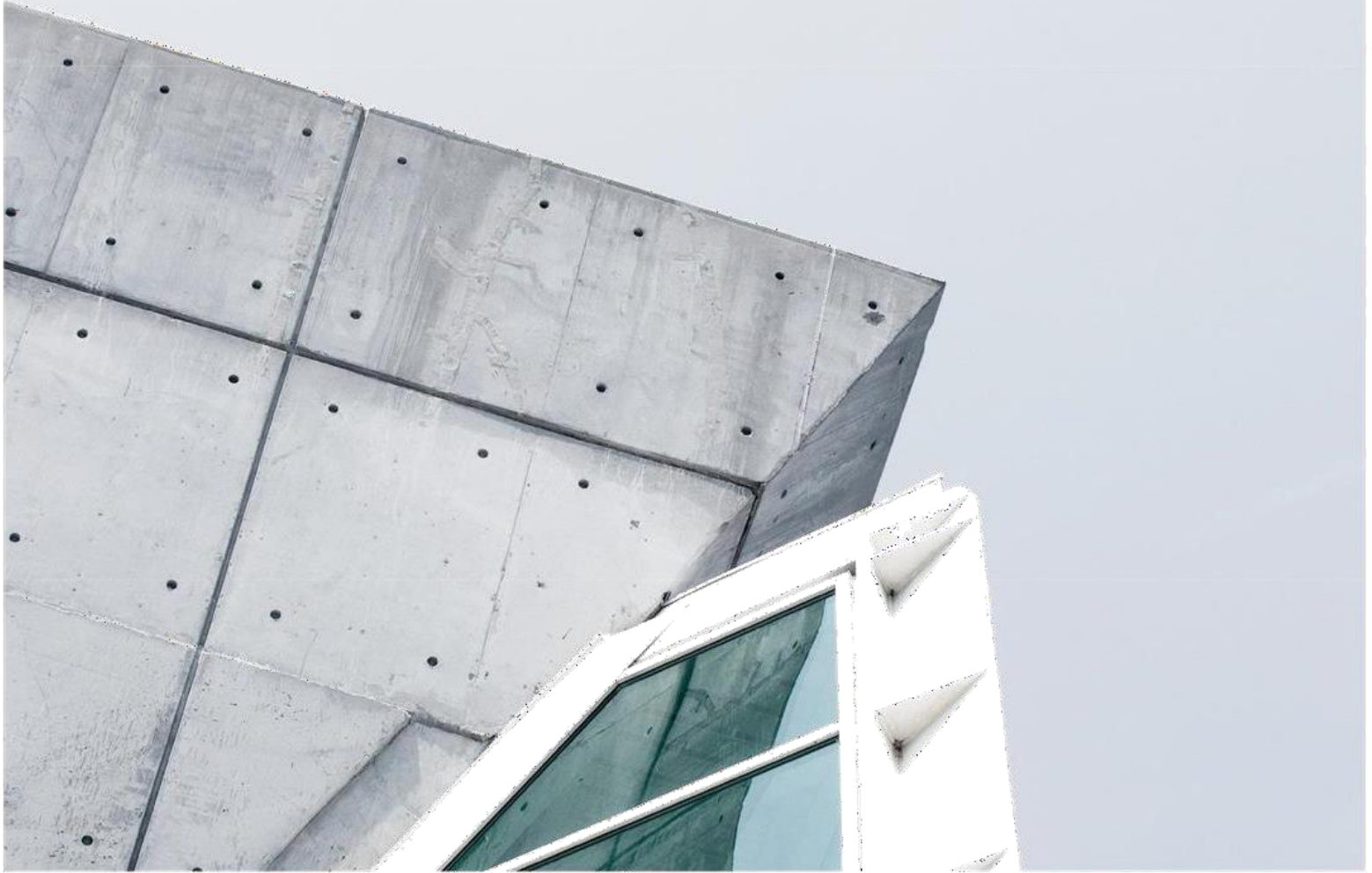




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IICA Survey Report

On

**SEBI Consultation Paper on Review of Regulatory
Provisions related to Independent Directors**



Independent Directors Survey – SEBI Consultation Paper

Centre for Independent Directors, IICA conducted a online survey with registered members of Independent Directors (ID) Databank regarding SEBI Consultation Paper on review of various statutory provisions related to Independent Directors. A total of 466 responses received by the end of last date for response. Here is the brief summary of recommendation-wise responses-

