BOARD & BEYOND

BY VOLO ADVISORY

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AI in the Boardroom

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D&O insurance explained for independent directors

Board Due Diligence
Due diligence before you say yes to a board

Get On Board Resources
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IN THIS ISSUE

AI in the Boardroom

Directors on AI: oversight, data, accountability — and the questions every board should ask management.

In this issue

- Cover story: AI on the agenda
- Roundtable report from Hyderabad
- The AI use-case register
- Data protection after the DPDP Act
- The month in governance

From the editor

Each issue of VOLO — The Monthly takes one theme and looks at it from the boardroom: what the rules say, what good practice looks like, and what directors and founders in our community are actually doing. As always, we welcome your letters and ideas for future issues at hello@voloadvisory.com.

BOARD INSURANCE

D&O insurance explained for independent directors

> ***Directors and officers liability insurance is an important protection for independent directors. Here is what it covers, what it does not, and the questions to ask before you rely on it.***

Independent directors bring judgement, not control. Yet when things go wrong, claims and investigations can name every director on the board. Directors and officers (D&O) liability insurance exists to meet the cost of defending such claims and, within limits, any resulting losses. Understanding your company's policy is part of your own due diligence.

The Indian regulatory position

- **SEBI LODR Regulation 25(10)** requires the top 1,000 listed entities by market capitalisation to undertake D&O insurance for all their independent directors, for such quantum and risks as the board determines.
- **Schedule IV** of the Companies Act 2013 requires the letter of appointment of an independent director to mention the provision for D&O insurance, if any.
- **Section 197(13)** of the Act allows a company to take insurance on behalf of directors and officers against liability for negligence, default, misfeasance, breach of duty or breach of trust. The premium is not treated as part of a director's remuneration, unless the person is proved guilty.

Even where insurance is not mandatory, such as smaller listed companies or unlisted companies, many boards choose to buy it, and you should ask.

How a D&O policy is usually structured

Policies vary, but most contain three core insuring clauses:

1. **Side A:** covers individual directors and officers directly when the company cannot or will not indemnify them, for example because of insolvency or legal restrictions. This is the most important cover for independent directors.
2. **Side B:** reimburses the company when it indemnifies its directors and officers.
3. **Side C:** covers the company itself, usually for securities claims in listed entities.

Because Sides B and C share the same limit as Side A, a large claim against the company can erode the cover available to individual directors. Some boards buy a separate Side A policy, sometimes for independent directors only, to ring-fence protection.

What is typically covered

- Defence costs in civil, criminal and regulatory proceedings, often advanced as they are incurred.
- Costs of responding to regulatory investigations and inquiries.
- Damages and settlements, where legally insurable.
- Extensions such as cover for pollution-related claims, employment practices, extradition proceedings or reputation management, depending on the policy.

What is typically excluded

BOARD DUE DILIGENCE

Due diligence before you say yes to a board

> ***An independent directorship carries real legal and reputational exposure. A structured due diligence process protects you and tells you whether you can genuinely add value.***

Saying yes to a board is easy. Leaving one gracefully, once you have discovered something uncomfortable, is not. Independent directors in India carry fiduciary duties under Section 166 of the Companies Act 2013 and the code of conduct in Schedule IV. Section 149(12) limits an independent director's liability to acts of omission or commission that occurred with their knowledge, attributable through board processes, and with their consent or connivance, or where they did not act diligently. That protection only works if you can show you were diligent. Diligence starts before the appointment.

Step 1: Read the public record

Start with what anyone can access. For a listed company, this is extensive; for an unlisted company, the MCA21 portal still gives you a good deal.

- **Annual reports for at least three years**, including the board's report under Section 134, the corporate governance report and the auditor's report.
- **Auditor's report qualifications**, emphasis of matter paragraphs and the CARO report, where applicable.
- **Stock exchange disclosures** on BSE and NSE: resignations of directors, auditors or key managerial personnel, and the reasons given.
- **Charges registered** against the company and any defaults disclosed.
- **Related party transactions** and the policy approved by the audit committee.
- **Litigation and regulatory actions**, including any orders from SEBI, tax authorities or sector regulators.

Step 2: Look for warning signs

None of these is automatically disqualifying, but each deserves a direct question:

- Frequent changes of statutory auditor, CFO or company secretary.
- Independent directors who resigned before completing their term, especially citing "pre-occupation" without further detail.
- Large or growing related party transactions, or loans to group entities.
- Delayed financial results or repeated extensions for filings.
- Significant pledging of promoter shareholding.
- A board where the same few people sit on every committee.
- Board papers or minutes that the company is reluctant to share in any form.

Step 3: Ask for private information

Once there is serious mutual interest, it is reasonable to ask the company secretary for a limited information pack, under a confidentiality undertaking if required:

1. Minutes of the last few board and audit committee meetings.
2. The latest board evaluation summary and any action plan arising from it.
3. The internal audit plan and the most recent significant findings.
4. The risk register or risk management committee report, where one exists.
5. The draft letter of appointment and the terms of any D&O insurance policy.
6. Details of the familiarisation programme for independent directors.

GET ON BOARD RESOURCES

Get on board: the essential resource kit (search firms, annual reports, appointment letters)

> *A practical kit for aspiring independent directors: how to work with board search firms, where to find annual reports in India, and what your letter of appointment must contain.*

Aspiring directors often ask the same three questions. How do I get noticed by the people who fill board seats? How do I research a company properly? And once I am offered a role, what should the paperwork say? This kit answers all three.

Part 1: Working with board search firms

Many listed and large unlisted companies use executive search firms or specialist board advisers to identify independent directors. They work for the company, not for you, so approach them accordingly.

How to be found

- **Prepare a board CV**, separate from your executive CV. Lead with governance experience, committee work, sector knowledge and functional depth such as audit, risk, technology or human capital.
- **Write a short positioning statement**: two or three lines on the kind of board you can help and why.
- **Keep your public profile consistent** with your CV, including dates and titles.
- **Register with the independent directors' databank**, if you have not already, and keep it current.

How to work with a search consultant

1. Request an introductory conversation, not a specific role. Consultants remember people who are clear about what they offer.
2. Be honest about your availability, existing directorships and any conflicts.
3. If you are put forward for a role, ask for the brief: skills sought, committee expectations, timeline and remuneration structure.
4. Keep the consultant informed if your circumstances change.
5. Never pay a fee to be placed on a board. Reputable search firms are paid by the client company.

Part 2: Where to find annual reports and filings

Reading the public record is the foundation of both interview preparation and due diligence.

- **Company investor-relations pages:** listed entities must publish a range of information on their websites, including annual reports, financial results, shareholding patterns, policies, and the terms and conditions disclosures such as director or auditor resignations.
- **MCA21 portal:** for both listed and unlisted companies, you can view master data, director details and charges, and purchase access to filed documents such as financial statements and annual returns.
- **Credit rating rationales:** where the company has rated debt, published

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