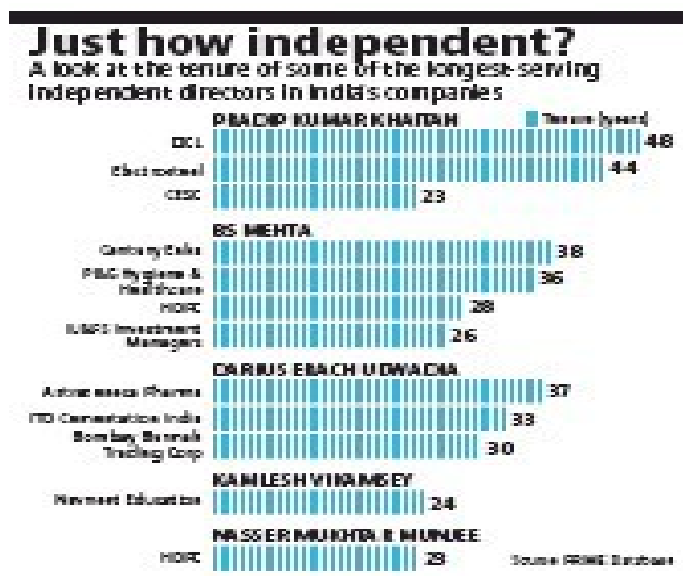


How actually independent are India's independent directors?

- Hindustan Times (Jalandhar)
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NEW DELHI: PK Khaitan, a lawyer by profession, has been serving on the board of OCL as chairman in an independent and non-executive role for the last 48 years. He has also been an independent director with two other listed companies for over 20 years.

Similarly, BS Mehta, is on the boards of P&G hygiene and healthcare and HDFC for 36 and 28 years in an independent role. Darius Erach Udwadia has been on the board of AstraZeneca Pharma for the last 37 years.

There are 48 listed companies that have independent directors with a tenure of over 10 years, according to PRIME database.

There was no mandate on fixing the tenure till the New Companies Act, 2013, limited it to two tenures of five years each, with three years to cool off. However, the law does not apply retrospectively and the existing independent directors can continue in the role for 10 more years, provided they are reappointed before March 31, 2015. The earlier term is not counted.

Though there is no violation of law, experts contend directors serving for long periods may lack independence and objectivity.

“Once a director approves a decision, they assume ownership of it and lose the ability to examine the outcomes analytically. Ten-year tenure fits better. It is long enough for directors to understand the business, but not so long that they are entrenched,” said Amit Tandon, MD, Institutional Investor Advisory Services (IIAS), a proxy advisory firm.

A 10-year cap on the tenure is in line with what is practised globally. The UK, France, Hong Kong and Singapore, among others, recently limited the tenure of independent directors to help allay investors’ concerns that long-serving board members tend to get complacent.

However, companies think otherwise.

“Long tenure is not related to a director’s ability to be independent. Longer tenures can help directors make faster decisions because of their knowledge of the firm,” says the spokesperson for P&G hygiene and healthcare.

“Our directors have been fiercely independent in guiding the functioning of the company and have always sought to challenge management and promoters in the best interest of the company and minority shareholders,” says an AstraZeneca Pharma spokesperson.

OCL and HDFC did not respond to HT’s requests for comments.

Even the directors themselves don’t consider tenure impacting their decision-making.

“If a person is ethical and conscientious, the length of service is unlikely to affect his independence,” says RA Shah, a senior partner at law firm Crawford Bayley and Co.

Besides being an independent director, Shah doubles as a solicitor for many companies through his law firm.

There is another issue which corporate governance experts believe hinders the critical thinking of the directors. If an independent director is paid for rendering professional advice outside the scope of his role, it comes under ‘pecuniary relationship’.

The Companies Act, 2013, sets limit on the fees (₹50 lakh or 10% of revenue of the concerned firm, whichever is higher) for such relationships between companies and independent directors. If breached, directors can no more be classified as ‘independent’.

According to a study by In Govern research, 21 of BSE 200 companies had financial transactions other than sitting fees and commission with independent directors or their firms.

For instance, Shah's firm Crawford Bayley and Co acts as solicitor for seven companies and is paid fees where he is an independent director. PK Khaitan's firm Khaitan & Co is solicitor for five companies where he is in a similar position.

However, the companies in their annual report have mentioned the fee paid to these firms is not material enough to breach their independence.

"The firms' advice can be questioned as the independent director (being a partner in the firm) may influence it," says Shriram Subramanian, MD of InGovern Research, a proxy advisory firm. "Often these independent directors also sit on the audit committee or even chair it, raising questions on the independence of the most important committee that safeguards minority shareholders' interest."