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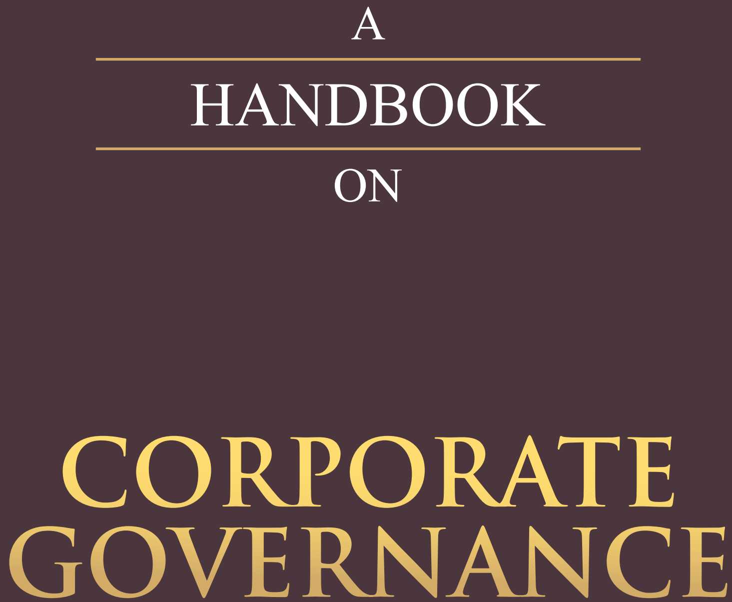
Building Tomorrow's Boards



Condensed Guide for
Corporate Directors and **Executive Management**

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A Handbook
on

CORPORATE GOVERNANCE

Institute Of Directors

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Email: info@iodglobal.com, Phone: +91-11-41636717
Website: www.iodglobal.com
IOD Publishing
ISBN: 978-81-932503-4-1

New Delhi, January 2019
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Rs. 500

About this Handbook

Any organisation, whether a business or a non-profit, needs good governance to ensure that it is run in a way that meets the legal and stakeholders expectations. Corporate Governance is about creating value for all stakeholders of the organisation in a sustained manner by following legal and ethical means.

The real task of ensuring good corporate governance in a company lies with the board of directors, while every person in the chain who helps to create value for stakeholders needs to be governed. It is also important to understand why companies need to follow good corporate governance practices. Equally important is to understanding why organisations should have good corporate governance practices and how they should improve these practices.

Corporate leaders and Directors can use this Handbook, as a ‘ready reckoner’ for quick reference on Corporate Governance practices and compliance issues, affecting the boardroom and the organisation as a whole.

■

FOREWORD

A country's growth and progress; it's sustainability and consistency, depend on good systematic governance of business. A well- mechanized participation of the stakeholders in the corporate business will alone lead to sustainable growth. The aim is to promote business sector as an engine of growth, reduce the vulnerability of developing and transition economies to financial crises, and provide incentives to corporations to invest and perform efficiently in a socially responsible manner. Good corporate governance is one such important aspect of globalisation, which transcends boundaries.

Corporate governance is the set of processes, relationship, customs, policies, laws, and institutions affecting the way a corporation is directed or controlled. Corporate governance is a major component of wealth creator for owners, and growth and sustainability for all stakeholders.

Concentrated ownership has been an important feature of India's private sector for the past seven decades. Concentrated ownership exists, because of institutional voids, like the absence of specialized intermediaries in capital markets. India's distinctive corporate governance issues originate from the high percentage of companies, that are family-owned. At present, one-third of Indian companies are controlled by one or more family members, in concert with one another. Most family owned businesses are unable to discern that there lies a dichotomy between the business and the personal affairs of the family. Thus, decisions are often made to suit the family, and not necessarily are in the best interest of the firm.

The revised Principles of Corporate Governance issued by OECD in 2015, are a public policy instrument, to guide governments, regulators, stock exchanges, investors, corporations and others, in their efforts to improve the legal, regulatory, and institutional framework for corporate governance. Key elements of good corporate governance include honesty, ethics, transparency, trust, integrity, responsibility, accountability, mutual respect, and commitment to the organisation. There are concerns that despite the global spread of governance codes, there is a growing propensity for compliance to err towards a box-ticking approach.

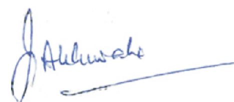
The commitment to act on shareowner's behalf is the key in defining a company's vision, setting priorities, determining strategy, and operating the business according to the highest standards of professionalism and ethics. Corporate governance is essentially about leadership that is responsible, exercised with probity, and conducted in a highly transparent and accountable manner. While technology still plays a role, the notion that corporate culture and an engaged and empowered workforce, are the critical enablers of innovation.

The commitment to act on shareowner's behalf is the key in defining a company's vision, setting priorities, determining strategy, and operating the business, according to the highest standards of professionalism and ethics. The concept of 'corporate governance' is not an end; it's just a beginning towards growth of company for long term prosperity and sustainability.

Corporate governance concept emerged in India after the second half of 1996 due to economic liberalization and deregulation of industry and business. With the changing times, there was also need for greater accountability of management of companies to their shareholders and customers. The high profile scams due to gaps in corporate governance failure like the stock market scam, the UTI scam, Ketan Parikh and Enron scams, and the recent Satyam scam.

The first edition of the Handbook presented Board's strategic role and insight into value creation, risk taking, accountability and legal compliance obligation. The clarity of the Handbook made it a much sought after publication and IOD had to plan its second edition with in a year. While preparing the text of the second edition we have carefully incorporated all the updated versions and interpretations of Companies Act, 2013 along with amendments to rules. I am sure this will be a very useful authentic updated publication.

I would like to place on record my special appreciation of the dedicated efforts of Mr. Pradeep Chaturvedi for leading the team and Ms Amanjit Kaur & CS Nayana Johnson for coordinating the compilation of this comprehensive handbook that provides the framework to help board practitioners to identify governance challenges, and transform them into opportunities. I am sure this handbook will be of immense benefit and a must-read for every director serving on Indian boards today, and even the ones who aspire to do so in the future. ■



January 02, 2019
New Delhi

Lt. Gen J. S. Ahluwalia, PVSM (Retd.)
President, Institute Of Directors

PREFACE

The first edition of the Handbook on Corporate Governance was published a year back and created wide demand. The updated second edition has, therefore been published incorporating all changes in the legal and administrative provisions, that have emerged since publication of the first edition.

The Government of India has realized the importance of bringing around amendments to Companies Act, 2013 through an ordinance which have impact on various sections of the Act. Since the Companies (Amendment) Ordinance, 2018 was issued in the press the same has been added in Annexure 6 to provide latest amendments.

IOD team of Ms Amanjit Kaur Chawla and CS Nayana Johnson carefully prepared the text and Ms Teena Lejo designed the Handbook. The text was peer-reviewed and supplemented by Corporate Governance Expert, Lt. Gen. Surinder Nath, Vice Chairman, IOD Council. I would like to gratefully acknowledge their contribution.

The Handbook will be found an effective tool explaining intricacies of corporate governance practices and provide easy understanding of corporate governance under the provisions of Companies Act, 2013.

■

January 02, 2019
New Delhi

Pradeep Chaturvedi
Vice President, Institute Of Directors

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Chapter - 1

CORPORATE GOVERNANCE

1.1 Introduction

Rapid and accelerating advances in science and technology are transfiguring the work place as never before. New era possesses immense capabilities, tremendous increase in productivity- enhancing technologies, efficiency enhancing corporate systems, innovation- spurring mechanisms and cost lowering globalisation, which can work synergistically to open endless possibilities. It is empowering the customers and employees, democratising the social, economic and political institutions and creating a sustainable relationship between environment and the human kind. Social and psychological engines fired by the knowledge era, are changing the way we do business.

This transformation is wreaking havoc on the institutions, creating chaos, causing disruption and disequilibrium. It is demanding a very high level of accountability from individuals and institutions especially the corporate. Directors are facing strobe-like glare of public scrutiny and have become a besieged lot. Public expectations of the conduct of business have risen sharply. They don't expect boards to be simply compliant through box ticking boards have to be competitive and responsible. The issues of transparency, equity, integrity, accountability, inclusivity and corporate responsibility are competitive differentiators in the knowledge economy.

The frequency and enormity of corporate frauds, sharpening inequalities, increasing poverty, deteriorating environment and rising terrorism are reminders that despite all the scientific advance, mankind is descending deeper into despair. This poses a huge challenge and an opportunity for the business to take the lead. They have to harness the technology to innovate products, services and models that satisfy the needs of all stakeholders. For the first time in human history, business has the power and technology to make a difference in human lives. Corporate governance covers an unlimited potential of the markets, to realise this goal and create prosperity for all.

Global industry across all sectors is experiencing extraordinary transformation. Globalization is driving radical changes across the global markets- deregulation, increased competition, convergence of traditional business models are transforming us all, into one global village. Good corporate governance is one such important aspect of globalisation, which transcends boundaries and is evolving day in and day out. There are significant developments in corporate governance practices worldwide such as role of independent directors, diversity, board practices and sustainability indicating the enhanced focus of stakeholders, independent audit committee, executive compensation, fraud reporting etc., which need to be further analysed.

A corporation is a congregation of various stakeholders, namely, customers, employees, investors, vendor partners, government and society. A corporation should be fair and transparent to its stakeholders in all its transactions. With the opening of the economy towards globalization, our corporate world requires a world-class governance system.

The essence of the corporate world lies in promoting compliance of the law in letter and in spirit, with transparency and accountability, and above all, fulfilling the fair expectations of all the

stakeholders. Unless a corporation embraces and demonstrates ethical conduct, it will not be able to succeed. Corporate governance is one such tool to achieve this goal.

Corporate Governance is a combination of strong commitment of the management to safeguard the interest of various stakeholders, openness in ideas, fresh air for enterprises and corporate ethics. Therefore, it provides broad parameters of accountability, control and reporting system by the management and it encompasses the interactive relationship among various constituents in determining direction, and performance of the corporate.

Corporate and securities laws have approached from one direction: protecting the interests of shareholders from potentially self-serving actions of management. Management experts and economists have approached the issue from a different perspective: aligning the interests of management with shareholders, so that conflicts of interest between managers and shareholders disappear. The corporate scandals of the past few years – Enron, WorldCom, Vivendi, Parmalat and others- have shown that the tension has yet to be resolved.

While recent corporate scandals have shown that regulators, auditors, lawyers and shareholders must remain vigilant, they have also highlighted the important role corporate governance plays in mitigating the risks posed by the divergent interests of shareholders and managers.

Corporate governance establishes 'a system' whereby directors are entrusted with duties and responsibilities in relation to the direction of the company's affairs. The term “governance” means control, i.e., controlling a company or an organisation, and corporate governance is governing or controlling the corporate bodies through ethics, values, principles and morals. It includes the structures, processes, cultures and systems that engender the successful operation of organisations.

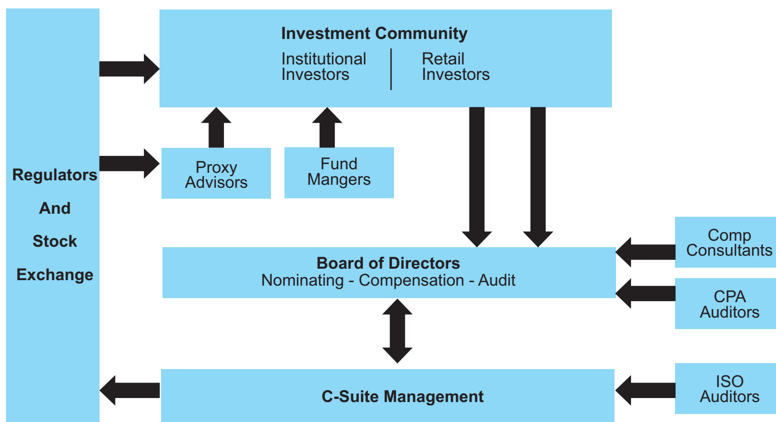

Figure 1.1: Overview of Corporate Governance Relationships

The 'purpose' of corporate governance is to facilitate effective, entrepreneurial and prudent management that can deliver the long-term success of the company. Boards of directors are primarily responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance

structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. Corporate governance is therefore about what the board of a company does and how it sets the values of the company, and it is to be distinguished from the day to day operational management of the company by full-time executives.

What is Corporate Governance?

Corporate governance is a "system" of "structures and processes" to direct and control companies. It specifies the distribution of rights and responsibilities among company's stakeholders (including shareholders, directors, and managers) and articulates the rules and procedures for making decisions on corporate affairs. Thus, corporate governance provides the structure for defining, implementing, and monitoring a company's goals and objectives, and ensuring accountability to appropriate stakeholders.

The director's role in improving the effectiveness of a company's governance can be described as "an agent of change".

This normally involves directors:

- Championing the need to professionalize governance within their company.
- Leading the development of corporate governance systems and processes, including a written set of policies covering, at a minimum, the rights and treatments of shareholders, clarifying the board's leadership role, and providing for transparency and disclosure.
- Overseeing the work of the designated managers responsible for ensuring compliance with corporate governance procedures and company policies.

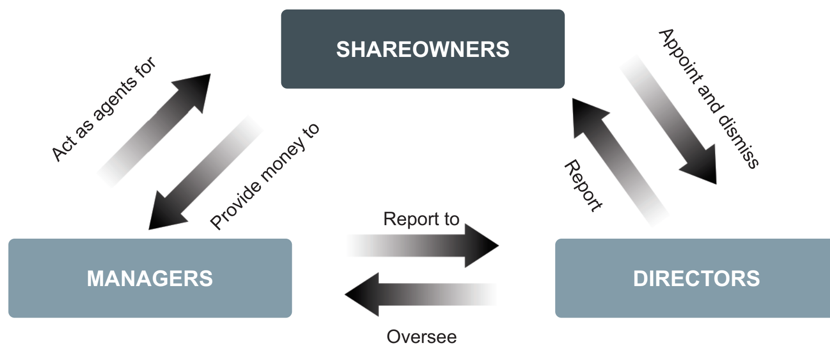

Figure 1.2: The Principle Actors: Shareholders, Directors, Managers

1.2 Corporate Governance in India- An Overview

More and more investors worldwide require adherence to best practices. Better companies lead to better societies. The commitment to acting on shareholder's behalf is key in defining a company's vision, setting priorities. Determining strategy, and operating the business according to the highest standards of professionalism and ethics. That commitment is fundamental to corporate governance.

Corporate governance is "the system by which businesses are directed and controlled". Corporate governance is about better boards and businesses for every size of company. While this does include prosperity and / or profits, it also means complying with the law, regulations and guidelines. It means accountability, so that decisions about, for example, pay, follow your company guidelines and are agreed by a committee that aren't affected by it. It also means that every level of decision-making has someone to answer to. It means preparing your accounts correctly and having them audited. It means the entire business cycle is clear, transparent and works properly, and that you communicate this regularly to anyone with an interest. It means your staff is understanding what your business does, your company values, and the role they play in its success; It means health and safety and all the other systems, controls and policies you have to take care of to run a business; It means encouraging diversity and fairness to ensure you get the best people on board-whether that is in the boardroom or in the workforce. It means communicating what you do and how- with annual reports and meetings. It means that your leadership is strong, but balanced by the board. It means better business for you, your staff, and your customers. Good governance gives your business the best way to live up to its potential. IOD is working towards developing a good governance index for the biggest firms as well as ways to recognise and develop good governing practices in smaller firms.

The genesis of corporate governance in India can be traced back to Kautilya's Arthshastra. Kautilya, the noted statesman and principal adviser to the Mauryan Emperor Chandragupta Maurya, believed that the happiness of the king depended on the happiness of his people. He propounded that the king and his ministers must follow a strict code of discipline, and always act in the best interest of their subjects.

At the time of Independence, India had an operational stock market, an active manufacturing sector and a host of well- developed British-derived corporate practices. From 1947-1991, it pursued decidedly socialist, industrial, and commercial policies, such as nationalizing banks to make the State the primary provider of debt and equity capital for private enterprises.

The Government responded to an impending fiscal crisis in 1991by passing a series of reforms aimed at general economic liberalization with an emphasis on corporate governance norms. This was catalyzed primarily by the growing need for capital by Indian firms and the formation of SEBI.

1.3 Code of Corporate Governance- Initiative in India

Initially, corporate governance codes were limited primarily to mature markets, but in the mid-to-late 1990s, more and more codes began to appear in emerging markets, particularly those hit by the Asian financial crisis that began in 1997. Governments, stock exchanges, and other sponsoring organisations across the region accosted that lack of sound corporate governance, including transparency and disclosure, had contributed to the vulnerability of Asia's corporate and financial sectors. Furthermore, the perception in the international equity and debt markets of lax corporate governance in countries in Asia, contributed to the spread of the crisis by contagion.

Corporate governance essentially addresses how companies are run. How should the board of directors function in order to provide appropriate oversight for management and sufficient accountability to shareholders and other stakeholders? The first attempt to codify corporate governance practices came in December 1992, with the publication of the United Kingdom's Cadbury code. Following the number of financial scandals, it became necessary to ensure that boards of directors, as fiduciaries, discharge their responsibilities within a framework of effective

accountability. This became the essence of good corporate governance.

The first major initiative to codify corporate governance norms was undertaken by the Confederation of Indian Industry (CII). CII released a Corporate Governance: A Code, in 1998. The comprehensive code focused mainly on listed companies and was not mandatory. Though the CII Code met with positive reception, a number of stakeholders expressed a preference for a statutorily backed code for corporate governance. Consequently, SEBI setup a committee under the auspice of Kumar Mangalam Birla which resulted in promulgation of Clause 49 of the Listing Agreement of the Stock Exchanges by SEBI.

Later, the Companies Act 2013 introduced significant changes regarding the board composition of a company, with a renewed emphasis on management procedures. Whilst the changes seemed overly prescriptive, a closer analysis led to the compelling conclusion that the emphasis on board processes would institutionalize good corporate governance and not make governance over- dependent on the presence of certain individuals on the board. The broad intent of the Act was to strengthen corporate governance in India, through the introduction of provisions that would facilitate the inception of transparent and accountable corporations with largely autonomous Board of Directors.

Concentrated ownership has been an important feature of India's private sector for the past seven decades. Concentrated ownership exists, because of institutional voids, like the absence of specialized intermediaries in capital markets. India's distinctive corporate governance issues originate from the high percentage of companies, which are family-owned. At present, one-third of Indian companies are controlled by one or more family members in concert with one another. Most family owned businesses are unable to discern that there lies a dichotomy between the business and the personal affairs of the family. Thus, decisions are often made to suit the family and not necessarily in the best interest of the firm. Another issue that exists in current corporate leadership is the rampant resistance to change in working culture that makes it difficult for younger (and often more innovative) executives to influence corporate decision making.

1.4 Concept and Definition

> "Corporate Governance is a system by which business Corporations are directed and controlled."
>
> - OECD

Governance is concerned with the systems by which organisations are run, directed and controlled; it is about developing and implementing the appropriate structures and processes to ensure that an organisation is run effectively and in the best interest of all stakeholders. It is about promoting corporate fairness, transparency and accountability. In other words, 'good corporate governance' is simply 'good business'. It ensures:

- Adequate disclosures and effective decision making, to achieve corporate objectives;
- Transparency in business transactions;
- Statutory and legal compliances;

- Protection of shareholder interests;
- Commitment to values and ethical conduct of business.

Corporate Governance ensures transparency which ensures strong and balanced economic development. This also ensures that the interests of all shareholders (majority as well as minority shareholders) are safeguarded.

Figure 1.3: Corporate Governance Aspects

Good governance balances statutory compliance requirements with high-performance objectives. It deals with determining ways to take effective strategic decisions. It gives ultimate authority and complete responsibility to the Board of Directors. Efficiency as well as globalization is significant factors urging corporate governance. Corporate Governance is essential to develop added value to the stakeholders.

1.5 Perspectives on Corporate Governance

A large number of key players in the market adhere to it because of legal obligation or for accessing foreign capital markets or to portray an image of a good corporate citizen. However, there are only few companies who believe that following good governance practices is beneficial for them in the long run. There are three primary perspectives:

A) Shareholders perspective:

It is based on the foundation that management are hired as the representative of the shareholders to minimise the risk of capital provided by them and therefore the obligation to serve their interests not just legal but moral. Therefore, taking shareholders interests into consideration in corporation's decision making process is supreme.

B) Organisation perspective:

Every organisation functions to fulfil the expectations of its stakeholders. A successful organisation

requires an alignment between three P's - Purpose, Process and People. To ensure robust processes in the organisation, compliance viewpoint needs to be distinguished between legal and ethical compliance mechanisms as only the former is inadequate.

C) Stakeholder's perspective:

Apart from shareholders and directors there are other stakeholders in a company like, creditors, financial institutions, government, employees, unions of employees and/or prospective investors. Protecting the interests of all stakeholders' forms an integral part of Governance strategy as protecting stakeholders interests contribute to long terms efficiency and progress. What needs to be ensured is reconciliation of all stakeholders' interest through strategies capable of raising not only economical standards but also social and environmental standards.

Thus, Corporate Governance should focus on decision making process and organisation to balance differing and competing interests. Reconciliation of diverging interests is the guiding principle to success. Balance between the different perspectives is essential for long term viability of any corporation. Fair balance of all perspectives is essential in achieving untouched maximisation value.

1.6 Stakeholders' Role

The stakeholders are the principal players in inception, sustainability, development and growth of any organisation. They are the shareholders, employees, suppliers, customers, lenders, investors, banks, government and community at large. Stakeholder Management typically encompasses:

- Stakeholder assessment and stakeholder mapping
- Identification of key concerns, risks and mitigating actions

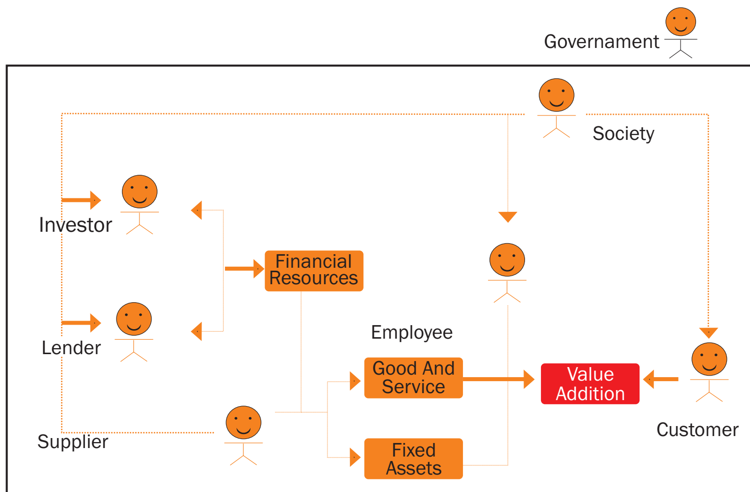

Figure 1.4: All Stakeholders are Human Being in Business

The above figure shows the system of the corporation which highlights that the whole system is

made up of people. The value addition process in the whole system would work absolutely smoothly if the foundation of the system happens to be ethics and values. Transparency should be emphasised when the objective is people oriented.

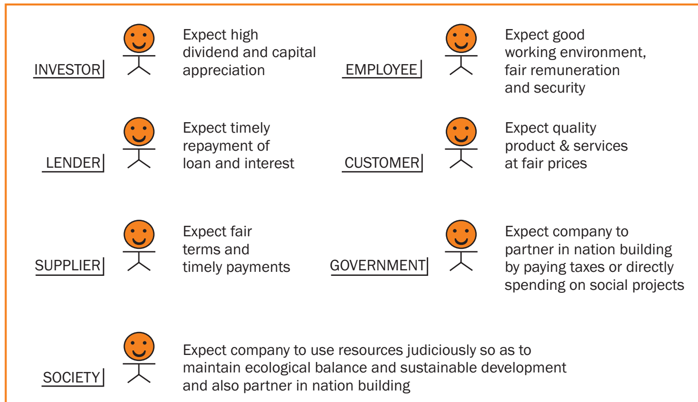

Figure 1.5: Performance Expectation of Stakeholders

Expectation serves as real motivation for the entire corporate system to work. For the work that is to be kept in progress, different expectations of the stakeholders have to be met.

The Company shall recognize the rights of stakeholders and encourage cooperation with the stakeholders, in the following manner:

a) The rights of stakeholders that are established by law or through mutual agreements shall be respected.

b) Stakeholders shall have the opportunity to obtain effective redress for violation of their rights.

c) Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in Corporate Governance process.

d) The Company shall devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

(Chapter II, Regulation 4(2)(d) of the SEBI (LODR) Regulations, 2015 refers)

1.7 Separation of Ownership and Control

Corporate governance issues arise from the roles of agency and stewardship. Agency involves the transfer of capital from the shareholders to the control of managers. Stewardship refers to the directors' role as guardians of the company's assets. The shareholders, through the board, delegate authority to management and entrust the board to act on their behalf.

These roles are important when a company's owners (e.g., the shareholders) are different from its managers. This separation of the ownership and control functions within a company inevitably leads

to the managers being made responsible for the spending of other people's money. For an effective relationship to be maintained between the providers of money and company managers, high levels of trust must exist between both. The board serves as the conduit between the two.

Shareholders and Stakeholders

A shareholder is any person who owns shares in a company. Stakeholders are any identifiable group of individuals or organizations who may have an impact upon, or be impacted by the company. Stakeholders groups typically include: shareholders, directors, senior executive management, other employees, customers, suppliers, the general public, regulators, and the government. One of the main issues in corporate governance concerns the extent to which a company can meet or reconcile different groups' interests.

