

Time to Consider Dispensing with the NRC?



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The essential purpose of an NRC is to evaluate appointments to the Board of Directors, examining the qualifications, attributes and likely independence of each individual; fixing their remuneration; and recommending the same for approval of the Board



The constitution of a Nomination and Remuneration Committee (NRC) was first mandated in the 2013 Companies Act for all listed firms, as well as for certain other prescribed types of companies. Specifically, it applies to all public companies with a paid-up share capital of Rs 10 crores or more, a turnover of Rs 100 crores or more, or aggregate outstanding loans, borrowings, debentures or deposits exceeding Rs 50 crores or more. (Previously, listing agreements might mention a 'Remuneration Committee', but actually constituting one was not mandatory.) In September 2015, SEBI amended its LODR Regulations to bring these in line with the Act.

The essential purpose of an NRC is to evaluate appointments to the Board of Directors, examining the qualifications, attributes and likely independence of each individual; fixing their remuneration; and recommending the same for approval of the Board. Further, the NRC is involved in formulating the firm's nomination and remuneration policy, and in identifying those who might be qualified to become Directors, KMPs or senior management in the firm, in line with criteria laid down in its policies.

NRC composition

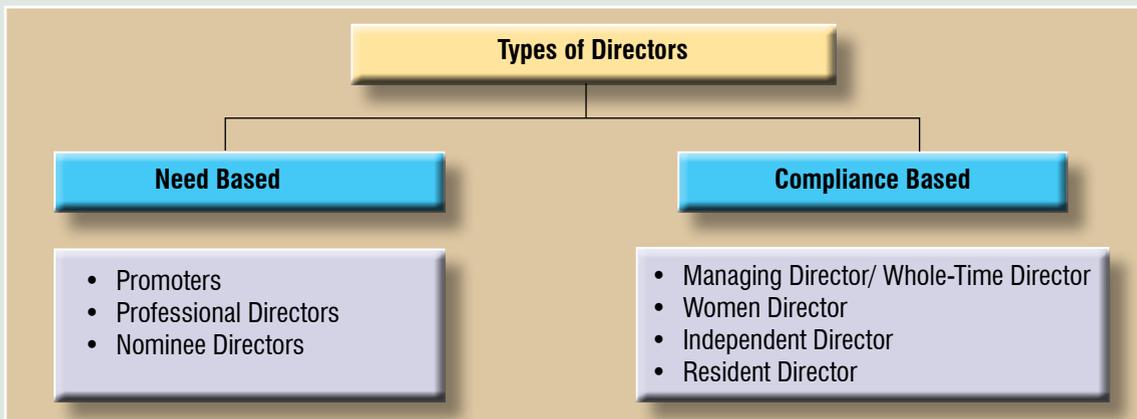
The Board of Directors is meant to appoint the NRC. Both the Act and LODR state that the NRC shall consist of at least three non-executive directors, and further, that at least 50 per cent of such directors shall be independent directors (IDs). While LODR states that the Chairperson of the Committee must be an ID, there is no such requirement in the Act. Also, the Chairman of the Company, whether executive or non-executive, may be appointed as a member of the NRC but cannot serve as its Chairman.

Constitution of the Board of Directors

Any Board of Directors is meant to include professional directors, promoters, nominees, IDs, women directors, and resident directors. Generally, appointments to such positions are either 'need based' or 'compliance based'. Need-based appointments include those of promoter, professional or nominee directors. Compliance-based ones are meant to satisfy regulatory requirements, such as with IDs, MDs, Whole-time Directors (WTDs), Women Directors or Resident Directors.

Practicality of the NRC

Every public company is required to have a minimum of three directors. In unlisted public companies, though, the directors normally represent the promoter group. The mandatory appointment of IDs in certain classes



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of companies is the responsibility of promoter directors, which the shareholders, who tend to be friends or relatives of the promoters, will usually approve. Therefore, having to constitute a separate committee for the express purpose of identifying directors in such companies adds an unnecessary burden in terms of paper work, the payment of sitting fees, and so on.

Whether the firm or listed or unlisted, the Board is likely to include a set of diverse individuals who represent the interests of the promoters, professionals and other stakeholders. Any director-level appointment is the sole responsibility of the entire Board, and must be approved by shareholders at a general meeting. An individual who joins the Board of a listed company must also understand the mind-set of all the other directors, besides the company's business, its prospects and its governance structures. A separate Schedule has been introduced in the Act, with provisions for the appointment and re-appointment of IDs, and the necessary evaluation mechanisms. In listed companies, promoters are meant to have an opportunity to identify and select directors, though the actual process of appointment must take into account the comfort of the entire Board.

In government-owned companies, meanwhile, the role of the NRC is redundant since the state appoints the majority of directors. In fact, a 2015 notification (GSR 463(E)) exempts such companies from this requirement. (The LODR rules, though, still require them to have an NRC recommend the appointment of directors.) However, they do still need to have an NRC to consider the appointment of senior management and other employees.

Conclusion

In government-owned companies, it is the government itself – which is both the main 'promoter' and 'shareholder' of the business – that appoints directors. It is worth extending this benefit to other listed companies as well. The roles of the NRC and the Board should be complementary, and the government and SEBI should consider dispensing with the requirement of constituting an NRC. Such a move would extend the concept of 'ease of doing business' to the corporate sector. ■