1) Cooling-off period of 3 years for appointment of KMPs or employees & their relatives of promoter group companies as IDs in the company

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 366 | 79% | 100 | 21% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendations - While analysing original responses from the Independent Directors, it can be observed that most of IDs support cooling-off period of 3 years for appointment of KMPs or Employees (Including their relatives) of promoter group companies as IDs in the company to ensure reasonable level of Independence, to avoid conflict of Interest, to ensure non-association with any proposal to be considered by the Board of Directors and to ensure that KMP does not misuse the inside information they have among other reasons. As per some other responses, only a cooling off period may be ineffective especially where the employer-employee relationship has lasted for say 10-20 years, it is not necessary that a KMP or an employee will become independent merely after some cooling-off period and former employees should not be appointed as ID unless the management has changed. KMPs etc are so close to the promoters and if they become ID without any cooling off period will certainly defete the purpose.

(b)Reasons for not supporting the recommendation - Some members have different views and as per their suggestions, KMPs or employees & their relatives of promoter group companies should not be allowed for appointment at all or cooling-off period may be extended to 5 years or association with the company cannot be reversed with lapse of time or cooling-off period of 18-24 months is sufficient or Relatives and employees cannot be independent irrespective of cooling period

2) Cooling-off period of 2 years in case of a material pecuniary relationship with listed entity/holding/Subsidiary/Associate can be extended upto 3 years.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 353 | 76% | 113 | 24% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation – Responses suggest that Uniform rules will help regulators, avoid conflict of interest, IDs are for other shareholders and peculiarly interest will make those IDs look after promoters interest, longer disassociation helps in maintaining independence & transparency, In line with the cooling off period for KMP etc., this also should be 3 years so that there is consistency in policy, longer the cooling-off period better the control, and it gives additional time to keep a close watch on the nature of the relationship.

(b) Reasons for not supporting the recommendation - Some members have different views and as per their suggestions, two years is sufficient, however the materiality threshold needs to be defined, there shouldn't be any material pecuniary relationship between the hiring company & ID, three years too long in current context, Independence is not function of such a period and cooling-off period should be extended to 5 years.

3) Appointment & Re-appointment of IDs with "Dual Approval" i.e (i) Approval of Shareholders (Ordinary Resolution for Appointment & Special Resolution for Re-appointment), (ii) Approval of "Majority of the minority shareholders". If either of the approval thresholds are not met, the person would have failed to get appointed / re-appointed as ID.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 285 | 61% | 181 | 39% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation – Responses suggests that viewpoint of minority group of shareholders is necessary to maintain expression of independent viewpoint, control of appointment and removal by Board of Directors & Promoter group dilute independence of IDs, present system is loaded too much in favour of the promoters in proposing the ID, prevent promoter shareholders from having only their 'own' directors, it's essential to protect the interest of minority, compliance with Good corporate governance principles, may lead to too much process and delays in appointment, Independent directors protect interest of minority shareholders and will strengthens the process of Appointment and no scope for conflicts at later stage.

(b) Reasons for not supporting the recommendation – Different views suggest that It will not serve any purpose and the same person's appointment can be approved in the second meeting after 90 days, dual approval will delay appointment process & may lead to misuse by

certain class of shareholders, these provisions should only be apply to companies having promoters in current shareholding, most of minority shareholders may not have knowledge about capability & Role of ID hence they don't engage or vote, promoter group shareholders should not be involved in voting for appointment of IDs, Special resolution for appointment of IDs is sufficient and it may be considered for top 1000 listed companies.