Figure 1.6: Shareholder Rights

Family Companies

Family businesses are the backbone and the main driver of growth in many, if not most economies. Because of their nature, family businesses face many additional challenges to those that their counterparts have to deal with. Some of these challenges can be addressed by adopting a sound corporate governance structure within the company. This governance structure should clearly define the roles, responsibilities, rights and interaction among the company's main governing bodies. The responsibility for corporate governance tasks in a family business is generally shared among the owners, the board of directors and the senior management. However, family members probably may have more responsibility in ensuring that their business is governed in a way that will make it viable and sustainable in the long term. In addition, family members' duty is not limited to the governance of their company; they are also responsible for the governance of their family and its relationship with the business. Setting up a solid family governance system early in the lifecycle of the family will help anticipate and resolve potential conflicts among family members about business issues. This will make it possible for family members to concentrate on other key issues such as growing the business. In addition to their own governance, family members have to set up an adequate structure for their company's board of directors and senior management.

A skilled, predominantly independent, and well organized board of directors would make it possible to set the right strategy of the company and properly oversee its management's performance. Also, a professional and well driven management is essential to running the day-to-day activities of the company. The choice of directors and senior managers should be based on their qualifications and performance and not on their ties to the family. Finally, it is very important that families in business become aware of the importance of these issues and start building an adequate corporate governance structure as soon as possible. Waiting until the size of the family is very large, and its business operations more complex would make it very difficult to address the already existing conflicts between family members. A timely and clear governance structure would make it easier to maintain family cohesion and its members' interest in the family and its business.

Stakeholder Relationships

To run a successful company, a company needs to develop good relations with:

- Shareholders
- Parties with contractual relationships
  - Employees
  - Contractors and suppliers
  - Financiers
  - Business partners, regulators, accountants, auditors, etc.
- **Others without contractual relationships:**
  - Communities
  - NGOs
  - Analysts, investor associations, pressure groups
  - Media and other "reputational" agents, etc.

A company will benefit from spending time, thought, and effort in developing plans to create, maintain, and monitor these relationships. This involves directing and managing the company by considering the perceptions and interests of all the interested parties rather than excluding any group. This approach involves directors working within a multiple stakeholder environment, where conflict may frequently occur among different stakeholders.

1.8 Corporate Governance Pillars

The foundation of trust among shareholders, directors, and managers consists of four corporate governance pillars:

- **Transparency:** Directors should clarify to shareholders and other key stakeholders why every material decision has been made.
- **Accountability:** Directors should be held accountable for their decisions and actions to shareholders, and, in certain cases, key stakeholders, submitting themselves to rigorous

scrutiny.

- **Fairness:** All shareholders should receive equal, just, and unbiased consideration by the directors and management.
- **Responsibility:** Directors should carry out their duties with honesty, probity, and integrity.

Accountability	Fairness	Transparency	Responsibility
• Ensure that management is accountable to the board • Ensure that the board is accountable to shareowners	• Protect shareowners; rights • Treat all shareowners, including minorities equitably • Provide effective redress for violations	• Ensure timely, accurate disclosure on all material matters, including; the financial situation, performance, ownership, and corporate governance	• Recognise stakeholders' rights • Encourage cooperation between the company and stakeholders in creating wealth, jobs, and economic sustainability

Figure 1.7: The four Pillars of Corporate Governance

1.9 Corporate Governance Framework

Every country has developed legislation and regulations specifying how companies are formed and how they should operate. Typically, the requirements for a company's formation and its operations are specified in company legislation. However, there is often a body of additional laws that may affect the board's behaviour and decisions. These laws, regulations, and rules may involve:

- Company
- Insolvency
- Director disqualification
- Safety
- Employment
- Environment
- Intellectual property
- Consumer protection
- Competition
- Financial
- Stock exchange listing regulations

Articles of Association may be known as the company's constitution. National company laws normally prescribe the content to be addressed in these articles. These provisions vary from country to country, but usually address:

- Maximum authorized share capital
- Shareholders' rights
- Alteration of capital
- General assemblies
- Shareholder votes
- Borrowing powers
- Appointment/powers/duties of directors and the CEO
- Disqualification of directors
- Board proceedings
- Appointment/powers/duties of director and the company secretary
- Issuance of dividends and company reserves
- Accounts and audit
- Special provisions associated with winding up

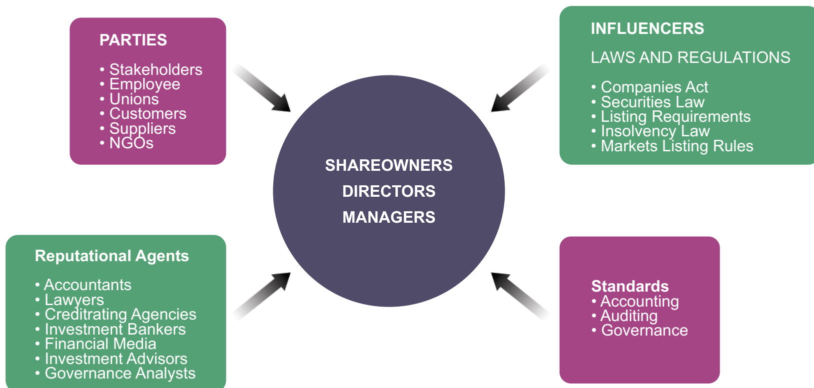

Figure 1.8: The Corporate Governance System

1.10 System of Good Corporate Governance

Good Corporate Governance systems are associated with:

- Having better access to external finance. Good corporate governance systems encourage global investors to invest, which subsequently leads to greater efficiencies in the financial and banking sectors.

- Lower costs of capital. Investors that are provided with high levels of disclosure by well governed companies are likely to provide capital to those well-governed companies at a lower rate, reflecting the investors' improved knowledge of the company's strategy and performance.
- Improved company performance. Sustainable wealth creation within private sector can only be brought about good management, entrepreneurship, innovation, and better allocation of resources. Better corporate governance adds value by improving the performance of companies through more efficient management, better asset allocation, and improvements in productivity.
- Higher firm valuation and share performance. Many researchers have identified the existence of a "corporate governance premium" (e.g., an additional price that investor will pay for shares in well-governed companies). In addition, some researchers have identified superior share performance by well-governed companies.
- Reduced risk of corporate crisis and scandals. A company with good corporate governance practices will, by definition, have a better risk-management system, which is more likely to cope with corporate crisis and scandals, than those without. These systems include enterprise risk management, disaster recovery systems, media management techniques, and business continuity procedures.

1.11 Elements of Good Corporate Governance

The stakeholders include employees, unions, customers, suppliers, and nongovernment organisation (NGOs). They have a significant impact upon the company and vice versa. Reputational agents serve as an enhancement to the corporate governance system. They are viewed as "gatekeepers," and include accountants, lawyers, credit-rating agencies, investment bankers, financial media, investment advisors, and governance analysts.

A company committed to good corporate governance has:

Good board practices	Control environment	Well-defined shareholder rights
• Clearly defined roles and authorities • Duties and responsibilities of directors understood • Board is well-structured • Appropriate composition and mix of skills • Appropriate board procedures	• Independent audit committee established • Risk management framework present • Internal control procedures • Internal audit function • Independent external auditor conducts audits	• Minority shareholder rights are formalized • Well- organised general assembly conducted • Policy on related party transactions • Policy on extraordinary transactions
• Director remuneration in line with best practice • Board self-evaluation and training conducted	• Management information systems established • Compliance function established	• Clearly defined and explicit dividend policy • Management information systems established • Compliance function established

Transparent disclosure	Board commitment
• Financial information disclosed • Non-financial information disclosed • Financials prepared according to IFRS • High quality annual report published • Web based disclosure	• The board discusses corporate governance issues and has created corporate governance committee • The company has a corporate governance champion • A corporate governance improvement plan has been created • Appropriate resources are committed • Policies and procedures have been formalised and distributed to relevant staff • A corporate governance code has been developed • The company is publicly recognized as a corporate governance leader

1.12 Disclosure and Transparency

Corporate governance fundamental principles are rooted in transparency, accountability, integrity and disclosure. Good corporate governance should ensure that timely and accurate disclosure is made regarding all material matters concerning the corporation, including its financial situation and results. The company shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the company, in the following manner:

a) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.

b) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.

c) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.

The company shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and should also ensure that the annual audit is conducted by an independent, competent and qualified auditor. (Chapter II, Regulation 4(2)(e) of the SEBI (LODR) Regulations, 2015 refers)

Disclosure and transparency are considered to be two of the most important elements of sound corporate governance. The OECD Principles of Corporate Governance (2004) states: "The corporate governance framework should ensure that timely and accurate discourse is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company."

The OECD disclosure obligations include:

· Financial and operating results

· Company objective

· Major share ownership and voting rights

- Remuneration policy for board members, key executives
- Related – party transactions
- Foreseeable risk factors
- Issues regarding employees, other stakeholders
- Governance structures, policies

Transparent companies are more highly regarded by investors, rating agencies, and others. Greater transparency leads to building or restoring trust among stakeholders.

A high level of trust, in turn, leads to:

- Increased access to external capital
- Lower cost of capital
- Improved operational performance
- Reduced risk of corporate crises, scandals
- Enhanced trust

Legitimate Interests of Interested Parties

Not all corporate disclosures are helpful. While there is a tendency among interested parties to demand ever more information, and for companies to provide it, more is not always better. Disclosure is best if it has certain characteristics, including:

- Regularity
- Timeliness
- Accuracy and reliability
- Comprehensiveness and relevance
- Comparability

A board needs to consider the legitimate interests of the key interested parties, and develop an information disclosure policy that will satisfy their needs.

Information Disclosure Policy

An information disclosure policy will typically address:

- Authorized persons
- Disclosure rules
- Public information
- Information provide to shareholders
- Confidential information
- Insider information

The board is expected to oversee all communications that the company has with shareholders, markets, regulators, and other stakeholders. Best practice suggests that the board develop or approve an information discourse policy that includes a role for an investor relations officer or department in communicating with investors.

Information to Be Disclosed

There are two types of corporate information:

· Financial

· Non-Financial

Financial Information

Guidance on good practices in corporate governance disclosure recommends:

· **Financial and operating results**

  This is a key board responsibility: ensuring that shareholders and other stakeholders are provided with high-quality disclosure on the company's financial and operating results that the board has been entrusted with governing.

· **The board's responsibilities regarding financial communications**

  Boards should disclose their duties in overseeing the production of the financial statements.

· **Significant transactions with related parties**

Shareholders are interested in information that would help them determine whether the directors have their company's best interests in mind.

The board has responsibility for reporting on the company's financial and operating results. This typically should include:

· Balance Sheet

· Income Statement

· Statement of changes in owner's equity

· A cash flow statement

· Explanatory notes (other disclosures)

The board is responsible for reviewing and approving financial statements before these are issued to shareholders. The board, in addition to the external auditor, provides some level of assurance that the financial statements accurately represent the company's situation. Providing credible assurances involves:

· Checking the consistency of the disclosed accounting and financial statements

· Ensuring the accuracy and integrity of the company's accounting and financial reporting systems

· Overseeing the independent internal audit processes

- Maintaining an appropriate relationship with the external auditors

Non-Financial Information

Boards also have a responsibility for reporting non-financial matters, which typically include:

- Company objectives. The company's purpose, vision, and strategic objectives.
- Major Share ownership and voting rights. The concentration of ownership. In some countries, detailed ownership disclosure is required after meeting certain thresholds of share ownership.
- Details of any variations in voting powers associated with different share classes. In the interest of protecting minority shareholders, the principle of equality of disclosure should be practiced so that all shareholders receive information equally.
- Any change affecting corporate control in the capital market should be reported. The disclosure should also describe any anti-takeover measures established by the company.
- Directors' and key executives' details. Education, qualifications, professional background, positions held, and potential conflicts of interest.
- Directors' and key executives' Performance evaluation and remuneration. Details of directors' and key executives' performance evaluations and their remuneration.
- Material foreseeable risk factors. Risk-Management objectives, systems and activities.
- Corporate Responsibility. Policy and performance in connection with environmental and social responsibility and their impact on the company's sustainability.
- Control environment. Process for the appointment of, and interaction with, external auditors. The board should disclose that the board has confidence in the external auditor's independence.
- Scope of work and responsibilities of the internal audit function. If there is no audit function, companies should disclose the reasons for its absence.
- Material issues. Any material activities or transactions. These will be discussed in detail in Part Four, "Financial Stewardship and Accountability."
- Governance structure and policies. Company's articles of association, board charter, board committees' terms of reference, and the ethics code.

Means for Information Disclosure

There are several means for disclosure, including:

- ***Annual Report***

The annual report is more than just a legal requirement – it should be seen as an information tool for the company's shareholders. It may also serve as a marketing tool to highlight the company's accomplishments and help attract potential investors. The annual report should present a balanced view, which requires the company not only to focus on successes, but also to explain any setbacks.

- ***Annual General Meeting***

Most corporate governance codes recognize that a board's relations with shareholders should be maintained through constructive use of the annual general meeting. Good practice suggests that the

board, through the chairman and/or CEO, present a clear, accurate evaluation of the company's situation to the general meeting, be available to answer questions and discuss the results with shareholders, and provide sufficient explanation of proposals put before the meeting (including proposed dividends and dividend policy).

- ***Website***

Increasingly, fair and timely disclosure is becoming synonymous with making information accessible on the company's website. This has the great advantage of being simple, instant, inexpensive, and globally accessible. A disadvantage is that it does not arrive in a mailbox. One must make an effort to check whether new information is available. Another disadvantage is that the legal status of disclosure on the internet is uncertain in many jurisdictions since much of the information is not audited. Information that has been audited should be clearly stated as much.

1.13 Management Vs. Governance

The governing body must govern; that is, it must provide leadership and strategy and must focus on the 'big picture'. Governance is about planning the framework for work and ensuring it is done. As such, it is distinct from management (organising the work) and operations (doing the work). As far as possible, the governing body should therefore steer clear from making managerial decisions and getting involved in the day-to-day implementation of strategy. The lines between governance, management and operations are easily blurred, as they are of course closely inter-related.

Corporate Governance deals with the manner the providers of finance guarantee themselves of getting a fair return on their investment. Corporate Governance clearly distinguishes between the owners and the managers. The managers are the deciding authority. In modern corporations, the functions/ tasks of owners and managers should be clearly defined, rather, harmonizing.

> "The interface between governance and management, which is sometimes difficult to define, must be reviewed regularly as part of a balancing act of good governance."

The prime governors of an organisation are members of the governing body i.e. Board of Directors. Whether these individuals are called 'management committee members', 'directors', 'trustees', or something else, will depend on the legal status and custom of the organisation. The governing body makes a unique contribution to an organisation by focusing on the achievement of long term aims.

In some organisations with complex structures, there is the possibility of confusion about which part of the organisation is in fact the governing body - if, for example, they have both a management committee and an executive committee, or both a council and a board. It is important to understand the difference between governance and management and who is responsible for each.

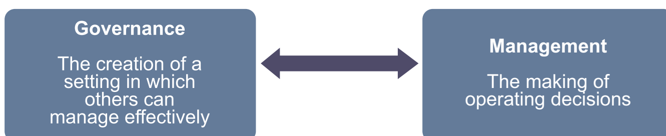

Figure 1.9: Management Vs Governance

Although by no means an exhaustive list, essentially, the Board has the responsibility to:

- ***Define expectations for the organisation***
  - o Set and maintain vision, mission and values
  - o Develop strategy (e.g., long-term strategic plan)
  - o Create and/or approve the organisation's policies
- ***Grant power***
  - o Select, manage and support the organisation's chief executive
- ***Verify Performance***
  - o Ensure compliance with governing document (e.g., Charter)
  - o Ensure accountability and compliance with laws and regulations
  - o Maintain proper fiscal oversight

Management takes direction from the board and implements on a day-to-day basis. Management has the responsibility to:

- Communicate expectations—mission, strategy, policies—to the entire staff;
- Manage day-to-day operations and program implementation to fulfil the expectations; and
- Report results to the board.

When the balance between the responsibilities of the board and management is established and functioning well, the organisation is better able to:

- Meet the expectations of clients, beneficiaries and other stakeholders;
- Deliver quality programs that are effective and efficient; and
- Comply with laws, regulations and other requirements.

GOVERNANCE	MANAGEMENT
Governance is simply the system by which companies are directed and controlled.	Management concentrates on the implementation of systems.
In the execution of governance function, focus is on the strategic issues.	In the execution of its management function, focus is on the operational management of the organisation.
It is concerned with the structures and processes associated with management, decision making and control in organisations.	Management must ensure that the processes of decision making and control are adhered to.
Governance relates to the governing of an organisation at thetop. It concentrates on the activities of those bearing the ultimate responsibility for the success or failure.	Management is responsible for ensuring that the operational functions of the organisation are effective and efficient.

Good governance is the means of ensuring due and adequate control over the strategy and direction of any organisation in achieving this key objective, having due regard for the interests of all stakeholders.	Good management means the organisation is operationally effective, but it may still be ineffective in its relationships with Governing body, Management, employees and other stakeholders.
Governance is concerned with the conduct of leadership.	Management is concerned with the operational running of the organisation.
Corporate governance represents a collection of broad principles and practices for the efficient, effective and profitable running of an organisation in pursuit of strategic objectives and in compliance with principles of best business practice and applicable legal and regulatory requirements.	Management can expect clear and unequivocal views on strategic direction from Governing body.
Governance focuses on overall control and ensures ensure that the organisation is exposed to governance philosophies, principles and values.	Management focuses on performance and results.
Governance is described as “hands-off”.Governance is about approving policy and goals.	Management is “hands-on”.Management is concerned with ensuring that the policies are implemented and the goals achieved.

If an organisation is struggling with finding a balance between the roles of the board and executive management, review the organisation's charter or other governing document, the board's terms of reference and the job descriptions of senior management staff to see what parameters are defined.

If these sources are insufficient to provide clarity, then consider asking the board to define responsibilities and procedures more clearly. In the end, it is part of governance - and therefore part of the board's responsibilities - to ensure that organisational roles and structures are clearly defined

- Using output of stakeholder mapping for communications and other interventions
- Monitoring stakeholder plan

Chapter - 2

PRINCIPLES OF CORPORATE GOVERNANCE

Social good has become a powerful competitive differentiator. Business run on true principles of transparency, equity, accountability, integrity and responsibility can make a difference that could give enormous pride to executives and provide the true incentive for driving the corporations.

The Principles of Corporate Governance are a public policy instrument, intended to assist governments and regulators in their efforts to evaluate and improve the legal, regulatory, and institutional framework for corporate governance. They also provide guidance for stock exchanges, investors, corporations and others that have a role in the process of developing good corporate governance. The objective of the Principles is to contribute to economic efficiency, sustainable growth and financial stability. Key elements of good corporate governance principles include honesty, ethics, transparency, trust, integrity, openness, performance orientation, responsibility, accountability, mutual respect and commitment to the organization.

OECD Principles of Corporate Governance first released in 1999, were revised in 2004 and 2015 to ensure the continuing high quality, relevance and usefulness of the Principles, taking into account recent developments in the corporate sector and capital markets. The OECD Principles are one of the key standards for sound financial systems of the Financial Stability Board.

India is largely compliant with the revised OECD Corporate Governance Principles which seek to identify the key in building blocks for sound corporate governance framework, and offer practical guidance for implementation at a national level. If India proposes to overhaul its existing CG framework based on the revised OECD CG Principles, it may not be a herculean exercise for the Indian companies in its implementation.

It is also noteworthy that SEBI's International Advisory Board opined that 100% compliance with OECD principles, though desirable, may not be absolutely necessary. It is essential that every key stakeholder understands the principles and sub-principles along with the implication of OECD Corporate Governance Principles, which may have an impact on not only Indian companies but also its holding companies, subsidiary companies and associate companies incorporated outside India. The Principles are important and relevant in cross-listing or cross-border merger or acquisition, as well.

On the basis of the underlying six principles, it is the role of government, semi-government or private sector initiatives to assess the quality of the corporate governance framework and develop more detailed mandatory or voluntary provisions that can take into account country-specific economic, legal, and cultural differences.

Principle 1: Ensuring the basis for an effective Corporate Governance framework

The corporate governance framework should promote transparent and fair markets, and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement.

- The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and well-functioning markets.
- The legal and regulatory requirements that affect corporate governance practices should be consistent with the rule of law, transparent and enforceable.
- The division of responsibilities among different authorities should be clearly articulated and designed to serve the public interest.
- Stock market regulation should support effective corporate governance.
- Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfil their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained
- Cross-border co-operation should be enhanced, including through bilateral and multilateral arrangements for exchange of information.

Principle 2: The rights and equitable treatment of shareholders and key ownership functions

The corporate governance framework should protect and facilitate the exercise of shareholders' rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

- Basic shareholder rights should include the right to:
  - secure methods of ownership registration;
  - convey or transfer shares;
  - obtain relevant and material information on the corporation on a timely and regular basis;
  - participate and vote in general shareholder meetings
  - elect and remove members of the board; and
  - share in the profits of the corporation.
- Shareholders should be sufficiently informed about, and have the right to approve or participate in, decisions concerning fundamental corporate changes such as:
  - amendments to the statutes, or articles of incorporation or similar governing documents of the company;
  - the authorisation of additional shares; and
  - extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.
- Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures that govern general shareholder meetings.

- Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.
- All shareholders of the same series of a class should be treated equally. Capital structures and arrangements that enable certain shareholders to obtain a degree of influence or control disproportionate to their equity ownership should be disclosed.
- Related-party transactions should be approved and conducted in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders.
- Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. Abusive self-dealing should be prohibited.
- Markets for corporate control should be allowed to function in an efficient and transparent manner. Anti-take-over devices should not be used to shield management and the board from accountability.

Principle 3: Institutional investors, stock markets, and other intermediaries

The corporate governance framework should provide sound incentives throughout the investment chain and provide for stock markets to function in a way that contributes to good corporate governance.

- Institutional investors acting in a fiduciary capacity should disclose their corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights.
- Votes should be cast by custodians or nominees in line with the directions of the beneficial owner of the shares.
- Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.
- The corporate governance framework should require that proxy advisors, analysts, brokers, rating agencies and others that provide analysis or advice relevant to decisions by investors, disclose and minimise conflicts of interest that might compromise the integrity of their analysis or advice.
- Insider trading and market manipulation should be prohibited and the applicable rules enforced.
- For companies who are listed in a jurisdiction other than their jurisdiction of incorporation, the applicable corporate governance laws and regulations should be clearly disclosed. In the case of cross listings, the criteria and procedure for recognising the listing requirements of the primary listing should be transparent and documented.
- Stock markets should provide fair and efficient price discovery as a means to help promote effective corporate governance.

Principle 4: The role of stakeholders in Corporate Governance

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

- The rights of stakeholders that are established by law or through mutual agreements are to be respected.
- Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.
- Mechanisms for employee participation should be permitted to develop.
- Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.
- Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and to the competent public authorities and their rights should not be compromised for doing this.
- The corporate governance framework should be complemented by an effective, efficient" insolvency framework and by effective enforcement of creditor rights

Principle 5: Disclosure and transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

- Disclosure should include, but not be limited to, material information on:
    - The financial and operating results of the company.
    - Company objectives and non-financial information.
    - Major share ownership, including beneficial owners, and voting rights.
    - Remuneration of members of the board and key executives.
    - Information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.
    - Related party transactions.
    - Foreseeable risk factors.
    - Issues regarding employees and other stakeholders.
    - Governance structures and policies, including the content of any corporate governance code or policy and the process by which it is implemented.
- Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial reporting.
- An annual audit should be conducted by an independent, competent and qualified, auditor in

accordance with high-quality auditing standards in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

· External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

· Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Principle 6: The Responsibilities of the Board

The Corporate Governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

· Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

· Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

· The board should apply high ethical standards. It should take into account the interests of stakeholders.

· The board should fulfil certain key functions, including:

  o Reviewing and guiding corporate strategy, major plans of action, risk management policies and procedures, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.

  o Monitoring the effectiveness of the company's governance practices and making changes as needed.

  o Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.

  o Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.

  o Ensuring a formal and transparent board nomination and election process.

  o Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.

  o Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

  o Overseeing the process of disclosure and communications.

  o The board should be able to exercise objective independent judgement on corporate affairs.

- o In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information. ·
- o When employee representation on the board is mandated, mechanisms should be developed to facilitate access to information and training for employee representatives, so that this representation is exercised effectively and best contributes to the enhancement of board skills, information and independence. ■

Chapter - 3

BOARD OF DIRECTORS

3.1 Role of the Board

The commitment to acting on shareholder's behalf is key in defining a company's vision, setting priorities. Determining strategy, and operating the business according to the highest standards of professionalism and ethics, is fundamental to corporate governance. For corporate governance is essentially about leadership that is responsible, exercised with probity, and conducted in a highly transparent and accountable manner. The emphasis on board accountability is on developing leadership skills. From articulating the business case for corporate governance to discussing the merits of a board evaluation, participants enhance their analytical skills, and work.

Our challenge is to help board directors understand corporate governance and its value. From that understanding, they can act as “agents of change”. They can look at how the companies of the boards on which they sit are governed, and assess their adherence to best practices. Where there are shortfalls, they can work to make the necessary changes.

Corporate directors need to be radical and revolutionary, to fulfil the competitive agendas of business social and ecological transformation. They have to adopt a triple bottom line approach of enhancing financial social and environmental capital by constantly spurring their organisations towards creating new competitive spaces through a spiral staircase of innovations.

Once corporation internalise that their profitability depends on the public perception of the difference they make to the society, governance of corporations will become easier. Boards will rise up to meet the expectations of all stakeholders. Only then will our focus shift from rhetoric to implementation and we will realise that what we need most urgently is not more codes but training to change our beliefs, ideas and attitudes of how things will work in the new era. This is why there is an urgent need to change governance strategies, and get directors truly on board. The wrenching change taking place all around cannot allow directors to remain aloof and leave the job to management. Boards today have to be proactive and not pliant, intrusive and not quiet, radical and not staid, innovative and not incremental.

Our challenge is to help board directors understand corporate governance and its value. From that understanding, they can act as “agents of change”. They can look at how the companies of the boards on which they sit are governed, and asses their adherence to best practices. Where there are shortfalls, they can work to make the necessary changes.

