Independent directors' pay under the spotlight

ASHLEY COUTINHO

In the past year, more than 1,000 independent directors (IDs) have quit, spooked by high-profile corporate frauds, accounting discrepancies, and application of global anti-corruption laws. ID terms are up for renewal this year and several may opt not to extend their tenure amid increasing accountability and liabilities they face.

With IDs reluctant to continue, the issue of their remuneration has once again come to the fore. IDs are currently not considered as employees and are not subject to any employee benefits, including stock option but may receive remuneration in the form of sitting fees (up to ₹1 lakh per meeting) and commissions as decided by the board of directors.

Experts, however, believe that the remuneration of IDs is still less than commensurate with their time involvement through board meetings and beyond. "It is still not lucrative enough for professionals to pick up independent directorship as an aspirational career," said Vinod Kothari, managing partner, Vinod Kothari & Company. "For most professionals, independent directorship is a post-retirement occupation. Typically, bureaucrats, senior bankers or corporate professionals pick up directorships when they retire."

Last year, a government panel had recommended capping the remuneration that an ID receives from a single company with a view to preserve the independence of these executives.

TOP 10 EARNERS IN FY18

Name	Remuneration (₹crore)
Aman Mehta	5.1
Om Prakash Bhatt	4.2
Punita Jayant Kumar Sinha	2.9
Adil Siraj Zainul	2.8
Shailesh Haribhakti	2.7
Raghunath Mashelkar	2.5
Nanoo Pamnani	2.4
Meleveetil Damodaran	2.4
Vegulaparanan Viswanathan	2.3
Nasser Munjee	2.3

Source: nseinfobase.com

NUMBER OF INDEPENDENT DIRECTORS EARNING MORE THAN A CRORE

2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
21	29	56	70	74	86

Source: nseinfobase.com

The number of IDs earning more than ₹1 crore rose to 86 in 2017-18 from 21 in 2012-13, according to *nseinfobase.com*.

"A cap is not feasible as it's the company's prerogative to pay IDs as they deem fit. Besides, IDs in smaller companies face far higher risks than that in larger firms and need to be adequately compensated," said Shriram Subramanian, founder and managing director, InGovern Research Services.

A few companies have started using professional search firms to identify directors and are looking at non-executive directors who bring on board expertise in areas such as core business understanding, legal, corporate and regulatory affairs. This may necessitate higher pay.

Experts believe that instead of prohibiting stock options altogether, companies could offer these in a limited way and impose a time limit on exercising them. Countries such as the US and the UK do not expressly prohibit stock options for IDs.

"One of the views gaining ground in the US is that IDs should get more stock options which will vest after they leave their company. This will ensure they are not thinking of the short term," said Subramanian. "The compensation of IDs should consist primarily of equity, which could be restricted for selling for a certain period. This may incentivise independent directors to act in the long term interests of the company," added Souvik Roy, partner, IC Universal Legal.

Regulators, in fact, seem to have left a window open to relax the current prohibition on stock options, according to experts. To this effect, the Companies Act, 2013, was amended vide an ordinance in 2018, wherein it omitted one of the sub-sections prohibiting the inclusion of stock options in the remuneration of independent directors. However, another section in the Act, which also refers to this prohibition, remains part of the Act.

Not everyone feels that an ID's remuneration needs to increase. According to Arvind Sethi, an independent director, promoters do share cosy relationships with IDs and most companies still do not want very 'independent' IDs. "IDs can get a share of the profit and there may be a case for limiting the absolute compensation to both executive and non-executive board members so that the incentive to milk the company is less. Such measures, however, can only work to a point," said Sethi.