4) After failure to get appointed, Listed entity can again propose the same person for appointment for a second vote of all shareholders (Special Resolution) after a cooling-off period of 90 days but within a period of 120 days. However, notice of meeting will include reason for proposing the same person.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 279 | 60% | 187 | 40% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation – A broad picture of responses suggest that It's an opportunity for corporate to explain the rationale, not getting appointed once should not be treated as no chance again, there may be many reasons for not getting appointed once and this should not block the chances for getting appointed in future, there could be situations when the merit and competence of the proposed person were not fully understood and appreciated, it's logical to ask the management, why they want to appoint the person, who has been rejected and the candidate should be given another chance to convince the Shareholders.

(b) Reasons for not supporting the recommendation - Different views suggest that if in first place the person failed to get appointed / re-appointed as ID then why should company again propose the same person for the whole voting process, rejection should be respected, there are plenty of competent candidates out there, proposing the failed candidate for whatever reason is entry through the back door and repeated attempts only implies the vested interest of the promoters.

5) Removal of IDs with "Dual Approval" i.e (i) Approval of Shareholders (Ordinary Reso for removal in first term & Special Reso for removal in second term), (ii) Approval of "Majority of the minority shareholders". If either of the approval thresholds are not met, the person would have failed to get removed as as ID.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 335 | 72% | 131 | 28% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation – Summarization of responses suggest that it will avoid control of IDs by promoters group, approval of both majority and minority share holders will ensure fairplay, it may safeguard the ID if any dissent is expressed against wishes of promoters, ID can work without fear and really independently, it will protect an ID from unwanted interference by any special group, ID would not be removed as a routine, which strengthens the system of ID and this will make the process transparent.

(b) Reasons for not supporting the recommendation - Different views suggest that it should not be applicable in promoterless companies, no need of dual approval for removal, removal with special resolution of shareholders is sufficient, promoter group should not be allowed to vote of resolution for removal of ID, Removal of ID dont need to have special rules. Rules for removal of normal director are sufficient for ID as well, and a person who has lost the confidence of the Board cannot continue.

6) After failure to get removed, Listed entity can again propose the same person for removal by a second vote of all shareholders (Special Resolution) after a cooling-off period of 90 days but within a period of 120 days. However, notice of meeting will include reason for proposing the same person again for removal.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 270 | 58% | 196 | 42% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation – Deduction from many responses suggest that If there is sufficient rationale, it should be allowed, addition and removal should be similar processes, one more opportunity is given to the listed company to present its case for removal of an ID, their must be a strong reason for the management to repropose IDs, company should have the ability to remove an ID with adequate reason or grounds, It gives time for all shareholders to review their earlier decision and majority view will now prevail and reconsideration of proposal on additional ground is fair.

(b) Reasons for not supporting the recommendation – Views against the recommendation forms broad opinion that what will substantially change in profile of the person in 90 days, once disapproved by shareholders, the board must not have any power, such decisions should not be open to review in a short period of 90-120 days, persecution of the ID by the promoter group that generally controls the majority of shareholders, ID cannot perform under threat and this provision is unnecessary.

7) NRC shall formulate a description of role & capabilities after evaluating balance of skills, knowledge and experience on the board. Each recommendation to board for appointment as ID should have capabilities as per that description. NRC shall use External agencies to find suitable candidates, consider diversity & time commitment of the appointees.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 369 | 79% | 97 | 21% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation – Suggestions point out that this will ensure that IDs are selected on merit and through a transparent process, for real independence it’s better to Map and find ID through external agency, will bring professionalism in the Selection of IDs, will ensure the board composition has requisite skills and competence required for the business, NRC can use ID Databank of IICA within the overall framework designed by NRC for selection of Ids, just like having a Job Description for posts in the Company, an ID also needs a JD, External agencies can give a perspective which NRC may lack and best candidates can be find out for the role of ID.

(b) Reasons for not supporting the recommendation – Views against the recommendation argue that external agencies may not always find best candidates hence NRC should be on forefront to find suitable candidates and use of ID Databank should be promoted instead of external agencies.