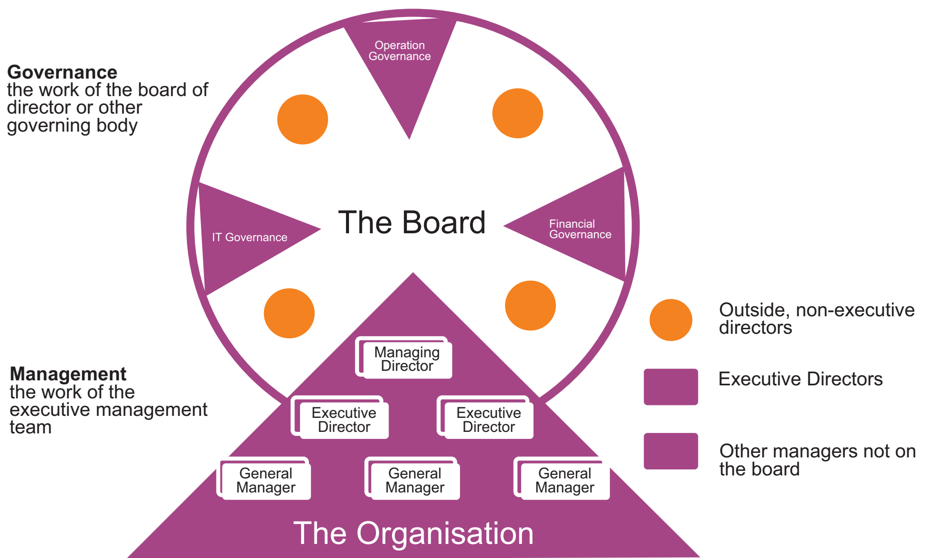

Figure 3.1: The Organisation

The board of directors' key purpose is to ensure the company's prosperity by collectively directing the company's affairs, whilst meeting the appropriate interests of its shareholders and stakeholders. In addition to business and financial issues, boards of directors must deal with challenges and issues relating to corporate governance, corporate social responsibility and corporate ethics. The role of the board is as under:

Establish vision, mission and values

- Determine the company's vision and mission to guide and set the pace for its current operations and future development.
- Determine the values to be promoted throughout the company.
- Determine and review company goals.
- Determine company policies

Set strategy and structure

- Review and evaluate present and future opportunities, threats and risks in the external environment and current and future strengths, weaknesses and risks relating to the company.
- Determine strategic options, select those to be pursued, and decide the means to implement and support them.
- Determine the business strategies and plans that underpin the corporate strategy.

- Ensure that the company's organisational structure and capability are appropriate for implementing the chosen strategies.

Delegate to management

- Delegate authority to management, and monitor and evaluate the implementation of policies, strategies and business plans.
- Determine monitoring criteria to be used by the board.
- Ensure that internal controls are effective
- Communicate with senior management.

Exercise accountability to shareholders and be responsible to relevant stakeholders

- Ensure that communications both to and from shareholders and relevant stakeholders are effective.
- Understand and take into account the interests of shareholders and relevant stakeholders.
- Monitor relations with shareholders and relevant stakeholders by gathering and evaluation of appropriate information.
- Promote the goodwill, support of shareholders and relevant stakeholders.

Definitions

The Companies Act 2013 ("the Act") has clearly defined the terms Board and Director of the Company and as per Section 2(10) "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company. It is clear that any decisions that are taken by the Board would make it a collective decision and will bind all the Directors provided such powers are exercised through a Board Process.

As per Section 2(34) "director" means a director appointed to the Board of a company. It means a director is an individual who is appointed as one of the members of the Board, upon which he is part of the collective body of directors of the company. Any director is an individual and any decisions that are taken may bind only the director, unless such decisions are implemented and executed after receiving approval from the Board.

3.2 Composition and Structure

Companies Act, 2013 introduces significant changes to the composition of the boards of directors. Every company is required to appoint 1 (one) resident director on its board. Nominee directors shall no longer be treated as independent directors. Listed companies and specified classes of public companies are required to appoint independent directors and women directors on their boards.

Every company shall have a board of directors as under:

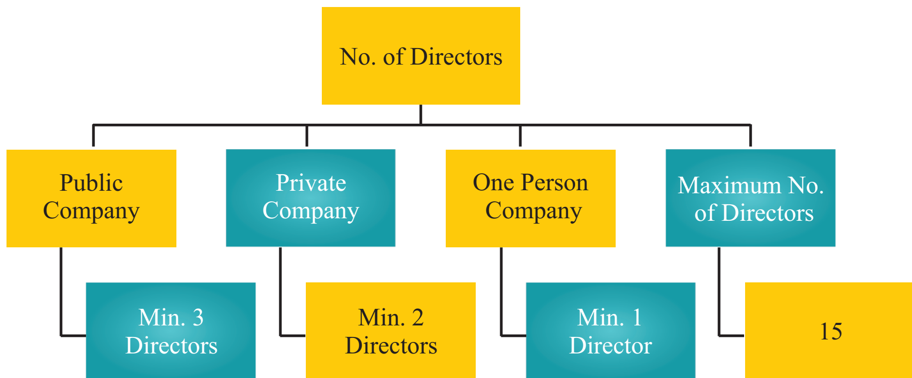

Figure 3.2: Composition and Structure

A company may have more than 15 directors after passing a special resolution in a general meeting. Minimum 6 directors in the top 1000 listed entities by market capitalization shall be applicable by April 1, 2019 and in the top 2000 listed entities, by April 1, 2020.

The maximum number of directorships, including any alternate directorship a person can hold, is 20.

The number of directorships in public companies/ private companies that are either holding or subsidiary company of a public company shall be limited to 10.

Maximum number of directorship (including alternate directorship) in listed entities would be reduced to 8 by April 1, 2019 and to 7 by April 1, 2020 (irrespective of whether the person is appointed as independent director or not). A person would not serve as independent director in more than seven listed entities.

At least 1 director who has stayed in India for a total period of not less than 182 days during the financial year shall be appointed by every company.

At least one woman director shall be appointed in:

a) Every listed company

b) Every other public company having

   i. Paid up share capital of one hundred crore rupees or more; or

   ii. Turnover of three hundred crore rupees or more

c) Any intermittent vacancy of a woman director shall be filled up by the Board within 3 months from the date of such vacancy.

Explanation: Paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

At least one woman independent director in the top 500 listed entities by market capitalization shall be applicable by April 1, 2019 and in the top 1000 listed entities, by April 1, 2020.

Every other public company having

i. Paid up share capital of one hundred crore rupees or more; or

ii. Turnover of three hundred crore rupees or more shall have minimum 2 independent directors on their board.

The board of directors of a listed entity shall have an optimum mix of executive and non-executive directors with at least 1 woman director and not less than fifty percent of the board of directors shall comprise of non-executive directors.

Where the chairman of the Board is:

- o Non-executive, at least one-third of the Directors to be independent directors
- o Executive chairman, at least half of the Board to be independent directors

Provided that where the regular non-executive chairman is a promoter of the Company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the Company shall consist of independent directors.

3.3 A Balanced Board

Every company should be headed by an effective board which is collectively responsible for the success of the company. Boards govern companies. They provide leadership, set its direction and major policies, appoint and supervise senior management, ensure it complies with the law and are accountable to shareholders. All directors are equal in the eyes of the law, and all are jointly and severally responsible for the conduct of their organisation.

To be effective, boards must be a working group of members who trust and understand one another. The group must be the right size, with the right balance of executive and non-executive directors, and have a good mixture of abilities, knowledge and experience.

Every public limited company shall have at least 3 directors .Every private limited company shall have at least 2 directors. A company can have a maximum of 15 (fifteen) Directors. It may appoint more than 15 directors by passing a special resolution. The ideal size of a board depends on a number of factors including the age, ownership, structure and financial profile of a company. It is important to remember that being the wrong size may limit a board's effectiveness. Too many members and meetings can become protracted, with cabals developing, and potentially poorer decision-making – with some choosing to let others do the hard work.

As a result, companies have been known to shrink their boards to improve strategic thinking and development. At the opposite extreme, too few directors may limit the knowledge and experience around the table.

Diversity, well managed, produces better results. And smart companies appreciate that diversifying their boards with women can lead to more independence, innovation, and good governance and maximize their company's performance

It should also be remembered that every board evolves. It goes through transitions in its development

as the company changes from inception, through periods of growth, maturity and possibly decline. The constant nature of change in today's global economy creates real problems for boards that want to maintain their full effectiveness and a failure to evolve and develop is likely to be a sign of weakness.

In terms of the internal composition of skills and experience, within the board itself there are no rules. No two companies are the same and their boards must reflect an organisation's uniqueness, needs and the context in which it operates.

Diverse Board

Diversity is vital for the knowledge economy. When knowledge is shared the resultant gain to the parties depends on their diversity. Greater the diversity, more is the aggregate value of knowledge, Societies have no role for yes –men, and think alike. This has transformational value for the societies and nations hitherto clinging to their own race, caste, region, religion. Realisation that the value increases not by cloning of same, but cooperating with the opposites will begin the end of the hatred spurred by the accidents of birth, and mark a new era of ethnic integration.

Our corporate attitudes can change only by making the boards diverse. Diversity is the wellspring of creativity. It is the diversity that generates a clash of ideas, that in turn foster innovation. It is the innovation that provides the grist to company's mill. Innovation cannot be nurtured unless the corporations consciously encourage dissent. The value today is created not by conformity but diversity; not by deference but difference. Darwin told us in 1859 that growing a variety of corps improves the yield. We have still not applied this to humans. What the 21st century boards need is training to harness the differences.

3.4 Role of the Chairman

Good boards are created by good chairman. The chairman creates the conditions for overall board and individual director effectiveness. The chairman should demonstrate the highest standards of integrity and probity, and set clear expectations concerning the company's culture, values and behaviours, and the style and tone of board discussions. The chairman's role includes:

- Demonstrating ethical leadership;
- Setting a board agenda which is primarily focused on strategy, performance, value creation and accountability, and ensuring that issues relevant to these areas are reserved for board decision;
- Ensuring a timely flow of high-quality supporting information;
- Making certain that the board determines the nature, and extent, of the significant risks the company is willing to embrace in the implementation of its strategy, and that there are no 'no go' areas which prevent directors from operating effective oversight in this area.
- Regularly considering succession planning and the composition of the board;
- Making certain that the board has effective decision –making processes and applies sufficient challenge to major proposals;

- Ensuring the board's committees are properly structured with appropriate terms of reference;
- Encouraging all board members to engage in board and committee meetings by drawing on their skills, experience, knowledge and where appropriate, independence;
- Fostering relationships founded on mutual respect and open communication- both in and outside the boardroom- between the non-executive directors and the executive team;
- Developing productive working relationships with all executive directors, and the CEO in particular, providing support and advice while respecting executive responsibility;
- Taking the lead on issues of director development, including through induction programmes for new directors and regular reviews with all directors;
- Acting on the results of board evaluation;
- Being aware of, and responding to, his or her own development needs, including people and other skills, especially when taking on the role for the first time; and
- Ensuring effective communication with shareholders and other stakeholders and, in particular, that all directors are made aware of the views of those who provide the company's capital.

The chairman of each board committee fulfils an important leadership role similar to that of the chairman of the board, particularly in creating the conditions for overall committee and individual director effectiveness.

A good chairman needs to perform many functions in practice, among other things serving as an effective team builder, a motivator, a diplomat and a conflict solver. In addition, the chair of a BOD for a state-owned enterprise is required to reconcile the needs and opinions of the government, SOE executives, and the board, retaining the trust of all parties and keeping political pressures away from proceedings of the board. Ideally, the chairman would also be capable of performing gap analysis of the board (identifying missing skills and competencies).

Chairperson of the board of top 500 listed entities would be a non-executive director and not be related to the MD or the CEO in accordance with the definition of 'relative' as per the Companies Act,2013.

The above requirement would not be applicable to listed entities that do not have any identifiable promoters as per the shareholding patterns filed with stock exchanges.

(SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018 refers)

3.5 Role Separation of Chairman and CEO

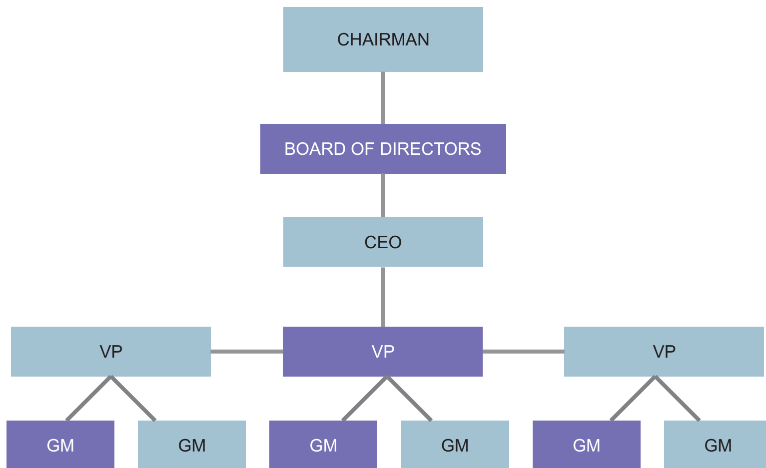

Figure 3.3: Role separation of Chairman and CEO

As per Section 203 (1) of Companies Act, 2013 read with the Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having a paid up share capital of ten crore rupees or more shall have the following whole-time key managerial personnel's:

i. Managing director or Chief Executive Officer or manager and in their absence, a whole time director and

ii. Company Secretary and

iii. Chief Financial Officer

Provided that an individual shall not be appointed or reappointed as the chairperson of the company as well as the managing director or chief executive officer of the company at the same time unless

- The articles of such a company provide otherwise
- The company does not carry multiple businesses

Provided further that nothing contained in the first proviso shall apply to public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more and which has appointed one or more Chief Executive Officers for each such business.

From 1st April, 2020 Chairperson of the board of top 500 listed entities would be a non-executive director and not be related to the MD or the CEO in accordance with the definition of 'relative' as per the Act. This would not be applicable to listed entities that do not have any identifiable promoters as per the shareholding patterns filed with stock exchanges. (SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018 referes).

It is perceived that separating the roles of chairman and chief executive officer (CEO) increases the effectiveness of a company's board. It is the board's and chairman's job to monitor and evaluate a company's performance. A CEO, on the other hand, represents the management team. If the two roles are performed by the same person, then it's an individual evaluating himself. When the roles are separate, a CEO is far more accountable.

A clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/CEO promotes balance of power. The benefits of separation of roles of Chairman and CEO can be:

1. Director Communication: A separate chairman provides a more effective channel for the board to express its views on management
2. Guidance: a separate chairman can provide the CEO with guidance and feedback on his/her performance
3. Shareholders' interest: The chairman can focus on shareholder interests, while the CEO manages the company
4. Governance: a separate chairman allows the board to more effectively fulfill its regulatory requirements
5. Long-Term Outlook: separating the position allows the chairman to focus on the long-term strategy while the CEO focuses on short-term profitability
6. Succession Planning: a separate chairman can more effectively concentrate on corporate succession plans.

3.6 Duties and responsibilities of Directors

The following duties have been imposed on the directors of companies, by the Companies Act of 2013, under its Section 166:

- A director of a company shall act in accordance with the Articles of Association (AOA) of the company.
- A director of the company shall act in good faith, in order to promote the objects of the company, for the benefits of the company as a whole, and in the best interests of the stakeholders of the company.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgement.
- A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- A director of a company shall not assign his office and any assignment so made shall be void.
- If a director of the company contravenes the provisions of this section such director shall be

punishable with fine which shall not be less than one Lakh Rupees but which may extend to five Lac Rupees.

The duties set out in this Section are not exhaustive. Apart from the duties set out in Section 166, directors are also responsible for various obligations provided under other sections of the Companies Act, 2013. For example:

- The board needs to lay the financial statements for approval and adoption at the annual general meeting of the shareholders (Section 129);
- The directors are responsible for devising proper systems to ensure compliance with the provisions of all applicable laws and to ensure that such systems are adequate and are operating effectively (Section 134);
- The board shall ensure that in the preparation of annual accounts, the applicable accounting standards has been followed along with proper explanation of material departures (Section 134);
- the directors are required to select such accounting policies and apply them consistently and make judgements and estimates that are reasonable and prudent so as to give true and fair view of the state of affairs of the company at the end of the financial year and of profit and loss account for that period (Section 134);
- the directors are required to take proper and sufficient care for maintenance of adequate accounting records in accordance with the provisions of the act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities (Section 134);
- directors should prepare the annual accounts on a going concern basis (Section 134)
- directors in case of listed companies have to lay down internal financial control to be followed by the company and that such internal financial control should be adequate and should operating effectively (Section 134)

Internal financial control means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business , including adhering to company policies , the safeguarding of its assets, prevention and detection of fraud and errors, the accuracy and completeness of the accounting records and the timely preparation of reliable financial information.

- Director needs to ensure that the company complies with obligations relating to corporate social responsibility provided under Section 135;
- The board is responsible for appointing first auditors within 30 days of incorporation of the company and such auditor shall hold office till the conclusion of the first annual general meeting (Section 139);
- A director needs to disclose his concern or interest in any company or companies or body corporates firm or such association of individuals including the shareholding to the company at the first meeting of the Board in which he participates, first Board meeting in the financial year and whenever there is any change in the disclosure already made, then at the first Board meeting held after such change. (Section 184);
- The board is responsible for appointment of whole time key managerial personnel (Section 203);

- The directors are responsible for issuance of notice and holding of board meetings and general meetings etc.

Responsibilities of the Board

A. Disclosure of Information

- Members of the Board and Key Managerial Personnel (KMP) shall disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.
- The Board and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

B. Key Functions of the Board

The key functions (responsibilities) of the board have already been discussed in chapter 2.

C. Other Responsibilities

- The Board shall set a corporate culture and the values by which executives throughout a group will behave.
- The Board shall encourage continuing directors training to ensure that the Board members are kept up to date.
- Boards shall consider assigning a sufficient number of non-executive Board members capable of exercising independent judgement to tasks where there is a potential for conflict of interests.
- The Board shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognized or exposes the company to excessive risk.
- The Board shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the company's focus.
- When committees of the board are established, their mandate, composition and working procedures shall be well defined and disclosed by the Board.
- The Board shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.
- Board members shall be able to commit themselves effectively to their responsibilities.
- In order to fulfil their responsibilities, board members shall have access to accurate, relevant and timely information.
- The Board and senior management shall facilitate the Independent Directors to perform their role effectively as a Board member and also a member of a committee of the board of directors.
- The Board shall lay down a code of conduct for all Board members and senior management which will be displayed on the Company's website.

(Regulation 4(2) (f) of SEBI (LODR) Regulations, 2015 refers)

The following compliance certificate shall be furnished by chief executive officer and chief financial officer to the Board of Directors:

I) They have reviewed financial statements and the cash flow statements for the year and that to the best of their knowledge and belief:

I. These statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

ii. These statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

II) There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.

III) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

IV) They have indicated to the auditors and the Audit Committee

i. Significant changes in internal control over financial reporting during the year;

ii. Significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

iii. Instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

(Regulation 17(8) and Part B of Schedule II of SEBI (LODR) Regulations, 2015 refers)

Power of the Board

1. Powers of Board under the statute

The powers that can be exercised by the Board in a board meeting are listed in section 179 of the Act. There are additional items listed out in the Rules to the Act, based on these two provisions the Board of Directors shall exercise the following powers:

1. To make calls on shareholders in respect of money unpaid on their shares.
2. To authorize buy back of securities under section 68.
3. To issue securities including debentures, whether in or outside India.
4. To borrow monies.
5. To invest the funds of the company.
6. To grant loans or give guarantee or provide security in respect of loans.

7. To approve financial statements and boards report.
8. To diversify the business of the company.
9. To approve amalgamation, merger or reconstruction.
10. To take over a company or acquire controlling or substantial stake in another company.
11. Any other matters as may be prescribed.

The regulators have under point 11 above, listed out additional items in Rule 8 of the Companies (Meetings of the Board and its Power) Rules, 2014, which allows the Board of Directors to exercise these additional powers:

1. To make political contributions.
2. To appoint or remove key managerial personnel (KMP);
3. To appoint internal auditors and secretarial auditor.

Delegation of Powers by the Board

1. A delegate is a person or entity designated to act for, or represent, another or others; in this case the Board. When a function is delegated, the Board is not absolved of the responsibility and remains accountable for what occurs on account of such delegation. A Board may delegate responsibilities to a sub-committee (which needs to include Board members), a Chief Executive Officer, a Board member or an employee.

2. Delegation of powers is an effective instrument for expeditious decision-making and efficient management. The delegation is made keeping in view the objectives of the Company and its accountability to the stakeholders. The Boards of Directors shall exercise all powers within the provisions of the Act, the Memorandum, Articles of Association of company and powers delegated by Government Agencies. As per the Act, the board may, by a resolution passed at a meeting, delegate powers to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify. The powers that can be delegated are for borrowing monies, invest the funds of the company, to grant loans or give guarantee or provide security in respect of loans.

3. The word delegation implies that powers are committed to another person or body, which are as a rule always subject to resumption by the power delegating. The word 'delegation' does not imply parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things, which otherwise that person would have to do himself.

4. It is advisable that all decisions that are not in the ordinary course of business, should always be authorised by a board resolution. Directors may have certain inherent powers, but in most of the case the director fails to draw a line on the limits that he will exceed in exercising the powers. Hence if a director exceeds his powers, he may incur personal liability for the performance of the company's obligation under that contract. The definition of Board also makes it clear that the Board is a collective body and not individuals who can exercise power and get away with the decisions approved by minority. It may also be pertinent to note that the Act now requires all resolutions passed by way of circular resolution to be approved/ ratified by the Board in the

ensuing meeting, thus making the intentions clear that no decision can be an individual decision or of the minority of directors. All the powers and decisions, exercised or taken on behalf of the board has to be either approved or ratified by the Board of Directors.

5. The decisions taken by the Board in the larger interest of the stakeholders are to be exercised with caution and diligently. As trustees the Board owes a responsibility to the shareholders and when power is delegated it should be kept in mind that directors direct and managers manage, but nonetheless, the board is responsible for management's action and performance. Directors do not have wide ranging and unlimited powers to run a company on behalf of the shareholders. To sum up, best board practices can be made better if powers exercised by Board are always collective

3.7 Board Meetings

Exercise of Power

The board can generally exercise the powers in the board meetings through a board process. Further the Act, provides for the following types of meeting of board of directors where the Board can exercise the powers, which are:-

1. Physical Board Meeting

The board meeting held in person where the directors are personally present is called as physical board meeting.

2. Circular Resolutions

Circular resolutions refer to the resolution passed by the Board thereof by circulation together with the necessary papers at their address registered with the company by hand delivery or by post or by courier, or through such electronic means and such resolution has been approved by a majority of directors, who are entitled to vote on the resolution. This process can be done through electronic mode also.

3.Video Conferencing or other audio visual means

'Video conferencing or other audio visual means' mean audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other, without an intermediary and to participate effectively in the meeting. As per the Act participation of the directors in the meeting through video conferencing or other audio visual means, should be capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Quorum, Frequency and Calling Notice

a) Every company shall hold first meeting of the Board of Directors within 30 days of its incorporation.

b) Every company will hold minimum of 4 meetings of its Board of Directors every year. Gap between two consecutive meetings not to exceed 120 days.

c) A one person company, small company, dormant company and a private company which is a start up to conduct at least one meeting of Board of Directors in each half of a calendar year and the gap between the two meetings to be not less than 90 days. Provided this provision shall not

apply in the case of One Person Company in which there is only one director on its Board of Directors.

d) Calling notice – Minimum 7 days' notice with agenda and notes on agenda, in writing to every director. For urgent business transactions, meeting may be called at shorter notice but at least one independent director, if any, must be present in such a meeting. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

e) **Agenda** - Sets out the business to be transacted at the meeting, and shall be given to the Directors at least seven days before the date of the meeting, unless the Articles prescribe a longer period. It shall be sent to all Directors by hand or by post or by e-mail or by electronic means.

f) **Quorum** - For the meeting of Board of Directors, it shall be one-third of its total strength or two directors, whichever is higher.

The quorum for every meeting of the Board of Directors of the top listed entity would be one-third of its total strength or three directors, whichever is higher, including at least one independent director.(Effective from 1 April 2019 for top 1,000 listed entities and 1 April 2020 for top 2,000 listed entities) (SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018).

Participation of directors by video conferencing or by other audio-visual means shall be counted for the purposes of quorum.

Provided this provision shall not apply in the case of One Person Company in which there is only one director on its Board of Directors.

g) **Finalisation of Minutes** - Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated to all the members of the Board or the Committee for their comments. Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.

(Secretarial Standard-1 (SS-1) on "Meetings of the board of directors"

Participation of Directors

Participation of Directors in the Board Meeting may be:

In person

Through Video Conferencing

Through the Audio visual means to be prescribed by the Ministry of Corporate Affairs (MCA)

Video or audio-visual means should be capable of recording and recognizing the participation of the directors. Recording and storing of the proceedings of such meetings should be done along

with date and time.

Meetings of Board through Video Conferencing or other Audio-Visual Means

a) Every company shall make necessary arrangements to avoid failure of video or audio-visual connection.

b) Chairperson and company secretary shall take due and reasonable care

- Safeguard the integrity of the meeting by ensuring sufficient security and identification procedures.
- Ensure availability of proper video conferencing or other audio visual Equipment / facilities for effective participation.
- To record the proceedings and prepare the minutes of the meeting.
- To store for safekeeping and marking the tape recording(s) for maintaining records of the Company, at least before the time of completion of Audit of that particular year
- To ensure that no other person except the authorized participants are attending or have access to the proceedings through video –conferencing or other audio visual means.
- To ensure that the participants are able to hear and or see other participants clearly during the course of the meeting. Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany them.
- The notice of meeting shall inform directors regarding option available to participants through video conferencing or audio-visual means and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
- A director intending to participate through video conferencing mode or other audio –visual means shall give prior intimation to that effect sufficiently in advance to Chairman/ Company secretary so that company is able to make suitable arrangements in this behalf.
- Any director who intends to participate through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year. Provided such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.
- In the absence of any intimation, it shall be assumed that the director shall attend the meeting in person.
- Company Secretary shall keep records of the request and details furnished by the Directors, which shall be noted and recorded in the minutes.
- The detailed procedure for actual conduct of the meeting through video conferencing or other audio-visual means and for maintenance of records of the same is given in Chapter XII of the Companies Act, 2013 and in Rule 3 of Companies (Meetings of Boards and its Powers) Rules, 2014.

