

I. NOMINEE DIRECTORS:

The Companies Act, 2013 defines nominee director as a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by the Central Government or the State Government by virtue of its shareholding in a Government Company or any other person to represent its interests.¹

While the Listing Agreement stated that the nominee directors appointed by an institution that has invested in or lent to the company are deemed to be independent directors, Companies Act, 2013 states that a nominee director cannot be an independent director. However, the SEBI Circular in line with the provisions of 2013 Act has excluded nominee directors from being considered as independent directors. The concept of independent director was introduced as part of the Companies Act, 2013 with a view to bring in independent judgment on the board. A director, once appointed, has to serve the interest of the shareholders as a whole. Directors appointed by private equity investors shall also be covered under the definition of nominee directors, and would no longer be eligible for appointment as independent directors.

Qualification/ Disqualification for appointment of Nominee Directors

No specific provision with respect to qualification or disqualification of Nominee Directors has been provided for, either in the Companies Act, 2013 or in the revised Clause 49 of the Listing Agreement. The Board can appoint nominee directors, if its articles permit. Otherwise it has to amend its articles for such power. It is usual for the financial Institutions which lend money to the companies to impose a condition to the effect that it can appoint its nominee to be on the Board of the company. The term of office of such nominee director shall be decided by the institution itself. Interestingly, there is no restriction on term of such appointment and this does not require approval in general meeting. However, the same may be restricted by the Articles of a company.

The Board of Directors of the Company shall have no power to remove from office the Nominee Director/s. Also at the option of the appointing authority such Nominee Director/s shall not be liable to retirement by rotation of Directors. Subject as aforesaid, the Nominee Director/s shall be entitled to the same rights and privileges and be subject to the same obligations as any other Director of the Company. The Nominee Director/s so appointed shall hold the said office only so long as any moneys remain owing by the Company to that appointing authority or so long as that appointing authority holds Debentures of the Company as a result of private placement or so long as that appointing authority holds shares in the Company as a result of underwriting or the liability of the Company arising out of any Guarantee is outstanding and the Nominee Director/s so appointed in exercise of the said power shall ipso facto vacate such office immediately the moneys owing by the Company to that appointing authority is paid off or on that appointing authority ceasing to hold Debentures/Shares in the Company or on the satisfaction of the liability of the Company arising out of any Guarantee furnished by that appointing authority. The Nominee Director/s appointed under the Article shall be entitled to receive all notice of and attend all General Meetings,

¹ Section 161(3)

Board Meetings, and of the meetings of the Committee of which the Nominee Director/s is/are member/s as also the minutes of such meetings. The appointing authority shall also be entitled to receive all such notices and minutes.

The Company shall pay to the Nominee Director/s sitting fees and expenses which the other Directors of the Company are entitled, but if any other fees, commissions, moneys or remuneration in any forms is payable to all the Directors of the Company the fees, commissions, moneys and remunerations in relation to such Nominee Director/s shall accrue to that appointing authority and the same shall accordingly be paid by the Company directly to that appointing authority. Any expenses that may be incurred by the appointing authority on such Nominee Director/s in connection with their appointment or Directorship shall also be paid or reimbursed by the Company to it or as the case may be to such Nominee Director/s.²

II. **ROLE AND DUTIES OF NOMINEE DIRECTORS:**

The main reason why a nominee is appointed is to have the power to supervise and sit-in on the proceedings of the Board, and to be present at the meetings of the Board. A nominee, being a representative of the investor or the third party getting involved in the Company, has a dual, almost conflicting position. On the one hand, as the director of the company, he has to serve the company and take actions which are in the best interest of the company. At the same time, since he has been appointed to protect the interests of the investor investing in the company, he has to also make sure that the investor's interests are safeguarded, even if that in some cases means going against the interest of the company.

² Articles of Association of Aditya Birla Nuvo Limited, Companies limited by shares as per the Companies Act 2013.