8) Notice of meeting shall disclose skills & capabilities required for ID and how the proposed individual meets the requirements. Further, Search channels including the category of person i.e promoters, Institutional Shareholder, existing director etc who recommended any search channel will also be disclosed.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 402 | 86% | 64 | 14% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation – Responses in support suggest that this information is necessary for transparency; this is a must for the shareholders to take a knowledgeable view, will enable board members to make them compatible with expected

skills and knowing the skills & capabilities can only help in careful & right selection of candidates.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that ID is appointed on the basis of skills so again and again doing such exercise would degrade ID, promoters should not normally be allowed to play any direct/indirect role for proposed individual to be considered for ID, this procedure will only delay appointments, nomination should be from ID databank only and there should be no disclosure requirements about recommenders.

9) NRC to be constituted with 2/3rd IDs instead of Majority of IDs.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 357 | 78% | 101 | 22% | 458 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation - Responses in support suggest that It will represent appropriate majority & will ensure full independence in the proceedings of the committee, Strengthens the Independent Directors and gives more say in the process, the ID will be able to play effective role, Reduce the impact of promoter/majority shareholder group, it will ensure impartial assessment of talent based remuneration/ incentive levels, it will bring about greater objectivity to the deliberations of NRC, It will increase confidence in the decisions of NRC and this will go closer to global standards of independence of the NRC.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that 2/3rd is anyway majority - the change is not really required, Promoters will be at the mercy of id s and it takes away the incentive to promote and run companies, majority is good enough, may end up delaying the decision making and Non IDs also bring knowledge and expertise to the process.

10) IDs should be appointed on the Board only with prior approval of Shareholders

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 247 | 53% | 219 | 47% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation - Responses in support suggest that it will give transparency and opportunity to reject, IDs primary interest is shareholders hence prior approval is desirable, they will be representing the interest of the shareholders and not that of management, Shareholders are aware of the risks and benefits of appointing such IDs, it will create more responsibility for board to hire good director and without prior approvals of share holders, decisions taken with approval of IDs may not align with the interests of the share holders.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that sometimes ID appointments need to happen in normal course of business who can be ratified later by shareholders, time is critical to a Board's efficient functioning. If shareholder prior approval process is long drawn, this would not be in the Company's best interest. Appointment by NRC and validation by shareholders for quick filling of positions. This may result in vacancies of the boards. Not feasible to have EGM every time ID has to be appointed. Further, it is costly affair to convene EGM again and again. Existing process of ratification by shareholders in AGM is good enough.

11) In case of casual vacancy, approval of shareholders should be taken within 3 months.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 349 | 75% | 117 | 25% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation - Responses in support suggest that three months period is reasonable time to get shareholders approval for effective and Transparent functioning of an entity. This is a welcome step to ensure Corporate Governance at the Board level which will suffer in absence of filling up casual vacancies of IDs promptly. ID is an important role hence vacancy for more than 3 months should be discouraged and time bound process is necessary to avoid intentional delays and also avoid interruptions in the Board performance. Any casual appointment should not run indefinitely. Prescribing of a time frame will install a sense of discipline and urgency in securing shareholders approval.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that approval should be taken in AGM or within six months because of associated cost of convening of shareholders meeting. Instead of getting approval within 3 months, intimation of appointment with necessary details could be given to shareholders and approval could be secured in next AGM. It may add unnecessary complications, instead hold NRC accountable and trust them. There should be a difference for large and small cap companies.

12) The entire resignation letter of ID shall be disclosed with list of existing directorships & membership in board committees.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 385 | 83% | 81 | 17% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation - Responses in support suggest that this will ensure Transparency and provide an opportunity for IDs to state the exact reason instead of stating Personal Commitments or Pre-occupation. Often the real reason for IDs leaving is hidden because it may lead to faults on the side of promoters. Resignation is a very important subject and the board and the regulatory agencies would need to know the reasons in detail.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that there may be something confidential in such letters which may need to be handle discretely. This is overstretching of disclosures. Rather, make his presence mandatory in the meeting where his resignation is being accepted. Puts the ID in an awkward spot. The IDs will simply not disclose the real issues in the resignation letter if the contents of the letter are going to be a public document. Details of directorship in other companies are already available on MCA website.