Matters not to be dealt with, in a meeting through Video Conferencing or other Audio-Visual Means

- The approval of annual financial statements.
- The approval of Board's report.
- The approval of the prospectus.
- The Audit Committee meetings for consideration of financial statements including consolidated financial statements.
- The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

(Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014)

Passing of Resolution by Circulation

- The Companies Act, 2013 requires certain business to be approved only at meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation under Section 175. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.
- No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution. Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board. Interested director shall not be excluded for the purpose of determining the above one third.
- A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.
- Secretarial Standards-1issued by Institute of Company Secretaries of India prescribes the matters which cannot be passed by circulation.

3.8 Board Effectiveness

a) The board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed.

b) An effective board develops and promotes its collective vision of the company's purpose, its culture, its values and the behaviours it wishes to promote in conducting its business. In particular it:

  - Provides direction for management;
  - Demonstrates ethical leadership, displaying- and promoting throughout the company-behaviours consistent with the culture and values it has defined for the organisation;

- Creates a performance culture that drives value creation without exposing the company to excessive risk of value destruction;
- Makes well – informed and high- quality decisions based on a clear line of sight into the business;
- Is accountable, particularly to those that provide the company's capital; and
- Thinks carefully about its governance arrangements and embraces evaluation of their effectiveness

c) An effective board shall not necessarily be a comfortable place. Challenge, as well, as teamwork, is an essential feature. Diversity in board composition is an important driver of a board's effectiveness, creating a breadth of perspective among directors, and breaking down a tendency toward 'group think'.

d) An effective board shall create a board mandate, which is a clear list of board responsibilities, so there is clarity as to what the responsibility of the board is and what the responsibility of the management is. Developing such a list is a useful way of ensuring that everyone understands their role and is not stepping on anyone's toes, and that there are no surprises.

e) An effective board shall establish several committees that are responsible for company specific matters. Commonly established committees include audit, remuneration, risk, reserves and governance committees etc.

Keys to improve the Board effectiveness

Create a climate of trust and candor	• Share important information with directors in time for them to be prepared • Rotate board members through small groups and committees so that they spend time meeting key company personnel
Foster a culture of open dissent	• Dissent is not the same thing as disloyalty. Treat dissent as an obligation and every subject is discussable • Probe silent board members for their opinions
Ensure individual accountability	• Give directors the task that require them to inform the rest of the board about strategic and operational issues the company faces
Evaluate board's performance	• Directors confidence in the integrity of the enterprise • Quality of discussions at board meetings • Credibility of reports, use of constructive professional conflicts, level of interpersonal cohesion and degree of knowledge • Go beyond resolutions and resumes. Look at initiative, role and participation in discussions and energy levels

3.9 Dysfunctional Board

A dysfunctional board of directors has the ability to cause multiple headaches for one's business or organisation. Not only will a dysfunctional board of directors often fail to make decisions that are in the best interest of the organisation, its dysfunction has the potential to move outside the confines of the boardroom, causing negative publicity. Knowing the signs of a dysfunctional board of directors will help one fix the board before larger problems occur.

Lack of Confidentiality

Much of what the board of directors discusses should be kept within the organisation. When board members do not keep this information confidential, problems often ensue. Members of the board may think they are simply sharing the information with close friends, but it could be misconstrued and released to stockholders, causing undue stress, or shared with competing organisations. Leaking information is a sign of dysfunction within a board.

Conflicting Agendas

Board members need to be on the same page when it comes to the future of an organisation and its initiatives. If board members have conflicting agendas related to the direction of the organisation, it will be hard for the board to make decisions. In addition to being on the same page as one another, board members must also be on the same page as the head of the organisation. Conflicting agendas are another sign of dysfunction within an organisation's board of directors.

Lack of Order

Meetings involving the board of directors should function in an orderly manner. If board members quickly jump from topic to topic, argue with one another or fail to discuss the most important matters at hand, the board is dysfunctional. Board meetings should contain a designated leader and an agenda to make them productive.

Lack of Respect

Occasionally board members experience a lack of respect for the CEO of a company and vice versa. This often happens when board members have been in place for a long time and a new CEO enters the company. All parties must develop respect for one another based on their common interest in working for the good of the organisation in order to keep the board from becoming dysfunctional. A lack of respect between new and older board members or factions is a sign that there might be dysfunctionality within the board.

Hostile Environment

A meeting of the board of directors can be a hostile environment, particularly when board members do not get along with one another. This type of environment stifles productivity and prevents board members from sharing constructive opinions. A meeting may become a venue for personal attacks rather than for focusing on coming to business decisions or providing constructive discourse.

Secret Meetings

While some information the board discusses should remain confidential, organisations should become concerned if a board of directors regularly holds secret meetings or meet on an unofficial

basis. Not only may some board members be left out of these meetings, but decisions could be made without the input of crucial members of the organisation, or with unethical motives.

Personal and Political Agendas

Board members should not allow personal and political agendas to cloud their decision-making. If board members continually propose moves that would benefit them personally or take a political stance, the image of the company could be compromised. Personal and political agendas also lead to more disagreements among board members, and they are indicative of a dysfunctional board.

Lack of Trust

Employees in an organisation must trust the board of directors in order for it to be functional. If the majority of employees do not trust members of the board, the advice and decisions the board makes may be ignored or may lead to high turnover rates within the company, among other things.

Dominating Members

Members of a board of directors should work as a team to make decisions to benefit the organisation. The board's ability to make the best decision is compromised when one or two board members are allowed to dominate the meetings. This may involve harassment of other board members, talking loudly to dominate the conversation or immediately shooting down any dissenting opinions. When certain members dominate meetings, you're looking at a dysfunctional situation.

Non Participants

Some board members sit on a board only for the prestige of the position. These members may attend meetings but rarely speak or offer any opinions on decisions. Those who refuse to participate in the conversation may be as damaging as members who control the conversation and take up space that could be filled by members who work to advance the organisation. Too many nonparticipants around a board table spells "dysfunctional.”

3.10 Information to be placed before the Board

a) Annual operating plans, budgets and any updates

b) Capital Budgets and any updates

c) Quarterly results of the Company and its operating divisions or business segments.

d) Minutes of all committees of the Board

e) The information on recruitment and remuneration of senior officers just below the board level including appointment or removal of Chief Financial Officer and the Company Secretary.

f) Show case, demand, prosecution and penalty notices which are materially important.

g) Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.

h) Details of any joint venture or collaboration agreement.

i) Any material default in financial obligations to and by the company, or substantial non payment for goods sold by the company.

j) Transactions that involve substantial payment towards goodwill, brand equity or intellectual property.

k) Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of VRS etc.

l) Sale of investments, subsidiaries, assets, which are material in nature and not in normal course of business.

m) Quarterly details of foreign exchange exposures and the steps taken by the management to limit risks of adverse exchange rate movement, if material.

n) Non-compliance of any regulatory, statutory or listing requirements and shareholders services such as non-payment of dividend, delay in share transfer etc.

o) Any issue, which involves possible public or product liability claims of substantial nature including any judgement or order which may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.

3.11 Role and Functions of Independent Directors

An Independent Director must:

Help in bringing an independent judgement to bear on the Boards deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;

Bringing an objective view in the evaluation of the performance f Board and management; (not applicable to Government company)

Scrutinize the performance of management inmeeting agreed goals and objectives; monitor the reporting performance

Satisfy himself on the integrity of financial information and that financial controls, the systems for risk management are robust and defensible;

Safeguard the interest of all stakeholders, particularly, the minority shareholders;

Balance the conflicting interest of the stakeholders;

Determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management; have a prime role in appointing and where necessary, recommend removal of executive directors, key managerial personnel and senior management. (not applicable to Government Company)

Moderate and arbitrate in the interest of the company as a whole, in the situations of conflict between management and shareholder's interest.

3.12 Guidelines for Professional Conduct for Independent Directors

An Independent Director shall:

a) Uphold ethical standards of integrity and probity

b) Act objectively and constructively while exercising his duties

c) Exercise his responsibilities in a bona fide manner in the interest of the company.

d) Devote sufficient time and attention to his professional obligations for informed and balance decision making;

e) Not allow any extraneous consideration that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;

f) Not abuse his position to the detriment of the company or its share holders or for the purpose of gaining director or indirect personal advantage or advantage for any associated person;

g) Refrain from any action that would lead to loss of his independence;

h) Where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;

I) Assist the company in implementing the best corporate governance practices. ■

Chapter - 4

BOARD COMMITTEES

4.1 Overview of Board Committees

In any organization the Board is the highest and ultimate decision-making body. However, as the organization grows in size, it may not be possible for the Board to make all the decisions directly. Therefore, the Board decides to delegate certain responsibilities to the management team and provides oversight. In case of delegation of authority, the Board is still accountable for the outcome even though the work is not done under its direct supervision. So the responsibility of the Board is to form different Committees that can be assigned with various responsibilities. Here, the Board performs its oversight role and acts as a yard stick for the proper functioning of the organization. However, it needs to be kept in mind that the Board cannot delegate its core oversight obligations to any subsequent Committees. It is necessary to remember that the Committees cannot replace the Board. They are supplementary to the Board.

An organization's board of directors is responsible for forming committees when necessary. Committee members must be drawn from the current members of the board itself, so having a talented and diverse board is an extremely important ingredient to the success of an organization. The board's power to form committees is usually addressed in the organization's bylaws. A typical bylaw provision on this subject usually allows the board to form any type of committee it deems appropriate, and also allows the board to delegate certain powers to a committee.

There are many types of Committees that can be formed by the Board. These Committees can be broadly classified into:

i) Audit Committee

ii) Nomination & Remuneration Committee

iii) Stakeholders Relationship Committee

iv) Strategy Planning Committee

v) Risk Management Committee

vi) CSR Committee

There are many reasons as to why it is desirable to form Committees:

i) The Board is large, making it difficult to call a meeting and obtain a quorum on short notice.

ii) The Board members are dispersed over a wide geographic area and are difficult to reach, or travel frequently making it difficult to convene a meeting in an emergency, making it impossible for the Board to meet on regular basis.

iii) Committees subsists the Board in crucial decision-making through thorough research and

in-depth study on the issue. The Committees are the extended executive arms of the Board, who can make exhaustive research for the Board on various executive and legislative issues like handling complex, time-taking, specialized issues that require persistent attention.

4.2 Audit Committee

Audit Committee is one of the main pillars of the corporate governance mechanism in any company. Following class of companies shall constitute an Audit committee.

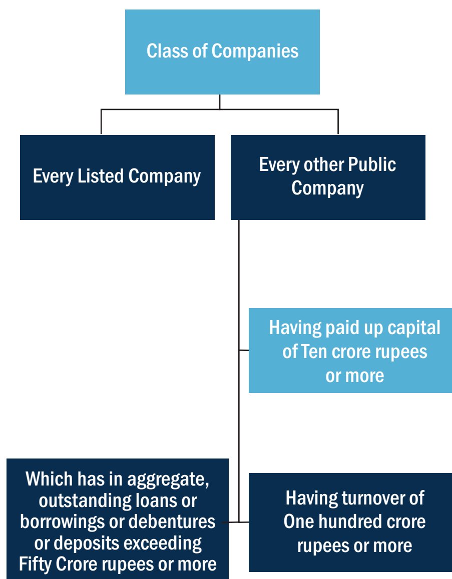

Figure 4.1: Applicability

The following class of unlisted public companies shall not be required to constitute Audit Committee:

- A joint venture
- Wholly owned subsidiary; and
- A dormant company

A qualified and independent audit committee shall be set up, subject to the following:

- The audit committee shall have minimum three directors as members. Two third of the members of audit committee shall be independent directors.
- Majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.
- The Chairman of the Audit Committee shall be an independent director.

- The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries.
- The Audit Committee at its discretion shall invite the finance director or the head of the finance function to be present at the meetings of the committee, but on occasions it may also meet without presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee.
- The Company Secretary shall act as the secretary to the committee.

a) Meeting of Audit Committee

The Audit Committee shall meet at least four times in a year and not more than 120 days shall elapse between two meetings. The quorum shall be either two members or one-third of the members of the audit committee, whichever is greater, but there should be a minimum of two Independent Directors present.

b) Power of Audit Committee

The Audit Committee shall have powers, which should include the following:

- To investigate any activity within its terms of reference.
- To seek information from any employee.
- To obtain outside legal or other professional advice.
- To secure attendance of outsiders with relevant expertise, if it considers necessary.

c) Role of Audit Committee

The role of the Audit Committee shall include the following:

- Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
- Recommendation for appointment, remuneration and the terms of appointment of auditors of the company.
- Approval of payment to statutory auditors for any other services rendered by the statutory auditors.
- Reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:
  - Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (c) of sub-section 3 of section 134 of the Companies Act 2013.
  - Changes, if any, in accounting policies and practices and reasons for the same.
  - Major accounting entries involving estimates based on the exercise of judgement by management.

- Significant adjustments made in the financial statements arising out of audit findings.
- Compliance with listing and other legal requirements relating to financial statements.
- Disclosure of any related party transactions.
- Modified opinions in the draft audit report.

· Reviewing, with the management, the quarterly financial statements before submission to the board for approval.

· Reviewing, with the management, the statement of uses/application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and the report submitted by the monitoring agency monitoring the utilization of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take steps in this matter. Review and monitor the auditor's independence and performance, and effectiveness of audit process.

· Approval or any subsequent modification of transactions of the company with related parties.

· Scrutiny of inter-corporate loans and investments.

· Valuation of undertakings or assets of the company, wherever it is necessary.

· Evaluation of internal financial controls and risk management systems.

· Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.

· Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.

· Discussion with internal auditors of any significant findings and follow up there on.

· Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.

· Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.

· To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non- payment of declared dividends) and creditors.

· To review the functioning of the Whistle Blower mechanism.

· Approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience and background, etc., of the candidate.

· Carrying out any other function as is mentioned in the terms of reference of the audit Committee.

The Audit Committee shall mandatorily review the following information:

- Management discussion and analysis of financial condition and results of operations.
- Statement of significant related party transactions (as defined by the Audit Committee), submitted by management.
- Management letters/letters of internal control weaknesses issued by the statutory auditors.
- Internal audit reports relating to internal control weaknesses, and
- The appointment, removal and terms of remuneration of the Chief Internal auditor shall be subject to review by the Audit Committee.
- Statement of deviations:
  - quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1) of SEBI (LODR) Regulations, 2015.
  - annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7) of SEBI(LODR) Regulations, 2015.
- The audit committee members would need to review the utilisation of loans and/or advances from/investment by the holding company in the subsidiary exceeding Rs 100 crore or 10 per cent of the asset size of the subsidiary, whichever is lower. The thresholds would include existing loans/advances/investments existing as on 1 April 2019 (the date when this provision comes into force) (SEBI(Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018

4.3 Nomination & Remuneration Committee

a) **Applicability:** The Nomination and Remuneration Committee is applicable to the following classes of Companies:

- Every listed Company
- Every other Public company-

o Having Paid up share capital of Rs.10 crores or more; or

o Having turnover of Rs. 100 crores or more

o Which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crores.

b) **Composition:** Three or more non-executive directors out of which not less than one-half shall be independent directors. The Chairperson of the company (whether executive or non-executive) may be appointed as a member of this committee but shall not chair such committee. The Chairman of this Committee shall be an Independent Director.

c) Quorum for Nomination and Remuneration Committee meetings:

- The quorum would be either two members or one-third of the members of the committee,

whichever is greater, with at least one independent director. The committee would be required to necessarily meet at least once in a year.

(SEBI(Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018 – Effective from April 1, 2019.

d) Duties:

· To identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance. Sebi LODR Amendment Regulations has amended the definition of senior management. The persons in senior management would include all members of management one level below the CEO/MD/whole-time director/manager (including CEO/manager, in case CEO/manager is not part of the board) and should specifically include the company secretary and the Chief Financial Officer (CFO). Further, it has been clarified that administrative staff would not be included. (Effective From April 1, 2019)

· Recommend the remuneration payable to the senior management. (Effective From April 1, 2019)

· To formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

· While formulating the policy, ensure that—

o the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;

o relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

o remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

Such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy if any shall be disclosed in the Board's report.

· Devising a policy on Board Diversity.

· Whether to extend or continue the term of appointment of Independent directors on the basis of Report of performance evaluation of Independent directors.

· The Chairman of Nomination & Remuneration Committee should be present at the AGM to

answer the Shareholder's queries. However, it would be upto the Chairman to decide who should answer the queries. (Section 178 of Companies Act, 2013 and Regulation 19 of SEBI (LODR) Regulations, 2015 refers)

4.4 Stakeholders Relationship Committee

a) Applicability- The Board of Directors of a company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year, shall constitute a stakeholders relationship committee.

b) Composition-

· Stakeholders Relationship Committee would comprise of such member as decided by the Board and the chairperson shall be a non-executive director.

· Listed company falling under the above ambit would have at least three directors as members, with at least one being an independent director w.e.f. April 1 2019. (SEBI LODR (Amendments) Regulations 2018 refers).

c) Minimum number of Committee meetings

· The committee would be required to necessarily meet at least once in a year.

d) Duties –

· Look into the mechanism of redressal of grievances of security holders of the company.

· Consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends. (Section 178 of Companies Act, 2013 and Regulation 20 of SEBI (LODR) Regulations, 2015 refers)

· Review measures taken for effective exercise of voting rights by shareholders.

· Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the registrar and share transfer agent.

· Review various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the security shareholders of the entity.

· the chairperson of the SRC should be present in the Annual General Meeting (AGM) to answer queries of the security holders.

4.5 Strategy Planning Committee

a) **Composition** – Some companies may have dedicated Strategy Planning Committee whose composition will be as decided by the board.

b) **Duties** –

· To recommend to the board the strategic roadmap of the company keeping in view the long term sustainability and growth of the company.

- To do perspective planning for the next 5 to 10 years highlighting goals to be achieved with emphasis on key enablers to support growth, organisation structure, manpower planning, financial resources required, technology, mergers, acquisitions and divestitures
- To recommend to the Board yearly implementation plans with specific targets and growth plans.

4.6 Risk Management Committee

- The board of directors shall constitute a Risk Management Committee.
- SEBI (LODR) Regulations requires the constitution of a Risk Management Committee by top 500 listed entities, determined on the basis of market capitalisation which is soon going to be made applicable to top 500 listed entities with effect from April 1, 2019.
- The majority of members of Risk Management Committee shall consist of members of the board of directors.
- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. The role of the committee would specifically include cyber security.
- The committee would be required to necessarily meet at least once in a year.

4.7 CSR Committee

a) **Composition** – Every company having net worth of Rs.500 Crore or more or turnover of Rs. 1000 Crore or more or a net profit of Rs. 5 Crore or more during the immediately preceding financial year shall have a CSR committee consisting of 3 or more directors out of which at least one will be an independent director.

b) **Duties** –

- Formulate and recommend to the Board a CSR policy indicating activities to be undertaken by the company as specified in Schedule VII.
- Recommend amount of expenditure and budgeting.
- Monitor CSR policy of the company from time to time.
- CSR policy to be included in the annual report and displayed on company's website. Board to ensure that the activities, as are included in CSR policy of the company, are undertaken by the company.
- The Board shall ensure that company spends, in every financial year, at least 2% of average net profits of the company made during the three immediately preceding financial years. If not spent, reasons to be reflected in the annual report. Provided that the company shall give preference to the local areas around it, where it operates for spending the amount earmarked for

CSR activities.

c) **Activities**:-

As per Schedule VII, Activities to be included by companies in their CSR policies:

i. Eradicating hunger, poverty and malnutrition, promoting preventive healthcare and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;

ii. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and differently abled and livelihood enhancement projects;

iii. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

iv. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga;

v. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

vi. Measures for the benefit of armed forces veterans, war widows and their dependents;

vii. Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports;

viii. Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Schedule Castes, the Schedule Tribes, other backward classes, minorities and women;

ix. Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;

x. Rural development projects;

xi. Slum area development.

(Section 135 read with Schedule VII of the Companies Act, 2013 refers)

Committees mandatorily to be constituted under the Companies Act, 2013

Particulars	Audit Committee	Nomination and Remuneration Committee	Stakeholder Relationship Committee	Risk Management Committee
Applicability	All listed entities & Every other Public company- *Having Paid up share capital of Rs.10 crores or more; or *Having turnover of Rs. 100 crores or more *Which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crores	All listed entities & Every other Public company- *Having Paid up share capital of Rs.10 crores or more; or *Having turnover of Rs. 100 crores or more *Which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crores	A company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year	Top 500 listed entities
Min no. of directors	Atleast 3	Atleast 3	Atleast 3	Atleast 3
Kind of Directors (Executive/ Non executive)	Both (E and Ne)	Only NE	Both (E and Ne)	Both (E and Ne)
No. of Independent Directors required	Atleast 2/3rd of members shall be independent directors	Atleast 50 % shall be independent directors	No such criteria and condition is essential	No such criteria and condition is essential
Chairman (CP)	CP shall be independent	CP shall be independent and Cp of the committee shall not be the Cp of the company	CP shall be a non executive director and may or may not be an independent director	CP shall be the member of the Board of Directors and senior executives may be the members of the committee
Presence at AGM	CP of the committee shall be present at the AGM	CP may be present at the AGM	No such criteria or essential condition	No such criteria or essential condition

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Chapter - 5

CORPORATE DIRECTORS

5.1 Director's Definition

A Director can be defined as 'a person acting as a directing will and mind of the Company to control, manage and govern its affairs in a prudential manner, whether appointed on the Board of a company or not.' This definition recognises the role of a director while accepting that he holds a central position in the company. It does not matter whether he is on the Board of a company or not. It takes into account the fact that a director is obliged to act in a righteous manner. The task of governance of the company is in the hands of directors collectively.

5.2 Classes of Directors

A) Independent Director

Independent Directors as the name suggests are directors on Board of a company who are independent individuals, not having any other relationship or transaction with the company.

As per Section 149 of the Companies Act, 2013, an Independent Director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director.-

a) A person of integrity & possesses relevant expertise and experience.

b) i) Who is or was not a promoter of the company or its holding, subsidiary or associate company.

ii) Who is not related to promoter or director in the company, its holding subsidiary or associate company.

c) Who has or had no pecuniary relationship (other than remuneration as such director or having transaction not exceeding ten percent of his total income or such amount as may be prescribed)with the company, its holding, subsidiary, associate company or their promoters or directors during the two immediately preceding financial years or during the current financial year.

d) None of whose relatives

i. Is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year.

Provided that the relative may hold security or interest in the company of the face value not exceeding fifty lakh rupees or 2 percent of the paid up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

ii. Is indebted to the company, its holding, subsidiary or associate company or their promoters,

in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial years

iii. has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

iv. Has any other pecuniary transaction or relationship with the company, its holding, subsidiary or associate company amounting to two percent or more of its gross turnover or total income singly or in combination with the transactions referred in sub clause i, ii, iii

e) Who neither himself, nor any of his relatives:

- Holds or has held the position of a key managerial personnel or is or has been an employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, or

  (Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years)

- is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of :
  - A firm of auditors or company secretaries in practice or cost auditors of the company or its holding subsidiary or associate company, or
  - Any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to10% or more of the gross turnover of such firm.
- Holds together with his relatives 2% or more of the total voting power of the company, or
- Is the CEO or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts or corpus from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company, or
- Who possesses such other qualification as may be prescribed.

f) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the above criteria.

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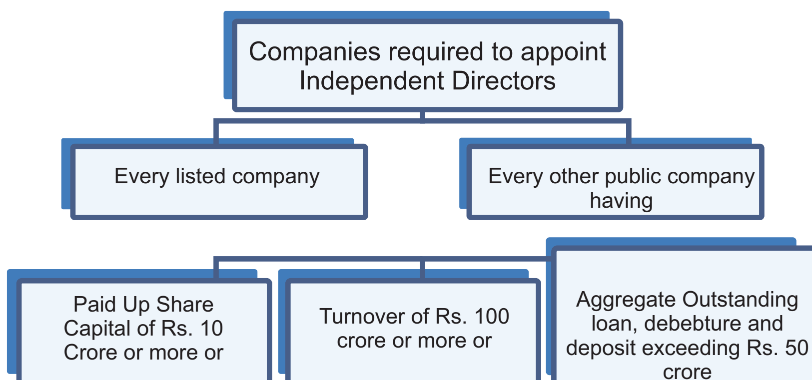


Figure 5.1: Applicability to Companies to Appoint ID

However the following class of unlisted public companies are not required to appoint independent directors:

- A joint venture
- wholly owned subsidiary
- Dormant company

B) Women Director

The following class of companies shall appoint at least one woman director

a) Every Listed Company

b) Every other public company having

   i) paid up share capital of one hundred crore rupees or more; or

   ii) turnover of three hundred crore rupees or more.

c) Any intermittent vacancy of a woman director shall be filled up by the Board at the earliest, but not later than immediate next board meeting or within 3 months from the date of such vacancy, whichever is later.

d) Top 500 listed entities and top 1000 listed entities from April 1,2019 and April 1, 2020 respectively would be required to appoint at least one woman independent director on their Board. (SEBI(Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018)

C) Nominee Director

Section 149(7) of the Companies Act, 2013, defines "Nominee Director". Nominee Director means 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 any Government or any other person to represent its interests.

These institutions/banks etc. also insist on borrowing companies to alter their articles of association so as to empower them to appoint and terminate the services of their nominee directors on the Board of the company as and when they like. These directors are known as nominee directors. They are not liable to retire by rotation and hold office at the pleasure of their nominating agencies. They cannot be removed by the company.

In simple words, person who acts as a non-executive director on the board of directors of a firm, on behalf of another person or firm such as a bank, investor, or lender is known as a Nominee Director. Typically there is no shareholding requirement for the nominee director but, if the bylaws of a firm impose a share qualification, he or she must obtain them within the specified period.

D) Managing Director

A managing director is the one who is responsible for overall management and operation of the company. The Companies Act, 2013 has entrusted the person at the position of the managing director with the substantial powers of the management of the affairs of the Company. A managing director falls within the category of an executive director. He is considered as the Key Managerial Person under the Act.

E) Whole-Time Director

Companies Act, 2013 inclusively defines the term 'whole-time director'. It includes a director in the whole-time employment of the company. Whole-time director is also an executive director. A whole-time director looks after the functional areas of the company's management. A company can have more than one whole-time director. The whole-time director is also considered as one of the Key Managerial Persons under the Companies Act, 2013.

5.3 Director Identification Number (DIN)

The Companies Act, 2013 mandates that every person to be appointed as a director in any company must have a DIN. A person cannot be appointed as a director in the company unless he has a Director Identification Number (DIN). The DIN is allotted within an outer limit of one month of making the application electronically in Form DIR-3. For making an application for allotment of DIN, the person is required to obtain Digital Signature Certificate (DSC) as the electronic form is to be signed using DSC. A person requires one DIN for all companies in which he is a director or intends to become a director in the future. It is not company specific but individual specific. DIN, being a unique number is valid for a lifetime of the applicant.

[Section 154 and Companies (Appointment and Qualification of Directors) Rules, 2014 refers]

5.4 Appointment

a) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an

individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member.

b) Every director shall be appointed by the company in general meeting

c) No person shall be appointed as a director of a company unless he has been allotted the Director

Identification Number under section 154 [or any other number as may be prescribed under section 153.]

d) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number 7[or such other number as may be prescribed under section 153] and a declaration that he is not disqualified to become a director under the Act

e) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment.

f) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be person whose period of office is liable to determination by retirement of directors by rotation. The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

At every subsequent annual general meeting after first AGM, one-third of rotational directors for the time being as are liable to retire by rotation. If their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Explanation.—For the purposes of this sub-section, “total number of directors” shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

g) (i) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

(ii) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be

deemed to have been re-appointed at the adjourned meeting, unless—

- at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
- the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;
- he is not qualified or is disqualified for appointment;
- a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
- section 162 is applicable to the case.

5.5 Disqualification

Directors hold a very responsible position in the Company. Hence the Companies Act, 2013 prescribes the disqualifications for the appointment of directors. These are couched negatively to indicate that the person is eligible to be appointed as a director, if he does not meet them.

As per Section 164 of the Companies Act, 2013, A person shall not be eligible for appointment as a director of a company, if -

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence

Provided that if a person has been convicted of any offence and sentenced imprisonment for 7 years or more, he shall not be eligible to be appointed as a director in any company.

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of section 152.

Further as per Section 164(2)- No person who is or has been a director of a Company which-

· has not filed financial statements or annual returns for any continuous period of three financial years; or

- has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

The disqualification under sub section (2) shall not incur for a period of six months from the date of appointment of such director.

5.6 Induction of Directors

A director's liabilities begin the day they're appointed. So the sooner we can get a director up to speed, in terms of knowing the business and their duties and responsibilities, the better. The objective of induction is to provide a new director with the information he or she will need to become as effective as possible in their role within the shortest practicable time. The induction process should aim to achieve three things, and these remain relevant today:

a) Build an understanding of the nature of the company, its business and the markets in which it operates.

b) Build a link with the company's people.

c) Build an understanding of the company's main relationships.

It also provides an understanding of (i) the role of a director and (ii) the framework within which the board operates.

Desirable Characteristics of Induction Processes

- An effective induction process has a number of characteristics. These include:
- The formal introduction of newly appointed directors to their position by the Chair and, if appropriate (e.g. for a government body) the appointing authority.
- The clear statement of the expectations for, and the responsibilities of, new members.
- The specification of personal accountability – for example, to establish the basis for performance review.
- The deliberate, systematic and rapid familiarisation of new members with the organisation and the operations of the board (including a briefing by the chief executive, the provision of appropriate supporting documentation and the assignment of another director to act as guide or mentor).
- The adoption of processes that acknowledge the whole board is in a new space and must consider how best to interact with, and use, the talent of new board members.

Carried out well a good induction process ensures that:

- new members are assisted to make an effective contribution almost immediately by recognising the value of a new member's 'intelligent naivety';

· the capability and dynamics of the newly reconstituted boardroom team is explicitly addressed and enhanced; and

· the board, as a whole, is stimulated to review its assumptions and positions on key issues and processes

5.7 Remuneration for Directors

a) All directors, executives and Non –executives should be adequately compensated for their time and effort.

b) Nomination and remuneration committee works out the remuneration for all executive and non –executive Directors and is approved by Board and shareholders.

c) Total managerial remuneration payable by a public company , to its directors including MD and whole time directors and its manager in respect of any financial year, shall not exceed 11% of the net profit of the company. The company in general meeting may authorise the payment of remuneration exceeding eleven per cent of the net profits of the company subject to the passing of special resolution in general meeting.

d) Except with the approval of the company by a special resolution:

i. Remuneration payable to any one managing director or whole time director or manager shall not exceed 5 % of the net profits of the company.

ii. If there is more than one such director, remuneration will not exceed 10% of the net profits to all such directors and manager taken together.

iii. Remuneration payable to directors, who are neither managing directors or whole time directors shall not exceed:

- 1% of the net profits of the company, if there is a managing or whole time director or manager
- 3% of the net profits in any other case.

Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non -convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

The percentage aforesaid shall be exclusive of the sitting fees payable to directors for attending meetings of the Board or Committee thereof.

e) If in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager by way of remuneration any sum exclusive of any fees payable to directors except in accordance with the provisions of Schedule V.

f) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in

excess of the limit prescribed by this section or without approval required under section 197, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company. The company shall not waive the recovery of any sum refundable to it unless approved by the company by special resolution within two years from the date the sum becomes refundable. However, where the company has defaulted in payment of dues to any bank or public financial institution or non convertible debentures holders or any other secured creditor, the prior approval of the bank or public financial institution concerned, as the case may be, shall be obtained by the company before obtaining approval of such waiver.

g) Sitting fees payable to a director for attending Board or committee meeting shall not exceed Rs. One lakh per meeting, provided that for Independent Directors and women directors, the sitting fees shall not be less than the sitting fee payable to other directors.

h) Independent Directors will be entitled to stock options.

I) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

j) Remuneration payable by companies having no profits or inadequate profit without Central Government approval:

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, pay remuneration to the managerial person not exceeding the limits under (A) and (B) given below:

(A)

Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(I) Negative or less than 5 crores	60 lakhs
(ii) 5 crores and above but less than 100 crores	84 lakhs
(iii) 100 crores and above but less than 250 crores	120 lakhs
(iv) 250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

Explanation- It is hereby clarified that for a period less than one year, the limit shall be pro- rated.

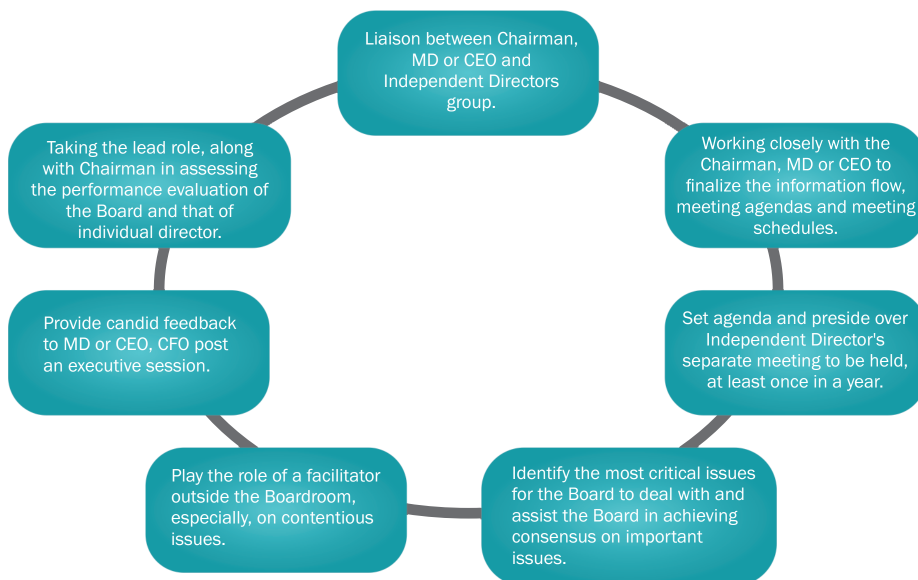
(B) In case of a managerial person who is functioning in a professional capacity, remuneration as per item (A) may be paid, if such managerial person is not having any interest in the capital of the

company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any, direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates.

Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company;

(Section 197, Chapter XIII, Companies Act, 2013, Schedule V, Part II (Sec I, II, III), Rule 4 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014)

5.8 Role of Lead Independent Director



Independent Directors' Separate Meeting

a) Independent Directors shall hold at least one meeting in a financial year without attendance of non-independent directors and members of management.

b) All independent directors will strive to be present at such meeting.

c) The meeting shall:

   i. Review performance of non-independent directors and the Board as a whole (Not applicable to Government Company)

   ii. Review performance of the Chairperson of the company, taking into account the views of executive and non-executive directors (Not applicable to Government company)

   iii. Assess the quality, quantity and timeliness of flow of information between the management and the board, which is necessary for the board to effectively and reasonably perform their duties.

   Code of Conduct, item VII, section 149 (8), Chapter XI of Companies Act, 2013 and Regulations 25 (4) of SEBI (LODR) Regulations, 2015 refers).

5.9 Vacation, Resignation and Removal

Vacation of director

As per Section 167 of the Companies Act, 2013, the office of a director shall become vacant in case—

- He incurs any of the disqualifications specified in section 164 of the Companies Act, 2013;
- He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested under section 184
- He becomes disqualified by an order of a court or the Tribunal;
- He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months;
- he is removed in pursuance of the provisions of this Act;
- he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified above.

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Where all the directors of a company vacate their offices under any of the disqualifications specified

above, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

Resignation of Director

As per Section 168 of the Companies Act, 2013, a director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice take note of the same and within 30 days intimate the Registrar in Form DIR-12 and also place the fact of such resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website. The director may also forward a copy of resignation along with detailed reasons for the resignation to the Registrar in Form DIR-11 within 30 days from the date of resignation. The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

Where all the directors of a company resign from their offices, or vacate their offices, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

Removal of Director

As per Section 169 of the Companies Act, 2013, a company may by ordinary resolution remove a director before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

A special notice shall be required of any resolution, to remove a director, or to appoint somebody in place of a director so removed. On receipt of notice of a resolution to remove a director, the company shall immediately send a copy thereof to the director concerned, and the director shall be entitled to be heard on the resolution at the meeting. The director concerned may make representation in writing to the company.

A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given. The director who was removed from office shall not be re-appointed as a director by the Board of Directors.

5.10 Safety Net

The Directors must build a safety net around them for protection. The safety net is a conscious effort on the part of directors to protect themselves from the legal penalties and liabilities under the Companies Act,2013 and other statues. The safety net is essentially an attempt to save the directors from unsolicited troubles. The safety net may work towards protecting the directors from the acts of omissions or commissions for which they are not party or have no role to play.

Safety Net may work towards protecting the directors to the maximum extent if it is carefully built.

Creating the safety net is not hard but it requires understanding of the framework of corporate governance within which the company functions.

The top 500 listed entities shall undertake Directors and Officers insurance (D and O insurance) for all independent directors of such quantum and for such risks as may be determined by its board of directors.

The steps in building safety net may vary from company to company but the following steps will remain common in most of the circumstances:

1. A director must obtain a copy of the Memorandum of Association (MOA) and Articles of Association (AOA) of the company of which he is a director or he is becoming a director.
2. A director must also gain knowledge about the entrenched provisions in the AOA.
3. A director must acquaint himself with the business of the company, its products or services, competitors and general industry terms attached with it.
4. A director must increase his knowledge about the provisions of the governing Act, Rules and Regulations.
5. A director must keep in his library a copy of the 2013 Act and other related Acts majorly applicable to the company.
6. A director, by virtue of his office, becomes an officer of the company and he may be regarded as an 'officer in default'. An ordinary director must ensure that he is not regarded as an 'officer in default'.
7. A director must insist on circulation of draft minutes of all Board Meetings or Committee Meetings, of which he is a part, prior tpo appending of signatures by the Chairman.
8. The draft minutes circulated by the company must be studied carefully and objections must be raised if the minutes do not record the proceedings correctly.
9. The Chairman enjoys absolute discretion regarding inclusion or non-inclusion if any matter is or could reasonably be regarded as defamatory of any person, or is irrelevant to the proceedings.
10. A director must raise a dissent to nay decision taken in a Board meeting, which is not in the interest of the company or stakeholders.
11. A director must keep in his records copies of notices of board meetings, agenda circulated and the minutes of each board or committee meeting.
12. A director must keep a track record of his relatives as the relatives play a major role in determination of conflict of interest of the director and the company.
13. A Director must pay attention to following provisions:
    - Filling of financial statements of the company with the Registrar of companies.
    - Filing of annual return with the Registrar of Companies.

- Repayment of deposits and interest due thereon.
- Redemption of debentures and payment of interest thereon.
- Payment of declared dividend.

14. A director should not absent himself from attending the board meetings held during a period of twelve months.
15. A director who resigns must inform the company in writing and simultaneously, he may inform to the Registrar of Companies within 30 days.
16. A director must take all precautions to ensure that prospectus, if issued by the company, does not contain any misstatement as serious consequences flow from non-compliance.
17. Non-compliance of provisions of laws of the country may have serious consequences.
18. An ordinary director signing cheques on behalf of the company may be deemed to be looking after day-to-day affairs of the company. The ordinary director, unless he is ready to assume liability, should refrain from signing cheques or regular communication on behalf of the company.
19. The duties of a director enshrined under section 166 of the 2013 act must be followed by the directors without fail.
20. The executive directors appointed by the company must obtain specific letter from the company delineating their role and responsibility in the company's management.
21. A director is entitled to inspect the books of account and other documents and records of the company.
22. A director must pay attention to financial implications of proposals placed before the Board of directors for approval.
23. The loan and investment transactions must be carefully evaluated by the directors.
24. The directors must work on ensuring that the company has proper internal controls or a robust system of internal audit.
25. The directors must not assign his office as a director. He should not disclose the information obtained by him about the company in a board meeting or otherwise to any person

■

Chapter - 6

CORPORATE GOVERNANCE PROCEDURES

6.1 General Meetings

General meetings under the Companies Act, 2013 may be classified as Annual General Meeting and Extraordinary General Meetings. A general meeting has to be convened by or on the authority of the Board. The board convenes or authorises convening of a meeting of its members every year called the Annual General Meeting to transact items of ordinary business specifically required to be transacted at an Annual General Meeting as well as special business, if any. Similarly, the Board may also, whenever it deems fit, call an extra-ordinary general meeting of the company.

Annual General Meeting

Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting. The gap between the date of one annual general meeting of a company and that of the next must not be more than fifteen months. In case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year. If a company holds its first Annual General meeting as provided above, it shall not be necessary for the company to hold any Annual General Meeting in the year of its incorporation.

Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Provided the annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all members in advance.

(Section 96 of the Companies Act, 2013 refers)

Report on Annual General Meeting

Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made there under.

Details of the Report:

S.NO.	DESCRIPTION
1.	the day, date, hour and venue of the annual general meeting
2.	confirmation with respect to appointment of Chairman of the meeting

3.	number of members attending the meeting
4.	confirmation of quorum
5.	confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting
6.	business transacted at the meeting and result thereof
7.	particulars with respect to any adjournment, postponement of meeting, change invenue
8.	any other points relevant for inclusion in the report

The Report shall contain fair and correct summary of the proceedings of the meeting.

Filing of Report:

The copy of the report shall be filed with the Registrar in Form No. MGT.15 within 30 days of the conclusion of the annual general meeting along with the fee.

Extraordinary General Meeting

Under the Companies Act, 2013, any general meeting other than Annual general Meeting is known as Extraordinary General Meeting. All businesses transacted at Extraordinary General Meeting are considered as Special Business.

The Board may, whenever it deems fit, call an extraordinary general meeting of the company. The Board shall, on the requisition of members who hold, as on the date of the receipt of a valid requisition:

a) in the case of a company having a share capital, not less than one-tenth of such of the paid-up share capital of the company carrying voting rights; or

b) in the case of a company not having a share capital, not less than one-tenth of the total voting power of the company, call an Extra-ordinary General Meeting of the Company.

If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition in the same manner in which the meeting is called and held by the Board.

(Section 100 of the Companies Act, 2013 refers)

Notice of General Meeting

A General Meeting of a company may be called by giving not less than twenty-one days' notice either in writing or through electronic mode in such manner as is prescribed in the Companies

(Management and Administration) Rules, 2014 and the Secretarial Standards- 2 as prescribed by the Institute of Company Secretaries of India.

For the purpose of reckoning twenty-one days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted. The meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five percent of the members entitled to vote at such meeting.

Form of Notice

The Notice should be in writing, though no form has been prescribed for this purpose. Notice for convening the general meeting can be sent through electronic mode as well. Oral intimation that it is proposed to have a general meeting is not a Notice at all and consequently if any Meeting is held, it will be invalid.

Persons entitled to Notice

In terms of sub-section (3) of Section 101 of the Companies Act, 2013, Notice of every Meeting of the company should be given to –

a) every Member of the company, legal representative of any deceased Member or the assignee of an insolvent Member;

b) the Auditor or Auditors of the company; and

c) Every Director of the company.

(Section 101 of the Companies Act, 2013 and Secretarial Standards-2 issued by the Institute of Company Secretaries of India refers)

Quorum

As per the section 103 of the Companies Act, 2013, the graded requirements of quorum depend upon the number of shareholders. The Quorum requirement under section 103 of the Companies Act, 2013 is:

a) five members personally present, if the number of shareholders as on the date of the general meeting is less than one thousand.

b) fifteen members personally present, if the number of members of the company as on the date of the general meeting is between one thousand to five thousand.

c) And thirty members personally present in case the number of members is more than five thousand.

In case of a private company however, the quorum requirement is the same i.e. two members personally present.

Further if the quorum is not present within half an hour of the appointed time, then the meeting shall be adjourned to the same day next week at the same time and place or such other time and place as the

Board may determine. If the meeting is called by requisitionists under section 100 of the 2013 Act, it shall stand cancelled. If at the adjourned meeting also quorum is not present within half an hour of the appointed time, then members present shall be quorum.

Proxies shall be excluded for determining the Quorum, however authorised representative of a body corporate is counted towards quorum. Members who have voted by remote e-voting have the right to attend the General Meeting and accordingly their presence shall be counted for the purpose of

Voting

"Voting Rights" means the right of a member to vote in any matter at a meeting of members or by means of e-voting or postal or physical ballot."

The various modes through which a shareholder can cast his vote are mentioned below:-

· By Attending the General Meeting:-

1. Show of Hands

As per Section 107 of the Companies Act, 2013, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 of the Companies Act, 2013 or the voting is carried out electronically, be decided on a show of hands.

2. Poll

As per Section 109 of the Companies Act, 2013, a poll may be demanded by such number of members holding, shares worth minimum value of Rs. Five Lakh or 10% voting power in the Company. It has been clarified by the circular that since these companies are mandatorily required to provide e-voting facility to its shareholders where the Principle of "One share – One vote" is recognized, therefore the meeting should be regulated accordingly by the Chairman.

3. By Voting Electronically:-

As per Section 108 of the Companies Act, 2013, read with rule 20 of the Companies (Management and Administration) Rules, 2014, every listed company and companies having more than one thousand shareholders are required to give e-voting option to their shareholders.

4. Postal Ballot

"Postal ballot" includes voting by shareholders by postal or electronic mode instead of voting personally by presenting for transacting business in a general meeting of the company.

A company

· Shall, in respect of such item of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

· May, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting,

Transact by means of postal ballot.

Lists of specified business to be transacted only through postal ballot process:-

1. Alteration of the objects clause/ main objects (in the case of company in existence immediately before the commencement of new Act) of the memorandum;
2. Alteration of articles of association in relation to insertion or removal of provisions which, under Section 2(68), are required to be included in the articles of a company in order to constitute it a private company;
3. Change in place of registered office outside the local limits of any city, town or village as specified in Section 12(5);
4. Giving loans or extending guarantee or providing security in excess of the limit prescribed under Section 186(3);
5. Issue of shares with differential rights as to voting or dividend or otherwise under Section 43(a)(ii);
6. Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
7. Buy-back of shares by a company under Section 68(1);
8. Election of a director under section 151 of the Act;
9. Sale of the whole or substantially the whole of an undertaking of a company as specified under Section 180(1)(a);
10. Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under Section 13(8)

Minutes of the proceedings of General Meetings

Every company shall keep Minutes of all Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

The minutes of the proceedings of every general meeting is to be prepared and signed in such manner as is prescribed under Rule 25 of the Companies (Management and Administration) Rules, 2014. The minutes should be kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by the Postal Ballot in books kept for that purpose with their pages consecutively numbered.

The Chairman of the meetings has the power to exclude any matter in the minutes, which in his opinion-

a) Is or could reasonably be regarded as defamatory of any person; or

b) Is irrelevant or immaterial to the proceedings;

c) Is detrimental to the interests of the company.

Procedure of maintenance of Minutes:

· Minutes shall be recorded in books maintained for that purpose.

· A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees.

· Minutes in electronic form shall be maintained with Timestamp.

· A company may maintain its Minutes in physical or in electronic form with Timestamp.

· Every company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorized by the Board.

6.2 Corporate Finance

6.2.1 Financial Controls

Financial control can be defined as "Management control (as exercised in planning, performance evaluation, and coordination) of financial activities aimed at achieving desired return on investment. Managers use financial statements (a budget being the primary one), operating ratios, and other financial tools to exercise financial control."

This segment briefly touches upon some aspects of control processes used by board to manage business. These are –

- Use of Management Information System (MIS) Reports and
- Audits (Internal and External).

Defining MIS report framework:

Budgeting process is important tool to set the culture and goal orientation of an organisation. Equally important is clear definition from the Board of the process of budgetary reviews. As a part of the budgeting exercise the Board should also:

- Set expectations and provide directions to management on:

• The content of MIS reports to be part of their briefing papers.

• The format of MIS reports to be part of their briefing papers.

• The timing and timeliness of board papers (also called board packs).

• The amount of information provided (level of drill down – by units, divisions, locations or similar structures).

• Ensure it has sufficient information with which to make decisions.

• Ensure management has in place the processes and controls to ensure the integrity of the information provided.

• Set KPIs for management to report against.

It needs to be noted that there are digital tools available to disseminate and control circulation of board packs.

- It would be useful to ensure that while setting up expectations from operating management specific mention is made to avoid the common mistakes. Some common mistakes management makes when putting together the board pack are:
  - Too much data in board papers resulting in loss of emphasis on critical areas.
  - A heavy emphasis on financial and operational materials. The board needs to differentiate between governing and managing.
  - Ignoring trade-off between Timeliness and Completeness. Too often Boards insist on complete information which requires detailed compilation exercise. This results in longer time frames for reporting to be generated. Such time elapse reduces the efficacy of the Board. Board needs to differentiate between materiality of information and the resultant level of completeness. An example is detailing prescribed for month end accrual process. Whether board prescribes monthly accrual based on actual bills being received or on past experience would drive the time to completion of reporting.

Complete reliance on management. It is important that Board works with the operating management. However it is equivalently important that there are independent sounding boards available to them. Such independent sounding boards could be from the Audit Firms and independent consultancies (Market, strategy, operational). Such external agencies can be used tactically to support operating team is effective business management.

Directors should ask the following questions about the information they are receiving:

i. Accuracy. Can I trust the data?

ii. Relevance. Does it cover the critical issues?

iii. Timeliness. Is it sufficiently up to date?

iv. Clarity. Is it presented in such a way that I can digest it quickly?

v. Risk assessment. Is the information purely historic or does it assess future risks?

vi. Depth. Do I receive only summaries or can I access individual subsidiaries?

Review of financial reports for analysing financial health of a company

Every business has different challenges. Further operating realities and structure are never the same between two businesses. The traditional thumb rules with respect to ideal ratios cannot be used for practical management purposes. Example – Ideal current ratio of 2:1 (prescribed by many books) cannot be applied for banking / financial industry. Further this also cannot be applied to Infrastructure business and IT services company.