13) In case of resignation due to Pre-occupation, personal reasons, then before joining of another company, a mandatory cooling-off period of 1 year.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 245 | 53% | 221 | 47% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation - Responses in support suggest that one year can be reasonable period to assess any pros and cons of the outgoing IDs also whether it has any vested interest as individual or group of individuals, it will discourage resignations due to hidden agenda and force IDs to state the actual Reason for joining the Board of another Company. This will improve transparency as IDs need to be clear why they have resigned.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that due to personal reasons cooling off period is not required or it should be six months. ID is meant to protect shareholder interest. Once he/she feels they cannot do that and resigns, they can't be penalised and disqualified from joining others. Pre-occupation and Personal reasons can differ from person to person and the circumstances, hence cooling-off period is irrelevant.

14) Cooling-off period of 1 year for transition from ID to WTD.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 247 | 53% | 219 | 47% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation - Responses in support suggest that a person who has been on the post of Independent Director can't become part of the management immediately. Logical to ensure disengagement before new role is taken up. So as not to get influenced by the prospect of a whole time job and would ensure arms length relationship. Hence 1 year seems to be sufficient time for the purpose to avoid conflict of interest.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that there could be genuine reasons for making such a move which benefits the company, there is no rationale for cooling off, If shareholders are agree, then there is no requirement of cooling-off period. Some responses suggest for 2 or 3 year cooling-off period. Sometimes an ID may have the expertise which can be put to use in that capacity as WTD.

15) Audit committee should have 2/3rd IDs and 1/3rd Non-executive directors who are not related to the promoter.

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 379 | 81% | 87 | 19% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation - Responses in support suggest that non-executive directors should also not related to any director. CAG audit may recommended for top 500 companies having substantial interest of Government, Public sector banks or financial institutions. This will ensure better financial reporting & disclosure and enhance internal controls over Related party transactions and Independence of Audit committee. Also Audit committee should look like not having composition of interested individuals. It will make it more professional and hopefully transparent as well. Real purpose of ID can be served. Such IDs in Audit committee must have strong background of financial & accounting knowledge. The WTD/KMPs may be invited if some information/clarification on any item is necessary in the meeting of committee.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that this requirement adds no value, it is difficult to implement, better to state a minimum of 2/3 IDs and leave the rest, it should be applicable only for companies having large enough board, Promoter interest is refused, family owned business will suffer, Where does one find a non executive director who is not related to the promoters? This is why they are called non executive, else would be independent. Current structure of Audit committee is sufficient from the point of view of Corporate Governance.

16) Whether there is a need for reviewing of Remuneration structure of IDs?

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 416 | 89% | 50 | 11% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation - Responses in support suggest that remuneration should not be constraint to play true role with a lot of duties responsibilities and liabilities, sitting fees alone cannot be a method of remuneration. It is unreasonable to expect ID's on boards of listed companies without reasonable remuneration, Compensation has to be based on time commitment, Liability of Independent Directors should also be reviewed, Need to make it attractive for good professionals & best talent to be taken as IDs, it should be reviewed periodically and disclosed.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that it should be left to individual entities, Present structure allowing a commission may not be in the interests of the minority shareholders, existing arrangements appear to be in order & IDs should not be influenced by monetary compensation.

17) Should ESOPs of vesting period of 5 years be allowed instead of profit linked commission? What would be max limit?

Survey Feedback

| Agree | Agree % | Disagree | Disagree% | Total |
|-------|---------|----------|-----------|-------|
| 203 | 44% | 263 | 56% | 466 |

Summary of arguments from Independent Directors (ID):

(a) Reasons in support of the recommendation - Responses in support suggest that ESOPs of long vesting period along with profit linked commission may be considered, vesting could be upto 3 years instead of 5, would motivate the IDs towards more active participation, it will ensure IDs involvement in long term interest of company, this will integrate them with the entity having own stakes and will be helpful in attracting talented people on board.

(b) Reasons for not supporting the recommendation - Views against the recommendation argue that ESOPs are not necessary, instead pay immediately for what IDs do; Companies should be left to strategise and use either of these options to attract right talent, IDs should be given the option to choose either option, instead Performance can be evaluated every year and ESOP can be an additional incentive, ESOPs reduces independence of the IDs, left to individual companies instead of mandating and present structure is more appropriate.

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