Board members have to consider two aspects in the context of financial reporting:

A) How robust is the financial reporting process and viewing the same from context of e-accounting world:

This involves understanding how does financial data get identified, captured, classified and aggregated into the report being presented. A graphical representation of the broad process of compilation of financial reports / statements is presented below:

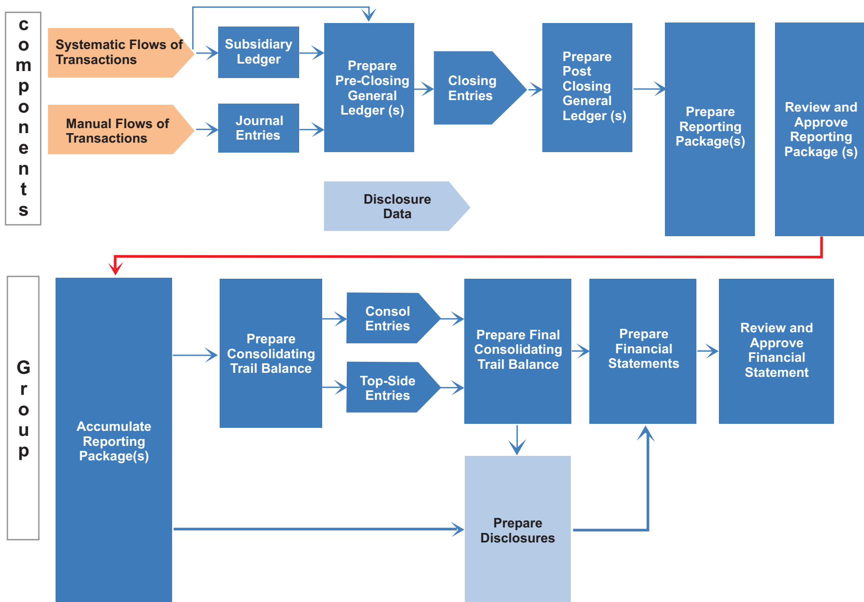


Figure 6.1: Compilation of Financial Statements

As further measure it would be appropriate for board members to be aware about:

i. Understanding the IT application systems and controls over financial reporting process

- The classes of transactions in the company's operations that are significant to the financial statements;
- The procedures, within both automated and manual systems, by which those transactions are initiated, authorized, processed, recorded, and reported
- The related accounting records, supporting information, and specific accounts in the financial statements that are used to initiate, authorize, process, and record transactions;
- How the information system captures events and conditions, other than transactions that are significant to the financial statements; and

- The period-end financial reporting process.

ii. Understanding accounting policies:

- Significant changes in the company's accounting principles, financial reporting policies, or disclosures and the reasons for such changes;
- The financial reporting competencies of personnel involved in selecting and applying significant new or complex accounting principles;
- The accounts or disclosures for which judgement is used in the application of significant accounting principles, especially in determining management's estimates and assumptions;
- The effect of significant accounting principles in controversial or emerging areas for which there is a lack of authoritative guidance or consensus;
- The methods the company uses to account for significant and unusual transactions; and
- Financial reporting standards and laws and regulations that are new to the company, including when and how the company will adopt such requirements.

iii. Understanding the process for recording journal entries

- In understanding and testing the relevant controls over the journal entry process area based, considerations specific to journal entries include the following:
- Segregation of duties (e.g., who prepares, reviews and posts entries);
- The review and approval process, including the purpose of the review (e.g., higher level "reasonableness" review versus a detailed review of the supporting documentation);
- Adequacy of the supporting documentation for the journal entry to enable a reviewer to determine whether the entry is appropriate;
- Competence of the preparer;
- Competence and authority of the reviewer.

iv. Understanding the process for disclosures involving

- Occurrence and rights and obligations — Disclosed events, transactions, and other matters have occurred and pertain to the entity;
- Completeness — All disclosures that should have been included in the Financial Statements have been included;
- Classification and understand ability — financial information is appropriately presented and described, and disclosures are clearly expressed;
- Accuracy and valuation — Financial and other information are disclosed fairly and at appropriate amounts.

B) How financial reports can be used for operational review:

Board members cannot give any prescriptive directions nor can they use any prescribed indicators to

gauge financial health. They would need to be use their awareness of the business and its operating realities. Juxtapose this awareness with their past experience to understand whether the deviations from normal are rationale for the business model being followed by the company.

There are two reports / indicators which Board members can use along with their past experience to form opinion about the financial health of the company.

- Common Size Statements: these are financial statements presented in percentage terms over a 5 to 10 years time horizon. This statement would highlight any material deviations in the operating ratio's of the company and thereby examine the reasons for such deviations. If the business model of a company has been fairly steady then the common size statement should be showing similar numbers through the years.
- Comparative statements: Comparative statements are drawn using the absolute numbers for a period of long time. Alternatively comparative statements can also be drawn using performance of competitors. The operating management can be asked to make notes to explain the differences in performances (ratio's) vis-à-vis competitors. Such explanations would establish a premise for the board members to form an opinion on course correction required, if any.

External and Internal Audits and control

Audit is an important tool to ensure that the operating management has conducted all business within normal norms of business conduct. It also ensures that conflict of interest in any transactions is appropriately addressed. As a corollary for Audit to be effective, it needs to be driven by board members who have no operating positions within the organisation. This would ensure that conflicts do not hamper the quality of Audit. Hence all Audits should be structured as reporting to committee of board which primarily consist of independent / non-executive members (Audit Committee). As a corollary, all appointments of auditors are to be done by the same Committee of Board. Few distinguishing aspects of various audits are presented below:

Statutory Audit

- As name suggest is primarily concerned with whether measurement and disclosures are in alignment with those prescribed.
- Very limited coverage on control and efficiency of operations.

Internal Audit

- Focus on control and efficiency of operations.
- Scope to be defined basis business model, operational structures and control process of organisation. The Board members should look out for existence of deficiencies in the control structure. It is to be noted that depending on severity the deficiencies could be significant material warranting relook at the financial statements. Board members would be well served to take cognizance of the Guidance note on reporting on internal financial controls which takes into consideration the requirement under the Companies Act 2013 while finalizing the scope of the Audits and disclosures related to the same in the balance.

- Co-sourcing is the model that is being increasingly adopted.

Other audits

- ISO – These audits assist in ensuring that standardised processes are in place and that these processes are being adhered too.
- SAS 70 / IT security – In the digital world IT audits have become critical. All important information and processes are IT enabled. Any loss of data or security breach could result in material business losses.

6.2.2 Role of CFO

More than just a glorified bookkeeper (or someone whose long service to the company has been rewarded with a fancy title), an effective CFO plays a number of important roles within the entrepreneurial company that are essential in providing a strong financial foundation for a growing business. Listed below are some of the critical areas in which an effective CFO will work to provide financial support for a company's business objectives.

Implements/Supervises Internal Controls

A CFO is responsible for bringing important financial controls to a company. Those controls should include the effective management of cash flow and overhead expenses, establishing credit policies for customers and working with major vendors to achieve more favourable payment terms, and implementing procedures for measuring and evaluating optimal inventory levels. At a higher level, a CFO should also develop effective controls that provide oversight against fraudulent activities.

Handles Projects with Major Financial Impact

Beyond implementing and monitoring company controls and systems, an effective CFO will also handle those projects that require significant quantitative and qualitative analysis in order to arrive at an understanding of the options that are available. For example, a CFO will take responsibility for developing a company's annual budget, interacting with the business owner and department managers to ensure that the final product accurately and objectively reflects the real requirements of the business. A CFO might also conduct a thorough analysis of a company's future capital investment requirements as a first step in securing additional financing.

Cultivates Relationships with Outside Financing Sources

A major responsibility of an effective CFO is to establish good working relationships with banks as well as other financial institutions that may impact on the company's ability to finance its operations. Activities in this area can include regular meetings with officers at the company's bank to review on-going operations, negotiating more favourable terms for bank lines of credit, and discussions with private investors on how additional capital might be invested in the firm.

Drives Major Strategic Issues

An effective CFO can also be expected to play an important role in addressing major strategic issues that can have an impact on the company's long-term future. Such issues might include the

development of an company acquisition strategy to help fuel additional growth, or the divestiture of particular product lines or business activities that no longer match the company's business objectives. A CFO would also play a key role in any effort to seek investment from the public financial markets or to launch an initial public offering (IPO).

Serves as Key Advisor to Company Management

Finally, an effective CFO is a key member of the management team of a growing entrepreneurial company. Because of his/her financial acumen and general business knowledge, a good CFO will help the business owner and other top executives make the tangible connection between a company's operations and its financial performance.

Figure 6.2: The CFO's Role

6.2.3 International Financial Reporting Standard

International Financial Reporting Standards (IFRS) are a set of international accounting standards stating how particular types of transactions and other events should be reported in financial

statements. IFRS are issued by the International Accounting Standards Board, and they specify exactly how accountants must maintain and report their accounts. IFRS were established in order to have a common accounting language, so business and accounts can be understood from company to company and country to country.

The point of IFRS is to maintain stability and transparency throughout the financial world. This allows businesses and individual investors to make educated financial decisions, as they are able to see exactly what has been happening with a company in which they wish to invest.

Mandatory Applicability

Phase I

Ind AS is mandatorily applicable to the following companies for periods beginning on or after 1 April 2016, with comparatives for the period ending 31 March 2016 or thereafter:

1. Companies whose equity and/or debt securities are listed or are in the process of listing on any stock exchange in India or outside India and having net worth of 500 crore INR or more.
2. Companies having net worth of 500 crore INR or more other than those covered above.
3. Holding, subsidiary, joint venture or associate companies of companies covered above.

Phase II

Ind AS will be mandatorily applicable to the following companies for periods beginning on or after 1 April 2017, with comparatives for the period ending 31 March 2017 or thereafter:

1. Companies whose equity and/or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than rupees 500 Crore.
2. Unlisted companies other than those covered in Phase I and Phase II whose net worth are more than 250 crore INR but less than 500 crore INR.
3. Holding, subsidiary, joint venture or associate companies of above companies.

Applicability to insurance, banking and non-banking financial companies Insurance, banking and non-banking financial companies shall not be required to apply Ind AS either voluntarily or mandatorily. However, it appears (though not clarified), that if these entities are subsidiaries, joint venture or associates of a parent company covered by the roadmap, they will have to report Ind AS adjusted numbers for the parent company to prepare consolidated Ind AS accounts.

6.2.4 Goods and Service Tax (GST)

Introduction

The concept of goods and services tax popularly known as GST will shift and replace the current indirect taxes with single centralized taxation system resulting in a simpler, efficient and effective tax system in the country. The GST will have a 'dual' structure, which means it will have two components- the Central GST and the State GST. They will both have separate powers to legislate and administer their respective taxes, thus equally empowering both. Taxes such as excise duty,

service, central sales tax, VAT (value added tax), entry tax or octroi will all be subsumed by the GST under a single umbrella.

Salient features of proposed GST

Consistent with the federal structure of the country, the GST will have two components: one levied by the Centre (hereinafter referred to as Central GST), and the other levied by the States (hereinafter referred to as State GST). This dual GST model would be implemented through multiple statutes (one for CGST and SGST statute for every State). However, the basic features of law such as chargeability, definition of taxable event and taxable person, measure of levy including valuation provisions, basis of classification etc. would be uniform across these statutes as far as practicable.

- The Central GST and the State GST would be applicable to all transactions of goods and services except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits.
- The administration of the Central GST would be with the Centre and for State GST with the States.
- The taxpayer would need to submit periodical returns to both the Central GST authority and to the concerned State GST authorities.
- Administration of GST will be the responsibility of the GST Council, constituted as per Article 279A of the Constitution of India.
- Keeping in mind the need of taxpayers' convenience, functions such as assessment, enforcement, scrutiny and audit would be undertaken by the authority which is collecting the tax, with information sharing between the Centre and the States.

To the extent feasible, uniform procedure for collection of both Central GST and State GST would be prescribed in the respective legislation for Central GST and State GST.

Impact and relevance of GST

GST is a solution provider by lining up total indirect tax structure of all streams into one single tax payable by the companies. The impact of this will be on the all multinational companies and facilitates for ease of doing business and adds factor to the globalization and liberalization.

6.2.5 Financial stewardship and accountability

Board members specifically carry this fiduciary responsibility for the organisation. They must see to it that managers fulfil all regulatory, legal, and reporting requirements imposed by federal, state, and local governments as well as meeting accounting guidelines and standards. To accomplish all of this requires the organisation to set up a well integrated financial management cycle featuring:

- accurate and dependable accounting
- effective internal controls procedures
- transparent reporting
- informed analysis

· responsible planning

· appropriate responses to its financial data

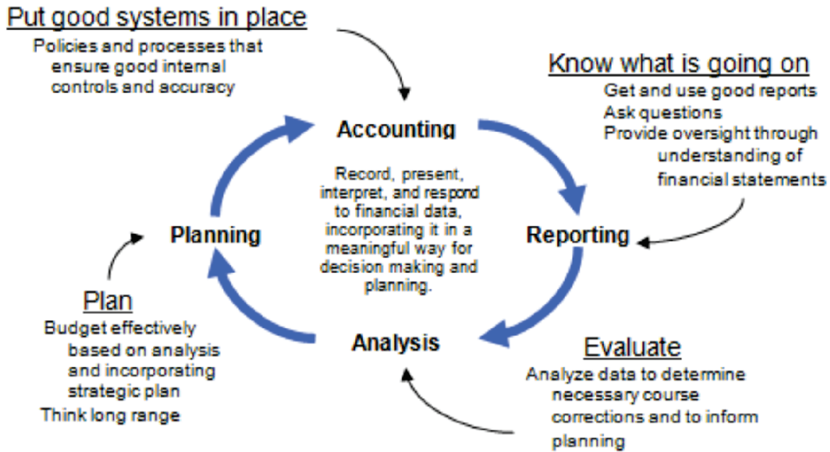


Figure 6.3: Financial stewardship and accountability

Board's Role in Financial Oversight and Stewardship

Broadly speaking, a board of directors' financial oversight duties include:

Establishing Financial Controls: While day-to-day accounting and financial decisions are the responsibility of management, the board must establish the framework in which management operates, creating policies that prevent error and fraud.

Ensuring Compliance With Policies and Procedures: Once financial policies and procedures have been established, the board (or a board committee) must verify that employees and volunteers are complying with these policies and procedures by reviewing regularly conducted reports, as well as the independent auditor's annual letter reviewing management's accounting practices. The board should also periodically review and revise the policies and procedures to ensure that they are effective and up to date.

Budget Approval: An organisation's management is responsible for creating an annual budget, which lays out the organisation's projected income and expenses for the upcoming year and serves as a framework for program management and overall administrative decisions. The board is responsible for reviewing and approving the budget. In its oversight function, the board should examine the budget to ensure that the projected expenses and income are comprehensive and realistic, based on the organisation's prior financial performance and general economic conditions. The board may send the budget back to management for revisions if it determines that changes are

needed.

Ensuring Financial Sustainability:

In addition to verifying that the organisation is meeting its budget targets, the board should look beyond periodic financial reports to consider how the organisation's current financial performance compares with that of previous years, and how its financial future appears. If the organisation's net assets decline over a period of years, or if future funding seems likely to decrease significantly, the board will need to take steps to achieve or maintain the financial stability of the organisation.

6.3 Establishment of Vigil Mechanism (Whistle Blower Policy)

a) Any person who blows a whistle and inform to public or concerned person of any of inappropriate activity going on inside the organization, is a whistle blower. He could be an employee or any person who is insider or outsider of an organization. Anyone can raise a voice if any illegal or inappropriate activity going on inside the organization. If person is an inside whistle-blower than he has to report directly to Chief executive officer or any of concerned authority or if he is an outsider than he must be reported to the media, enforcement agencies of public interest groups.

b) Every listed company and the following class or classes of companies shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances about unethical behaviour, actual or suspected fraud or violation of Company's Code of Conduct or Ethics Policy.

- Companies, which accept deposits from the public;
- Companies, which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

c) The Companies, which are required to constitute an Audit Committee, shall oversee the functioning of the vigil mechanism through the Committee. If any members of the committee have a conflict of interest, they should recuse themselves and other members of the Committee would deal with the matter on hand.

d) In case of other companies, Board of Directors shall nominate a director to play the role of Audit Committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.

e) The vigil mechanism to cater for adequate safeguards against victimization of employees and directors or any other person, who avail of the mechanism. The vigil mechanism is to provide direct access to the Chairperson of the Audit Committee or the Director nominated to play the role of Audit committee, as the case may be, in exceptional cases.

f) In case of repeated frivolous complaints being filed by a director or an employee, the Audit Committee or the director nominated to play the role of audit committee, may take suitable action against the concerned director or employee including reprimand.

g) The details of establishment of such mechanisms shall be disclosed by the company on its

website and in the Board's report.

(Rule 7 of Companies (Meetings of the Board and its Powers) Rules, 2014 and Regulation 22 of SEBI (LODR) Regulations, 2015 refers)

Exercises of whistle blowing in Indian Corporation:

Wipro Limited has adopted an Ombuds process policy wherein it has established procedures for receiving, retaining and treating complaints received, and procedures for the confidential and anonymous submission by employees of complaints regarding possible violations of the code of conduct and ethics. Under this policy, Wipro employees are encouraged to report questionable accounting matters, any reporting of fraudulent financial or other information to the stakeholders, any conduct that results in

violation of the company's code of business conduct and ethics, to management (on an anonymous basis, if employees so desire). Likewise, under this policy, the company has prohibited discrimination, retaliation or harassment of any kind against any employees who, based on the employee's reasonable belief that such conduct or practice have occurred or are occurring, reports that information or participates in the investigation.

Reliance Industries Limited recognizes that issues concerning such breaches can sometimes be extremely sensitive and it's vital to deter employees from open communication on it. Company has also mentioned in their policy without sufficient evidence of misconduct, employee can file report. If any employee has reasons to believe that any employee of Reliance has displayed inconsistent behaviour. Then, he has inform to Ethics office and can handover facts which support to complain. The Ethics office will acknowledge receipt of the report/ complain. The office will investigate the matter and they have right to involve any other investing agency. The investigation will be completed in not more than 90 days. If investigation concluded that it is really breach of code, the ethics office will take immediate action against it. The Ethics Office will maintain a log of all cases whether or not accused found guilty. The log and copies of related documents will be retained in organization for a period of 2 years.

6.4 Protection of Minority Shareholders

Small Shareholder: a shareholder who is holding shares of nominal value of INR 20,000 or such other sum as may be prescribed.

Minority Shareholder: Equity holder of a firm who does not have the voting control of the firm, by virtue of his or her below fifty percent ownership of the firm's equity capital.

Corporate governance is based on majority rule, which although efficient, allows for possible abuse by the majority. The law has therefore provided various methods for the protection of minority shareholders. These methods are highly fact-sensitive and minority shareholders are reminded to choose the correct method for addressing the specific problems they face.

1. Right to appoint a director-

   Small shareholders, upon notice of not less than 1/10th of the total number of such shareholders

or 1000 shareholders, have a small shareholder director elected.

2. Right in decision making and such director appointed shall be considered as independent director.
3. Oppression and mismanagement-

   Right to apply to tribunal by the minority shareholders, when management or control of the company is being conducted in a manner prejudicial to the interests of the class or company.
4. Rights with respect to reconstruction and amalgamation-
   - Purchase of shares of dissenting shareholders at a determined value by the registered valuer.
   - The minority have been given a right to make an offer to the majority shareholders to buy the shares of minority shareholders.
   - The transferor company shall be the agent for making payments to minority shareholders.
5. Class action suit: Class action suit may be filed by the minority shareholders as per the provisions of Companies Act, 2013
6. Appointment of Directors by proportional representation u/s 163 of Companies Act, 2013

6.5 Class Action Suits

Section 245 of the Act empowers member(s), depositor(s) or any class of them are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors to file an application before the Tribunal on behalf of the members or depositors to seek all or any of the following -

a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by misstatement to the members or depositors;
d) to restrain the company and its directors from acting on such resolution;
e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
f) to restrain the company from taking action contrary to any resolution passed by the members;
g) to claim damages or compensation or demand any other suitable action from or against -
   i. the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
   ii. the auditor including audit firm of the company for any improper or misleading statement of

particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or

iii. any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

h) to seek any other remedy as the Tribunal may deem fit.

Who can file Class Action?

Class Action is also called representative action, where one of the parties is a group of people who are represented collectively by a member of that group.

The requisite number of members for filling of Class Action is as under: -

- in the case of a company having a share capital, not less than 100 members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member (s)holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant (s) has paid all calls and other sums due on his or their shares;
- in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

Not less than 100 depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor(s) to whom the company owes such percentage of total deposits of the company, as may be prescribed, can file Class Action before the Tribunal.

What if Class Action is found to be frivolous in nature?

Where any application for Class Action filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

Class Action is a new provision under the Act and still not known to the members and depositors of India Inc. This is provision is widely used in Western Countries. In 2011, Mahindra Satyam had to pay $125 million (about Rs.580 Crore) to its investors abroad, in an out-of-court settlement to end Class Action Suits filed a group of investors, who had lost substantial money after Satyam Computers (then Tech Mahindra) fiasco. In India, Satyam Computer's home country, mutual funds and small investors lost their money, as Class Action provision was not there in the Companies Act, 1956.

6.6 Secretarial Audit for Bigger Companies

What is secretarial audit?

Secretarial Audit is a process to check compliances made by the Company under Corporate Law & other laws, rules, regulations, procedures etc. It is a mechanism to monitor compliance with the

requirements of stated laws and processes. Periodically examination of work is necessary to point out errors & mistakes and to make a robust compliance mechanism system in an organization.

Every company needs to comply hundreds of Laws, rules, regulations. These laws are complex and non-compliances would attract major risk to company. Periodically inspecting the records of company gives exact information whether, and if so, to what extent Company has complied with the laws applicable to the Company.

Secretarial Audit gives comfort to the regulators, stakeholders and management that company has disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes

For which companies secretarial audit is mandatory?

As per section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, following companies are required to obtain 'Secretarial Audit Report' form independent practicing company secretary;

(1) Every listed company

(2) Every public company having a paid-up share capital of Fifty Crore rupees or more; or

(3) Every public company having a turnover of Two Hundred Fifty Crore rupees or more.

- "Turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year. [Section 2(91)]
- Secretarial Audit is also mandatory to a private company which is a subsidiary of a public company, and which falls under the prescribed class of companies

Who can be appointed as secretarial auditor?

Only a member of the Institute of Company Secretaries of India holding certificate of practice (company secretary in practice) can conduct Secretarial Audit and furnish the Secretarial Audit Report to the Company.

Appointment of Secretarial Auditor

As per Rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, Secretarial Auditor is required to be appointed by means of resolution passed at a duly convened Board meeting and resolution for appointment shall be filed with Registrar of Companies within 30 days.

Scope of Secretarial Audit

The scope of Secretarial audit is not limited to the corporate laws applicable to company but it extent to all laws applicable to Company.

6.7 Corporate Governance requirements with respect to subsidiary of Listed Entity

- At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary whether incorporated in India or not. [Regulation 24(1)]

- “Material Subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.
- The audit committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary.
- The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.
- The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.
- The term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted subsidiary for the immediately preceding accounting year.
- A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.
- Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.
- Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

6.8 Related Party

“Related party” with reference to a company means:

- A Director or his relative.
- A key managerial personnel or his relative.
- A firm, in which a director, manager or his relative is a partner.
- A private company in which a director or manager or his relative is a member or director.
- A public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital
- any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- Any person on whose advice, directions or instructions a director or manager is accustomed to

act except if advice is given in the professional capacity.

· Any company which is: -

a) Holding, subsidiary or an associate company of such company.

b) A subsidiary of a holding company to which it is also a subsidiary

c) an investing company or the venturer of the company.

· Such other persons as may be prescribed by the Central Government.

(Section 2(76) of the Companies Act, 2013 refers)

List of relatives in terms of Clause (77) of Section 2 of the Act:

A person shall be deemed to be relative of another, if he or she is related to another in the following manner, namely:-

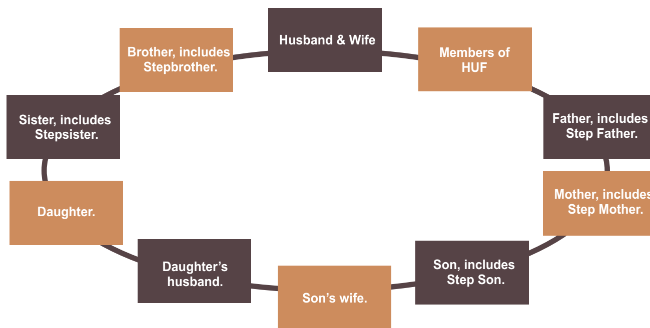


Figure 8.2: Relatives

(Rule 4 of the Companies (Specification of definition details) Rules, 2014, Chapter I of the Companies Act 2013, refers)

6.8.1 Related Party Transactions

(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions

From April 1, 2019, clear threshold limits, as considered appropriate by the board would be required to be disclosed in the materiality policy. Such materiality policy should be reviewed by the board at least once every three years and updated accordingly.

Explanation: A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(IA) Payments made by the listed entities to related parties with respect to brand usage/royalty

amounting to more than two per cent of consolidated turnover of the listed entity would be considered material. (Effective from April 1, 2019) (Sebi (LODR) Amendments 2018)

As currently required by the Listing Regulations such related party payments for royalty and brand would require approval from the shareholders on a majority or minority basis. This sub limit of two per cent would be considered within the overall 10 per cent limit to determine material RPTs.

(2) All related party transactions shall require prior approval of the audit committee.

(3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-

a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;

b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;

c) the omnibus approval shall specify:

i. the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,

ii. the indicative base price / current contracted price and the formula for variation in the price if any; and

iii. such other conditions as the audit committee may deem fit:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.

e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:

(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

From April 1, 2019, all material RPTs would require an approval of the shareholders through a resolution and a related party would not vote to approve such resolutions whether the entity is a related party to the particular transaction or not. (SEBI(Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018 refers)

(5) The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases:

(a) transactions entered into between two government companies;

(b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Explanation: For the purpose of clause (a), "government company (ies)" means Government company as defined in sub-section (45) of section 2 of the Companies Act, 2013.

(6) The provisions of this regulation shall be applicable to all prospective transactions.

(7) For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.

From April 1, 2019,all entities falling under the definition of related parties not vote to approve the relevant transaction irrespective of whether the entity is a party to the particular transaction or not. (SEBI(Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018)

(8) All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

(9) the listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosure of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website. (Sebi (LODR) Amendments 2018) (effective from April 1, 2019)

(Regulation 23 of SEBI (LODR) Regulations, 2015 refers)

6.8.2 Disclosures – Related Party Transactions

a) Every contract or arrangement entered into under section 188 (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

b) Details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance.

c) The company shall disclose the policy on dealing with Related Party Transactions on its website and also in the Annual Report.

The Listing Regulations amend the definition of 'related party' by including all promoters/promoter group entities that hold 20 per cent or above in a listed entity.

Additionally, in order to strengthen transparency on related party transactions, the following would be disclosed:

a. Half-yearly disclosure of related party transactions on a consolidated basis, in the disclosure format required for related party transaction in the annual accounts as per the accounting standards, on the website of the listed entity within 30 days of publication of the half-yearly

financial results. Copy of the same also to be submitted to the stock exchanges (Effective from half-year ending 31 March 2019)

b. Disclosures of transactions with promoters/promoter group entities holding 10 per cent or more shareholding would need to be made annually (even if not classified as related parties in the annual report). (Effective for annual reports filed for the year ended 31 March 2019)

Strict penalties may be imposed by SEBI for failing to make requisite disclosures of RPTs.

6.8.3 Contract or Arrangement with a Related Party

1. A Company shall enter into any contract or arrangement with a related party subject to the following conditions:-

a) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose:-

   i. the name of the related party and nature of relationship;

   ii. Nature, duration of the contract and particulars of the contract or arrangement;

   iii. Material terms of the contract or arrangement including the value, if any;

   iv. Any advance paid or received for the contract or arrangement, if any;

   v. The manner of determining the pricing and other commercial terms, both, included as part of contract and not considered as part of the contract;

   vi. Whether all the factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and

   vii. Any other information relevant or important for the Board to take a decision on the proposed transaction.

b) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussion on the subject matter.

2. A company must pass prescribed resolution to enter into any contract or arrangement with a related party with respect to the following:-

a) Sale, purchase or supply of any goods or materials,

b) Selling or otherwise disposing of, or buying property of any kind,

c) Leasing of property of any kind,

d) Availing or rendering of any services,

e) Appointment of any agent for purchase or sale of goods, materials, services or property,

f) Such related party's appointment to any office or place of profit in the company, its subsidiary or associate company,

g) Underwriting the subscription of any securities or derivatives, thereof, of the company.

(For more details, refer to Rule 15(3) of the Companies (Meetings of the Board and its Powers, Sec 188 of the Act) Rules, 2014)

6.9 Prohibition on Insider Trading of Securities

Insider means:

Any person who is:

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

Trading means and includes:

Subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly.

Unpublished price sensitive information means:

Any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily include but not restrict to, information relating to the following: –

i. financial results;

ii. dividends;

iii. change in capital structure;

iv. mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;

v. changes in key managerial personnel; and

vi. material events in accordance with the listing agreement.

Every listed company, in their Code of Conduct for Directors, key managerial persons and all other employees lays down a policy on prohibiting trading in shares/securities of the company for a specified period prior to the declaration of quarterly/annual financial statements of the company.

Disclosure by certain persons

Initial Disclosure: Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

Continual Disclosures: Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. In the case of connected persons the onus of establishing, that

they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

Trading Plans

(a) An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

(b) To curb the abuse of the Trading Plans, certain safeguards have been built in the provisions of SEBI (PIT) Regulations, 2015 which are:

1. trading plan to cover a period of at least 12 months;
2. approval of trading plan by the compliance officer;
3. public dissemination of trading plan;
4. cooling off period of six months from the public disclosure of the trading plan;
5. no trading during specified periods;
6. mandatory implementation of trading plan;
7. trading plan to be deferred in case UPSI at the time of formulation of the trading plan is not generally available at the time of execution of trades.
8. no overlapping of trading period in two trading plans;

(c) The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

If any person contravenes the provisions, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

[Section 195, Chapter XII of Companies Act 2013 and SEBI (Prohibition of Insider Trading) Regulations, 2015) refers]

6.10 Prohibition & Restrictions regarding Political Contribution

A company, other than a government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party provided: -

a) A Board resolution authorizing making such contributions is essential.

b) The amounts contributed to any political party during the financial year will be disclosed in its Profit and Loss statement.

Not only has the government through the Finance Act, 2017 removed the earlier limit for political

contributions by companies not exceeding 7.5 % of the average net profit during the immediately preceding three years but also removed the requirement of disclosing the name of the political party to which contribution has been made.

6.11 Loan and Investments

6.11.1 Multi layering of Investment Companies

Section 186 of the Companies Act, 2013 prohibits a company from making investment through more than two layers of investment companies. As per the provisions of Companies (Restriction on number of layers) Rules 2017:

· A holding company is allowed to have up to two layers of subsidiaries. In computing the layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account. Provided that the provisions of this rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country.

· The restrictions are in addition to the layering restrictions under Section 186(1), which prohibit a company from making investment through more than two layers of investment companies. Investment companies will also be included in the count for the purpose of layer requirements under the new rule.

· The provisions of this rule shall not apply to a banking company, as defined in clause © of section 5 of the Banking Regulation Act 1949, a non-banking financial company as defined in clause (f) of Section 45_l of the Reserve Bank of India Act, 1934, an insurance company and a Government company referred to in clause (45) of section 2 of the Act.

· If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first day during which such contravention continues.

6.11.2 Loan and Investment by Company

As per Section 186 of the Companies Act, 2013:-

(1) No company shall directly or indirectly —

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.

Explanation.—For the purposes of this sub-section, the word "person" does not include any

individual who is in the employment of the company.

(2) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply.

(3) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security

(4) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

(5) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.

(6) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

(7) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

8) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

(9) The register referred to in sub-section (8 shall be kept at the registered office of the company and

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

(10) Nothing contained in this section, except sub-section (1), shall apply—

(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;

(b) to any investment—

(c) made by an investment company;

(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;

(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities]

(11) The Central Government may make rules for the purposes of this section.

(12) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Explanation.—For the purposes of this section,—

(a) the expression "investment company" means a company whose principal business is the acquisition of shares, debentures or other securities 13[and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. Of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. As a proportion of its gross income.]

(c) the expression "infrastructure facilities" means the facilities specified in Schedule VI.

Exemptions-

Section 186 shall not apply to –

(a) a Government company engaged in defence production;

(b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section. - Notification

dated 5th June, 2015.

3. In case of Specified IFSC Public Company - In Sub-section (5) of section 186 after the proviso, the following proviso shall be inserted -

   "Provided further that in case of a Specified IFSC public company, the Board can exercise powers under this sub-section by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.". -

   Notification Date 4th January, 2017.

4. In case of Specified IFSC Public Company - In Sub-sections (2) and (3) of section 186 shall not apply if a company passes a resolution either at meeting of the Board of Directors or by circulation. - Notification Date 4th January, 2017.

5. In case of Specified IFSC Public Company - In Sub-section (1) of section 186 shall not apply. - Notification Date 4th January, 2017.

6. In case of Specified IFSC Private Company - In Sub-section (1) of section 186 shall not apply. - Notification Date 4th January, 2017.

7. In case of Specified IFSC Private Company - In Sub-sections (2) and (3) of section 186 shall not apply if a company passes a resolution either at meeting of the Board of Directors or by circulation. - Notification Date 4th January, 2017.

8. In case of Specified IFSC Private Company - In Sub-section (5) of section 186 after the proviso, the following proviso shall be inserted -

   "Provided further that in case of a Specified IFSC public company, the Board can exercise powers under this sub-section by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.". -

   Notification Date 4th January, 2017.

9. In case of Section 8 Company- In Sub-section(7) of Section 186, the following shall be inserted namely :- Notification Dated 13th June, 2017.

   " Provided that nothing contained in this sub-section shall apply to a company in which twenty six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance objects as stated in its memorandum of association."

6.11.3 Loan to Directors

As per section 185 of the Companies Act, 2013

(1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

(a) any director of company, or of a company which is its holding company or any partner or

relative of any such director; or

(b) any firm in which any such director or relative is a partner.

(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—

(a) a special resolution is passed by the company in general meeting:

Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

(b) the loans are utilised by the borrowing company for its principal business activities.

Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—

(a) any private company of which any such director is a director or member;

(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(3) Nothing contained in sub-sections (1) and (2) shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or

(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—

(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;

(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and

(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

6.12 Internal Audit

(1) The following class of companies shall be required to appoint an internal auditor [which may be either an individual or a partnership firm or a body corporate], namely:-

(a) every listed company;

(b) every unlisted public company having-

(i) paid up share capital of fifty crore rupees or more during the preceding financial year; or

(ii) turnover of two hundred crore rupees or more during the preceding financial year; or

(iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

(iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and

(c) every private company having-

(i) turnover of two hundred crore rupees or more during the preceding financial year; or

(ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year:

Provided that an existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within six months of commencement of such section.

Explanation.- For the purposes of this rule –

(i) the internal auditor may or may not be an employee of the company;

ii) the term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not'.

(2) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

Internal auditor shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. ■

Chapter - 7

STRATEGIC LEADERSHIP

7.1 The Governance of Strategy

Strategy is how a company orient itself towards its market and its competitors. Flawed strategic thinking can create massive value destruction and even threaten a company's survival.

Strategic Analysis

The Board should ensure that:

a) The Company's competitive advantages have been identified.

b) Any gaps between the company's present capabilities and those needed to fulfil the vision have been identified. This involves an analysis of the external political, social, and market environment, and the company's internal resources. This analysis may lead to a redefinition of the company's purpose.

c) Boards should be prepared to ask incisive questions, anticipating rather than reacting to major issues.

Board Role in Governance of Strategy

A key board role is to ensure that the company is pursuing an appropriate, effective strategy. The only way to achieve this is for the board to be constructively engaged in governing the strategy process. A well-developed strategy reduces a company's risk of failure and increases its chance of success at the expense of its rivals, who have less-developed plans or no plan at all.

Questions directors should ask include:

a) Where should the company be in the long term? What is the strategic direction?

b) Which markets should it compete in and what kinds of products and services should it provide? What are the markets and the scope?

c) How can the business perform better than the competition in those markets? What is the source of competitive advantage?

d) What resources (skills, assets, finance, relationships, technical competence, and facilities) are required to compete effectively?

e) What external factors within the broad business environment affect the company's ability to compete?

f) What are the values and expectations of those with influence on the company, such as the stakeholders?

Many companies are typically driven from the top by one or more entrepreneurs whose "strategy" is simply transferred to the entire company by their decisions and behaviour. As business grows, or market conditions become more complex and competitive, this type of leadership is, at best, inadequate and, at worst, dangerous.

7.2 Evaluating strategy delivery

The strategic planning framework for developing and articulating a strategic direction comprises the

following phases:

a) Envisioning a future state for the company
b) Strategic analysis
c) Strategy formulation
d) Implementation
e) Monitoring strategy execution

Key Performance Indicators (KPIs)

The term "key performance indicator" is used when the measures focus upon the business strategy. The Key performance Indicators include:

a) Calculating Price/Earning (PE) ratio
b) Economic Value Added (EVA)
c) Return on Investment
d) Gross Profit Margin
e) Market Share
f) Customer Satisfaction
g) Economic, Environment, Social ("Triple Bottom Line")

Balanced Score Card

The balanced score card links a company's KPIs together using a simple framework. To successfully implement the balanced scorecard, the critical task for the board and the senior executives is to identify the appropriate KPIs that reflect the achievement of the desired corporate strategy results.

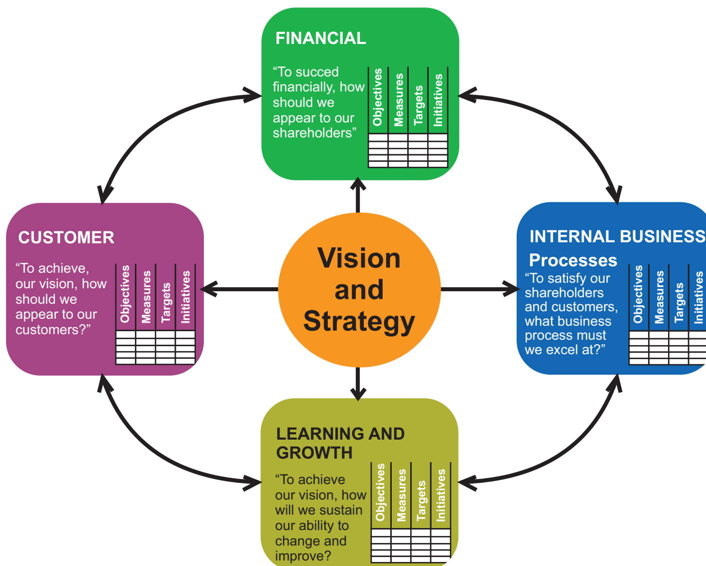


Figure 7.1: The Balanced Score Card

Organisational Performance Benchmarking

Strategic Benchmarking is concerned with comparing different companies' strategies and assessing the success of those strategies in the marketplace. In particular, the benchmarks tend to focus upon:

a) Strategic purpose

b) Core competencies

c) Process capability

d) Product lines

e) Strategic alliances

f) Technological capability

g) Socially responsible performance

h) Environmental performance

Corporate Dashboards

Once a company has identified appropriate KPIs, produced a balanced scorecard, and benchmarked the company's performance against the competition, the usual next step is to produce the information in a user-friendly format. This frequently involves the development of corporate dashboards.

A dashboard display makes the details of a business accessible at a glance using easy-to-read graphics interpreting real-time data.

7.3 The Governance of Risk: Cyber Security & Enterprise Risk Management

Cyber warfare indisputably is increasingly becoming part of India's offensive and defensive mechanisms. India's booming IT industry and rapidly growing network infrastructure are both an advantage and vulnerability in this context. Until a few years ago, the biggest threats hinged around wannabe hackers, practitioners of corporate espionage. Cyber security is not just an issue for the governments, it's for companies and citizens too. A knowledge economy needs to maintain the integrity of its data. Many of the systems we are trying to protect extend across national boundaries, but the threat is not limited to multinational organizations.

Cyber security is the protection of information systems from theft or damage to the hardware, the software, and to the information on them, as well as from disruption or misdirection of the services they provide. It includes controlling physical access to the hardware, as well as protecting against harm that may come via network access, data and code injection, and due to malpractice by operators, whether intentional, accidental, or due to them being tricked into deviating from secure procedures.

The Information Technology Act, 2000 (also known as ITA-2000, or the IT Act) is an Act of the Indian Parliament (No 21 of 2000) notified on 17 October 2000. It is the primary law in India dealing with cybercrime and electronic commerce. Section 2(nb) of the Information Technology (Amendment) Act, 2008 defines Cyber Security: “means protecting information, equipment,

devices, computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosure, disruption, modification or destruction.” Board have the fiduciary duty to understand and oversee cyber security.

ISO 27001 (ISO27001) is the International Cybersecurity Standard that delivers a model for creating, applying, functioning, monitoring, reviewing, preserving, and improving an Information Security Management System.

The Ministry of Communication and Information Technology under the government of India provides a strategy outline called the National Cybersecurity Policy. The purpose of this government body is to protect the public and private infrastructure from cyber-attacks.

Cyber Security issues for Board's Consideration

Following issues need to be considered for evolving strategy to counter cyber risk:

- Adopting measures to keep up with cyber security threats
- To identify and understand the most critical pieces of company information e.g. what are the company's most valuable intellectual property assets and consumer based informational assets, and how are they currently being protected?
- Unauthorized access to computer systems
- Inappropriate use of computer systems by employees or ex-employees
- Installation of viruses or malware on computer systems
- Theft of private and confidential information
- Disruption or denial of service
- Phishing attacks

Check-list for board members

Following check-list can assist in effective decision making:

- Accept Responsibility for Cyber security
- Forming a Committee of Experts is a good idea
- Assessing risks by the Board – Discussion as separate item
- Understanding structure relating to Cyber Security
- Review the adequacy of resources devoted to policies addressing IT and cyber security
- Cyber Insurance covering breaches
- Is your company prepared for crisis?

Ten Corporate Cyber Security Risks

a) Failure to cover cyber security basics

Using only an antivirus solution or the failure to encrypt critical customer and employee data or other vital information sends an open invitation for hackers to take advantage of these security

holes. World Wide Web exploits are multiplying aggressively, so protecting your company means being constantly educating yourself to know these dangers and do everything you can, with the resources you have, to prevent attacks or have a recovery plan if they happen.

b) Not understanding what generates corporate cyber security risks

Companies often fail to understand "their vulnerability to attack, the value of their critical assets, and the profile or sophistication of potential attackers". Security risks aren't brought about by technology alone; psychological and sociological aspects are also involved, which is why company culture plays a major role in how cyber security is perceived in the company and how many resources are devoted to this subject.

c) Lack of a cyber-security policy

Not prioritizing the cyber security policy as an issue and not getting employees to engage with it is not something that companies nowadays can afford. As part of their cyber security policies, companies should:

- identify risks related to cyber security
- establish cyber security governance
- develop policies, procedures and oversight processes
- protect company networks and information
- identify and address risks associated with remote access to client information and funds transfer requests
- define and handle risks associated with vendors and other third parties
- be able to detect unauthorized activity.

d) Confusing compliance with cyber security

Ensuring compliance with company rules is not the equivalent of protecting the company against hacker attacks. Having an information security management system implies a widespread implementation of strict rules that allows managers to oversee how data flows through the system and to protect confidential information from leaking to hackers or other unwanted sources.

e) The human factor - the weakest link

The human factor plays an important role in how strong (or weak) your company's information security defences are. That is one more reason to add a cyber-security policy to your company's approach, beyond a compliance checklist that you may already have in place. Protecting sensitive information is essential, and you need to look inside, as well as outside to map and mitigate potential threats.

f) Bring your own device policy (BYOD) and the cloud

In the quest to providing your employees with better working conditions and a more flexible

environment, you may have adopted the "Bring Your Own Device" policy. But have you considered the corporate cyber security risks you brought on by doing so?

g) ***Funding, talent and resources constraints***

We know that there are plenty of issues to consider when it comes to growing your business, keeping your advantages and planning for growth. So budgets are tight and resources scarce. That's precisely one of the factors that incur corporate cyber security risks.

h) ***No information security training***

Employee training and awareness is essential when covering your base in terms of information security. In fact, 50% of companies believe security training for both new and current employees is a priority and 67% of them say they have increased funds spent on education and training of employees in the past 12 months (Dell's protecting the organisation against the unknown – A new generation of threats 2014).

I) ***Lack of a recovery plan***

Being prepared for a security attack means to have a thorough plan of what can happen to prevent the cyber-attack, but also minimize the damage if is takes place. Through prevention, your company can detect the attack in its early stages, and the threats can be isolated and managed more effectively. By having a recovery plan in place, your response time can be shorter and your system can be up and running normally in no time.

j) ***Constantly evolving risk***s

Polymorphic malware is harmful, destructive or intrusive computer software such as a virus, worm, Trojan or spyware that constantly changes, making it difficult to detect with anti-malware programs. That is why you should take into account that your company might need an extra layer of protection, on top of the antivirus solution.

The first line of defence must be ensured by a product that can act proactively to identify malware, block access to hacker controlled servers and stop data leakage, but also keep your system protected by patching vulnerabilities (usually, applications that are not up to date, such as Flash or Java).

As cyber risks increase and hacker attacks become more aggressive, more extreme measures, such as shutting down network segments or disconnecting specific computers from the internet may become mainstream.

Enterprise Risk Management

Enterprise risk management (ERM) is the process of managing the activities of an organisation in order to assess, monitor, control and mitigate the effects of risk on an organisation's capital and earnings. ERM is a process, affected by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risks to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.

ERM in business includes the methods and processes used by organisations to manage risks and seize opportunities related to the achievement of their objectives. ERM provides a framework for risk management, which typically involves identifying particular events or circumstances relevant to the organisation's objectives (risks and opportunities), assessing them in terms of likelihood and magnitude of impact, determining a response strategy, and monitoring progress. By identifying and proactively addressing risks and opportunities, business enterprises protect and create value for their stakeholders, including owners, employees, customers, regulators, and society overall. ERM can also be described as a risk based approach to managing an enterprise.

Figure 7.2: ERM Framework

Key Risk Categories & Aspects

We could explore various risk categories of risk that confront any enterprise, including some of the following:

- Strategic Risk
- Reputational Risk
- Compliance Risk
- Operational Risk
- Business Operations Risk
- Market Risk / Trading Risk
- Credit Risk
- Liquidity Risk
- Interest Rate Risk

Aspects of risk cover the dimensions across which risk is experienced or analyzed in the organisation for example:

Risk Dimension: This covers the risk categories that the organisation is subject to, including the ones above and their sub-categories (for example market/trading risk, and within that derivative

trading risk and within that options/futures derivative trading risk).

Organisational Dimensions: This covers which part of the organisation is susceptible to a particular risk, such as the corporate office, the country offices or the branches or local offices, and is based on the organisational hierarchy of the company.

Geographical Dimensions: This covers the countries, states, and district/counties/zones where the risks accrue.

Time Dimensions: This covers the periods which are being analyzed and compared such as losses under specific risk categories in the current period versus the previous period (e.g. month to month, quarter to quarter and year to year); this also covers seasonal dimensions of risk, for example, if there are acute shortages of a particular raw material like an agricultural commodity in a particular season, which can result in a business loss.

Customer Segment Dimensions: These could cover various customer groups such as rural/urban/metropolitan or retail/corporate.

Product or Business Segment Dimensions: These include business segments such as trade finance for a bank, or polyester fibres for a textile manufacturer or criminal law for a legal company.

The nature, scale and complexity of the business determine which of the above categories and aspects of risks are relevant to the firm. The nature, scale and complexity of the business will also determine the sophistication of the ERM framework required in the company to manage risks.

Board Responsibility, Risk Appetite and Culture

The key role of the Board of Directors towards ERM, relates to establishment and monitoring of the ERM framework, composed of policies, processes, organisational structures and reporting capabilities. In addition, the board plays a significant role in defining the organisational risk appetite and ensuring the existence of a risk focused culture of the company.

The responsibilities of the board with regards to ERM include the following:

- Aligning risk appetite and strategy, via evaluating strategic alternatives, setting related objectives, and developing mechanisms to manage related risks.
- Enhancing risk response decisions, via providing rigor in identifying and selecting among alternative risk responses (i.e. risk avoidance, reduction, sharing, acceptance).
- Reducing operational surprises and losses, via gaining capability to identify potential events and establish responses, reducing surprises and associated costs or losses.
- Identifying and managing multiple and cross-enterprise risks, via facilitating effective response to the interrelated impacts, and integrated responses to multiple risks.
- Seizing opportunities, via considering a full range of potential events, management is positioned to identify and proactively realize opportunities.

While the management of risk may be centralized into a specific department or body within the company, and may be overseen by the board, various types of risks are spread across and lead to

periodical losses in different parts of the organisation. It is critical that each and every employee and representative of the company maintains an awareness of the risks that exist in his/her line of activity. This awareness of the risks, combined with an understanding of the related mitigation, control and monitoring mechanisms constitutes the risk culture of the company. Ensuring this culture is established and exists across the organisation is the responsibility of the board, and they can reinforce the same via incentive/disincentive mechanisms, education and organisational communication.

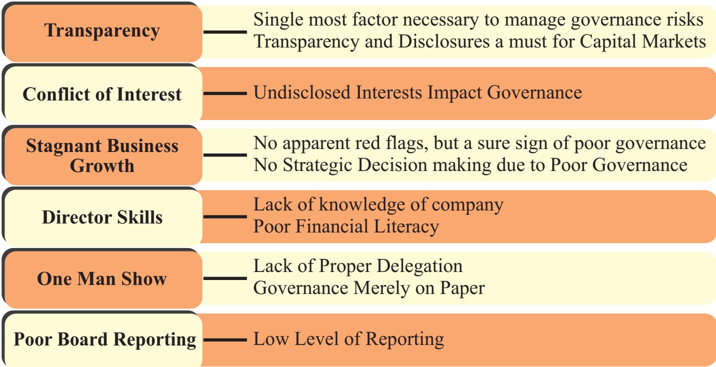


Figure 7.3: Corporate Governance Risks

Risk Management: Functions & Framework

"A process, affected by an entity's board of Directors, Management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risks to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives."

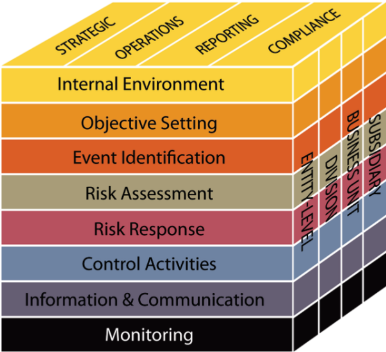


Figure 7.4: Risk Internal Environment

Director's Role in ERM Framework

Corporate risk taking and the monitoring of risks have remained front and center in the minds of Boards of Directors. The Board and relevant risk committees should work with management to and implements enterprise- wide risk management. Risk management should be tailored to the specific company, but in general, an effective risk management framework will: promote and actively cultivate a corporate culture and environment that understands

- Adequately identify the material risks that the company faces in a timely manner.
- Implement appropriate risk management strategies that are responsive to the company's risk profile, business strategies, specific material risk exposures and risk tolerance thresholds.
- Integrate consideration of risk and risk management into business decision-making throughout the company.
- Adequately transmit necessary information with respect to material risks to senior executives and, as appropriate, to the board or relevant committees.
- Directors should work with management to understand and agree on the type, format and frequency of risk information required by the board. High-quality, timely and credible information provides the foundation for effective responses and decision-making by the board.
- Senior management should provide the board or committee with an appropriate review of the company's legal compliance programs and how they are designed to address the company's risk profile, detect and prevent wrongdoing.
- The company's risk management structure should include an ongoing effort to assess and analyse the most likely areas of future risk for the company, including how the contours and inter-relationships of existing risks may change and how the company's processes for anticipating future risks are developed.
- Anticipating future risks is a key element of avoiding or mitigating those risks before they escalate into crises. In reviewing risk management, the board or relevant committees should ask the company's executives to discuss the most likely sources of material future risks and how the\ company is addressing any significant potential vulnerability.

Key functions of an ERM framework include the following:

Risk Identification: The risk identification function needs to identify the laundry list of risks the company is susceptible to, and create an inventory of such risks.

Risk Assessment: Risk assessment is a periodic activity, in which the risk can be assessed in terms of frequency and severity. This assessment is done in terms of inherent and residual risk, where the latter reflects the risk subsequent to mitigations and controls. The high frequency and high severity risks are obviously the subject of a high level of monitoring and management in the organisation.

Risk Analysis: Risk analysis is the activity of understanding the nature of risk on a case by case basis. Operationally, there is usually an identified group of people who scan the environment for risks at the point of any transaction (for example, a loan or a contract) and identify via standard checklists or

other methodologies whether the identified risks do exist in the transaction.

Risk Monitoring (ongoing): The ongoing risk monitoring function is an operational function that scans all transactions and examines whether the state of pre-identified risks are in existence in the transactions or not, and whether the controls and mitigations are in operation. All threshold breaches are identified.

Risk Mitigation & Control: Risk mitigations are methodologies to mitigate risks that cannot be avoided, or it is unprofitable to do so. Insurance and hedging are two methodologies to mitigate risks. Controls are put in place both to prevent the incidence of risk events and also to limit the impact of such events.

Risk Reporting: Risk reporting is done to appraise government authorities as well as the executive management of the company with regard to the risk events (including near misses) that have taken place in the system. Also, companies that track the Key Risk Indicators to identify locations those are probably at risk.

Risk Organisation Set Up

Level Role

LEVEL	ROLE
Board of Directors	Oversees risk management performed by the executive management.
Risk Management Committee	Comprised by independent directors who oversees risk management on behalf of the board and makes recommendations on the risk management program.
Risk Council	Includes- CEO, COO and CFO which formulates risk management guidelines and policies. Reviews enterprise risks periodically, initiates actions and review progress.
Office of Risk Management	Comprises a network of risk managers from all businesses and support groups across the group, and is led by the Chief Risk Officer (CRO). Facilitates the execution of risk management in the enterprise as mandated by the Risk council.
Unit Heads	Manage their functions as per risk management framework and culture; also manage risks at unit level in consultation with the Risk council.
Operational Management	Implement prescribed risk actions. Provide feedback on the efficacy of risk management and warnings for early detection of risk events.

Corporate Governance Matrix

Corporation Governance Risk Matrix					
Key Due Diligence Areas	**Queation To Ask**	**Tick Yes / No where applicable**		**Comments / action required**	**Answer Source**
		Yes	**No**		
Transparency International Country Corruption Ranking	How does the country in transparency international's Corruption Perceptions Index?				Documents code of ethics, code of conduct legal records accounting record compliance policy, audit statement relevant legal records
	How are business integrity issue dealt with locally?				
	Is Financial Regulatory system of the country operating in line with high international standards?				
	Is there a designated person at the company with responsibility for managing compliance issues, ethic and potential conflicts of internet?				
Business Integrity of Company	Any criminal convictions amongst the company management, staff ?				Interviews: Board chair, board directors, CEO, Company Management, CFO Controller, Staff Members, Compliance or Risk Officer, Legal Counsel, Auditors, Specialist Consultants
	Has any management person, staff or board member been, or, is under investigation by law enforcement or regulatory authorities?				
	Evidence or suspicion of company management criminal activity e.g. intimidation, blackmail, etc?				
	Involvement or association with criminal?				
	Involvement or association with money laundering?				
	Does any one connected with the company appear or any UN list of person suspected of involvement in terrorist activities or any other relevant national or international blacklists? The response should include the results of enquiries in compliant, world-check or other comparable systems. If not accessible or available, this should be noted here.				
Code of Conduct	Does the company have a code of conduct for employees prohibiting bribery?				
Anti-bribery	How are employees made aware that the company does not condone bribery?				
	Is there a regular anti-bribery training for employees?				
	Does the company operate in a sector where bribery is prevalent?				
	Does the company have a policy on gifts, entertainment and other potential sources of conflict of interest?				
Anti- money Laundering	Does the company have anti-money-laundering training and procedures in place?				
	Have background search been performed on beneficial owners and others with a significant relationship to the company ?				
Accounting and Compliance	Are the accounting records fully up to date and complete?				
	Does the company send regular and complete information to the tax authorities?				
Dealing with government	Evidence of company involvement in misuse or misappropriation of public property?				
	Evidence of bribing public officials or use of inappropriate means to influence public decisions or processes?				
	Evidence of major political affiliations or contributions?				
	Evidence of political government official involvement in the company? (e.g. beneficial owners, on board of directors, etc.)				
	Media references to illegal or disreputable activities?				
	Persistent rumours of illegal or disreputable activists?				
	Requests for or suggestions of illegal or disreputable actions (e.g. falsification of document, bribe, etc.)				
	Misappropriation, fraud or other crimes against the company or its owners or stockholders?				
	Any undisclosed or unusual beneficial ownership or carried interests?				
	Sudden or unexplained withdrawal of potential customers, investors or other affiliates to the company?				
	Sudden or unexplained change of shareholders, auditors, accountants, lawyers or other professional advisors?				

7.4 Corporate Responsibility

Corporations have a responsibility to those groups and individuals that they can affect, i.e., its stakeholders, and to society at large. Stakeholders are usually defined as customers, suppliers, employees, communities and shareholders or other financiers.

The responsibility to society at large may well be identical with the responsibility to its various communities. Many have suggested that corporations have a special "social responsibility" over and above its business purpose. In any case corporate responsibility consists of earning a licence to operate by creating value for stakeholders, including shareholders, and society.

Corporate responsibility includes being consistent with ethical principles and conduct such as honesty, integrity and respect for others. By voluntarily accepting responsibility for its actions corporations earn their licence to operate in society.

Example: Companies earn a licence to operate by creating products and services that their customers value, by creating jobs for employees whom they treat fairly and in accordance with the law, and by complying with other applicable laws.

In a case where a company's products are discovered to be harmful to customers, or where their products or operations are deemed harmful to the general public, a company's licence to operate can become imperilled. This may result in penalties that enforce existing laws and regulations, or new laws and regulations that in extreme cases put a company out of business.

Corporate responsibility means long-term profitability. With all this talk about reporting, labelling, transparency and social responsibility, companies are scrambling to find the right balance between responding to consumer pressure, government mandates, client requirements, and employee demands, while at the same time satisfying their investors and shareholders. Is this sustainable? Can we really demand so much from our corporations? Can we truly expect companies to behave this way and still make money?

The answer is a resounding YES! There is more than a 100-year history of sustainable and profitable businesses because contributing to society (and not just through annual tax-deductible donations) meant more than just satisfying one set of stakeholders. The companies invested in all their "assets" – suppliers, employees, and customers – and it paid off. It paid off well. What we are now asking of today's companies is to include the environment as one of their assets, and it can pay off just as well.

7.5 Corporate Social Responsibility (CSR)

Corporate social responsibility (CSR) is a business approach that contributes to sustainable development by delivering economic, social and environmental benefits for all stakeholders. CSR is a concept with many definitions and practices.

CSR is a concept with many definitions and practices. The way it is understood and implemented differs greatly for each company and country. Moreover, CSR is a very broad concept that addresses many and various topics such as human rights, corporate governance, health and safety, environmental effects, working conditions and contribution to economic development. It can be defined as the responsibility of corporate towards society to address its needs, integrating CSR

policies with its business practices.

The Corporate Social Responsibility has been defined in the Companies (Corporate Social Responsibility Policy) Rules, 2014, to mean and include but is not limited to-

i) Projects or programs relating to activities specified in Schedule VII to the Act; or

ii) Projects or programs relating to activities undertaken by the Board of Directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

In nutshell, it can be stated that CSR is not charity or mere donations, but CSR is a way of conducting business, by which corporate entities visibly contribute to social good.

As per Section 135 of the Companies Act, 2013, every company having-

a) net worth of rupees five hundred crore or more, or

b) turnover of rupees one thousand crore or more, or

c) a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Mandatory Expenditure

Section 135(5) mandates 2 percent of the Average net profit during the three immediately preceding financial years.

For Financial Year 2014-15 Calculation: Average net profit of FY 2011-12, 2012-13 & 2013-14 needed to be considered.

Average Net Profit is calculated as per section 198 i.e. Calculation done for managerial calculation.

Responsibility of Board of Directors

1) Board should take in account the recommendation of CSR committee & approve the CSR policy & also place it on company's website. Ensure that the activities are carried out as per the policy.

The CSR Policy of the company shall, inter alia, include the following, namely:—

(a) a list of CSR projects or programs which a company plans to undertake falling within the purview of Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and

(b) monitoring process of such projects or programs:

CSR activities do not include the activities undertaken in pursuance of normal course of business of a company. The Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.

(2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company. Clarification / Other provision w.r.t to expenditure

1) Company must form CSR committee which will formulate and recommend to board the activities to be carried out & amount of expenditure to be incurred from time to time & monitor the CSR Policy.

2) Expenditure only on the employees of the company & their families will not form part of CSR activity .It means CSR can be incurred on the employee but not fully only part of the whole

3) It must be expended in India. Preference must be given to the local area in which the company

4) Any surplus arise of the CSR project will not form part of the Business income.

Display of CSR activities on its website

The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any, as per the particulars specified in the Annexure.

■

Chapter - 8

BUSINESS ETHICS AND INTEGRITY

8.1 Corporate Governance and Business Ethics

Corporate governance is set of self-developed rules meant to run companies ethically in a manner such that all stakeholders including shareholders, supplier–partners, customers, employees, the society at large, governments and even competitors are dealt with in a fair manner. Good corporate governance should take in account fairness in its transactions with all stakeholders. Corporate governance is not something, which regulators have to impose on a management; it should come from within.

Business ethics stands for moral principles and standards based on honesty, integrity and ethical conduct that organisations are expected to follow, while dealing with all stakeholders. Business essentially is a process available to society to use scarce resources in an efficient manner to produce those goods and services which society wants and is willing to pay for. Organisations engaged in businesses must balance their desire to maximize profits with the needs of stakeholders. The significant issues in business ethics include ethical management of enterprise in relation to its stakeholders in particular and conservation of natural resources & environment in general.

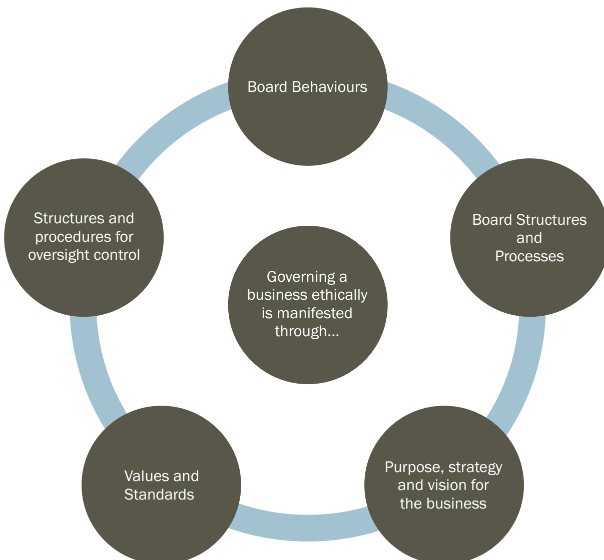


Figure 8.1: Ethical aspects of Corporate Governance

Ethical conduct is both necessary and important for organisations for several reasons, some of which

are given below:

i. Ethical conduct ensures long-term sustainability of business, provided that the market exists for its goods and services at fair price. A business enterprise that is honest and fair to its customers, employees, and other stakeholders earns their trust and goodwill.

ii. Ethical business behaviour is not only about good business, but about good citizenship as well. Morally conscious businessmen have earned name, and built great business empires. Such organisations earn respect and reverence in society.

iii. Ethical policies and practices enable a business enterprise to build goodwill for itself with all stakeholders. A business organisation that adheres to a code of conduct gains a competitive advantage and builds long-term value for itself.

iv. Business organisations can prosper only through harmonious relationship with society. Unethical practices at times create distrust, disorder and turmoil with society and downfall of business enterprise/s.

v. For every individual employee, his/her profession is the centre of his/her life. Unless organisational values are in harmony with his/her personal life, one cannot be happy and health person. Ethical and transparent policies of organisation towards employees lead to happiness and engagement of employees with the organisation, which in turn benefits organisation with higher employee productivity.

vi. Modern society is an industrial high tech society. Business value systems influence the society the business serves, as such these value systems percolate also in the society.

vii. When an organisation fails to behave in accordance with the social expectations, it may lose not only its image and market share, but also its very right to exist.

viii. In current context, a business entrepreneur or manager is expected to serve as a trustee of various social groups. As a trustee, entrepreneur he must not only abide by the ethical values of the society but also demonstrate ethical conduct and transparency in all his transactions with society and other stakeholders.

ix. In the era of globalization, requirements of licenses and permissions are either done away or relaxed. At the same time, the law is becoming more and more stringent in the requirements of compliance and disclosure. Several agencies- both governmental and non-governmental are watching every business from the point of view of their ethical conduct. Unethical conduct may not only lead to punitive action but also erosion of brand value.

8.2 Integrity

a) There are strong linkages between ethics and business. Companies displaying a clear commitment to ethical conduct have been found consistently outperforming those, which do not display ethical conduct.

b) Ethical conduct promotes sustainable growth and builds brand image, while failure to do so may result not only in loss of image, market share, but also it's very right to exist.

c) An organisation with a strong ethical environment places its customer's interest as foremost, which helps in promoting a strong public image.

d) Ethical work culture provides a solid foundation for efficiency, increased productivity and sustainable loyalty of all stakeholders including investors.

e) Ethical work environment helps in attracting and retaining the best talent available in the market and creating efficient and committed workforce which in turn gives them a strong competitive advantage over poorly managed organisations

8.3 What a board can do?

Understand Why Behaviour matters	• Ask whether existing attitudes are what you need to succeed. • Consider how undesirable attitudes could cause damage.
Set out What's Expected	• Give behavioural issues a regular slot on the agenda. • Review programme objectives at full board level. • Mandate on-going further work at committee level, including oversight of effectiveness.
Communicate Expectations	• Ask management to prepare a communications plan. • Refine and agree the plan and oversee its implementation. • Get regular feedback from employees on what it means to them.
Ensure Standards are Embedded	• Study, and if need be reform, management and staff training. • Look at how management are involved and are setting an example. • Adapt to the challenges of communicating in different cultures and languages.
Identify Key Influences	• Consider how reward mechanisms might influence behaviour • Look at how the board & top management set the tone and shape behaviour. • Assess how growth, change & uncertainty impact culture.
Conduct Regular Assessments	• Develop regular reporting on staff attitudes & behaviour • Establish KPIs to track performance. • Find out how management informs itself about staff attitudes and breaches of standards.
Get Assurance	• Monitor the assurance programme & be prepared to change focus over time. • Use a wide range of indicators to assess behaviour. • Ensure significant lapses in behaviour are reported to the board, along with examples of the good as well.
Set an Example	• Senior manager and Directors take part in training & periodic refresher courses. • Publicize board support & involvement in program. • Highlight cases of employees “doing the right thing”.

Law cannot codify all ethical requirements. An action, which is unethical, need not necessarily be illegal. Ethics is a set of principles or standards that govern and regulate the behaviour of individuals or organisations. These standards are self-imposed rather than enforced, but play a crucial role in

today's business environment.

8.4 Ethics Committee

Writing a code of conduct, supporting it at top levels and communicating it to employees are just a beginning to inculcate culture of ethics in an organisation. Effective deployment of code of ethics and its monitoring would be required. Companies should have a committee of independent non-executive directors who are responsible for ensuring that systems are in place in the company to assure employees comply with the Code of Ethics.

Functions of Ethics Committee

The oversight process of the Ethics Committee of an organisation involves the following areas to be addressed by it:

i) Review of the definitions of standards and procedures

The Committee should review the organisation's areas of operation, the activities that require a formal set of ethical standards and procedures. Once the review is complete and any shortcomings comes to light, the ethics committee should assign the creation of revised guidelines to the appropriate personnel, including the design of a formal method for communicating standards, and procedures to employees. This method should ensure that employees understand as well as accept the ethics program. The ethics committee can suggest behaviours to senior management to reinforce the organisation's guidelines

ii) Facilitate Compliance

The ethics Committee has the responsibility for overall compliance of ethical standards and procedures enshrined in code of ethics. It is the responsible authority for ethics compliance within its area of jurisdiction. It should serve as the court of last resort concerning interpretations of the organisation's standards and procedures. In case of inconsistencies, the committee should make recommendations on improving the existing compliance mechanisms. There should be regular follow-ups to ensure that compliance recommendations are understood and accepted.

iii) Due diligence of prospective employees

The ethics committee should define how the organisation will balance the rights of individual applicants and employees against the organisation's need to avoid risks that come from placing known violators in positions of discretionary responsibility. This includes the oversight of background investigations on employees and applicants who are being considered for such positions

iv) Oversight of communication and training of ethics programme

The ethics committee should define methods and mechanisms for communicating ethical standards and procedures. This includes the distribution of documents (codes of conduct, for example) to ensure that every employee understands and accepts the organisation's ethical guidelines. To make certain that published standards are understood, the ethics committee should provide regular training sessions, as well. Since communication is a two-way process, the ethics committee should solicit stakeholders input regarding how standards and procedures are defined and enforced. In this

connection, it is useful to create ways of providing proof that each employee has received the appropriate documents and understands the standards

and procedures described therein.

v) Monitor and audit compliance

Compliance is an on-going necessity and the ethics committee should design controls, which monitor, audit and demonstrate employees' adherence to published standards and procedures. There should also be some mechanisms to check the effectiveness and reliability of such internal controls. To warrant that the organisation's goals, objectives and plans are not in conflict with its ethical standards and procedures, the ethics committee should develop methods for regular review and assessment

vi) Enforcement of disciplinary mechanism

Disciplinary provisions should be in place to ensure consistent responses to similar violations of standards and procedures (as against applying different standards to different employees based on their position, performance, function, and the like). There should be provisions for those who ignore, as well as for those who violate standards and procedures.

vii) Analysis and follow-up

When violations occur, the ethics committee should have ways to identify why they occurred. It is also important that lessons learned from prior violations are systematically applied to reduce the chances of similar violations taking place in future.

8.5 Creation of Ethical climate- Role of Directors

a) The Board of Directors of a company holds the ultimate responsibility for the ethics of their actions. The Directors are the role models in ethical practices and their work culture, attitudes and behaviour percolates across the company and goes straight to the bottom-line. It motivates the employees, increases their confidence level and output.

b) Due to globalization, increased role of media, speed of communications, watch by various regulatory agencies, the directors are now under greater demand of accountability and transparency. By virtue of their position, Independent Directors are expected to play a greater pro-active role in a company's approach towards ethical issues and protecting interests of stakeholders.

Professional Responsibilities-

i. Ownership Attitude – Every director treating the company as his/her own and accepting personal responsibility and accountability for all its business needs and actions.

ii. Consumers focus- Superior understanding of the consumer needs and development of products or services accordingly.

iii. Integrity- Honest dealings with consumers, business partners and all the stakeholders.

iv. Professional Competence- Constant updating of professional developments, setting standards and achieving them.

v. Knowledge and respect of the laws-

- Obeying policies, procedures, rules and regulations
- Faithfully obeying the local, national & international laws & regulations.

vi. Performance Evaluation- Sincere and true performance evaluation of the peers and the Board.

vii. Upright behaviour and avoiding any inducements- Avoid any personal fee, gift, commission or any other form of remuneration arising out of business transactions, directly or through family or relatives/ friends.

viii. Observe Corporate discipline-

- Faithfully carry out the board decisions
- Maintain confidentiality of sensitive information.

ix. Identifying, managing and mitigating business risks- Risks to be identified, boldly faced and prudently managed, Losses/damages to be prevented/ minimised.

x. Protection of Company's properties- Company's assets to be safeguarded from loss, damage, theft or misappropriation.

Moral Responsibilities

i. Protection of Environment – company's products should do no harm to the local or global environment.

ii. Quality of Products – No compromise on the quality of products. Ensure products are such, that they do not cause harm to the health of consumers.

iii. Be honest and trustworthy – Abstain from making false or deceptive claims about the products, services and systems. Instead provide full disclosure of all pertinent limitations, safety precautions and problems involved.

iv. Fair and just dealing – Be fair, impartial and no discrimination on the basis of race, gender, religion, caste, age or nationality. Treat everyone with respect and good faith, avoid loose talk.

8.6 Disclosure of Interest by Directors

a) Every Director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosure already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals which shall include shareholding, by giving a notice in writing in Form MBP-1

b) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

c) All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of

the company secretary of the company or any other person authorized by the Board for the purpose.

(Sec 184 of the Act and Rule 9 of Companies (Meetings of the Board and its Powers) Rules, 2014 refers)

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Chapter - 9

BOARD & DIRECTORS' PERFORMANCE EVALUATION

9.1 Purpose of Evaluation

Annual performance evaluation of boards and directors is an acknowledged global best practice. India has moved to the forefront of the governance challenge with its SEBI (LODR) Regulations, 2015 and Companies Act, 2013, which mandates that the Board of every listed company and other public companies with paid-up capital of Rs 25 crore or more shall include in the report by its Board of Directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

The stakeholders and investors are interested to know whether the members of Board are effectively functioning individually and collectively. The Board at many times requires new skills for promptly responding to the dynamic changing business environment. Performance measurement, against the set benchmarks, in the form of Board evaluation (also called "Board assessment", "Board review") has the potential to significantly enhance Board effectiveness, maximize strengths, tackle weaknesses and improve corporate relationships. Annual assessment is a powerful tool to convert good boards into great boards.

It has proved beneficial to boards, reinforcing appropriate roles and responsibilities, giving the board and the directors a regular opportunity to review their critical issues and effectiveness; and then determine whether they are performing adequately to protect the interests of all stakeholders. The purposes of the Board evaluation can be enumerated as under:

- Improving the performance of Board towards corporate goals and objectives.
- Assessing the balance of skills, knowledge and experience on the Board.
- Identifying the areas of concern and areas to be focussed for improvement.
- Identifying and creating awareness about the role of Directors individually and collectively as Board.
- Building Team work among Board members.
- Effective Coordination between Board and Management.
- Overall growth of the organisation.

Appraisal of Board's performance includes fixing up of individual and collective roles and responsibilities of its directors, creating awareness among Directors about their expected level of performance and thereby improving the effectiveness of the Board. Board evaluation contributes significantly to improved performance at three levels - organizational, Board and individual Board member level. It also improves the leadership, teamwork, accountability, decision-making, communication and efficiency of the board. A commitment to annual evaluation is powerful change

agent.

The boards should undertake a formal and rigorous annual evaluation of their own performance and that of their committees and individual directors. The board Chair should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of current directors.

Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties).

However, the general lack of faith of a large part of the Indian corporate sector on the need and efficacy of the board and individual director evaluation. Also, a very large part of India's corporate sector comprises family-managed companies. Unless executed carefully, these two realities may well turn a very desirable provision of the Act into an annual box-ticking and profligate exercise.

9.2 Key Elements

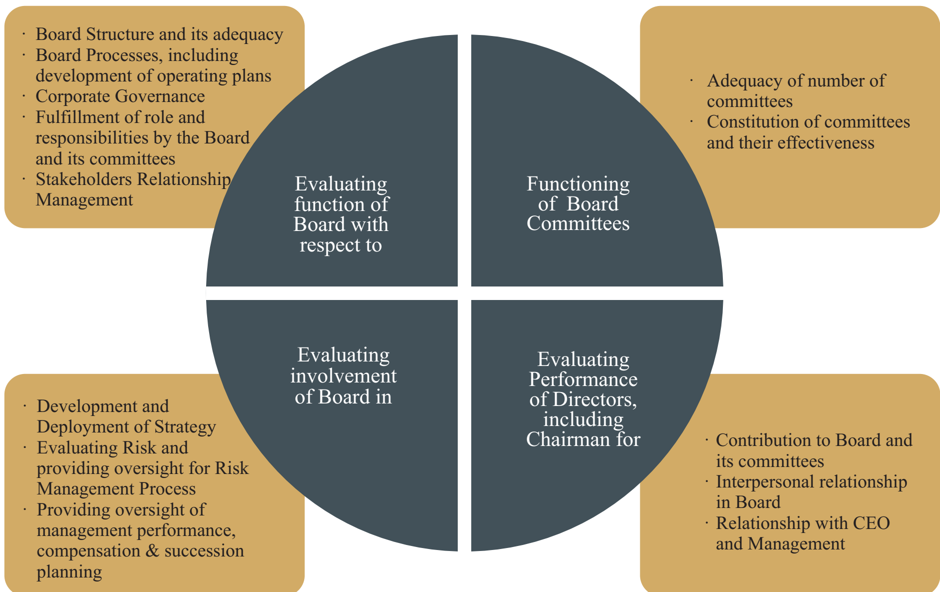

Figure 9.1: Key elements of the Board & Directors' Performance Evaluation

9.3 Evaluation Process

The underlying principles governing the processes and methodologies of evaluation of the board and individual directors are now more or less standardised in the US, UK and most of the OECD countries. The levels of disclosures, though, vary. Some regulators in these markets mandate

disclosures of the process, parameters, outcomes and action plans arising from evaluation; many others have still kept board evaluations voluntary.

Internationally, the performance evaluation is either conducted

- In house by Chairperson or Governance and Nomination Committee or
- By an external independent body/expert.

Board evaluation, through self-evaluation or by a third party, is a powerful tool to uncover the real issues that inhibit board's effectiveness. But it is not a panacea. It needs to be carefully designed if it is to go beyond a box-ticking survey. Confidentiality is a prerequisite for the success of the entire evaluation process.

There is no bar to seek external assistance for evaluation. Institute of Directors' tailor-made Board and Directors' (including Independent Directors) Performance Evaluation Service, offers independent, unbiased and objective conduct of evaluation, formulation of Evaluation Policy, services for Board functioning. It streamlines corporate evaluation process then delivers a valuable report with company specific recommendations and actionable results.

Disclosure on Board Evaluation

According to Section 134 sub-section 3(p) read with Sub-rule (4) of Rule 8 of the Companies (Accounts) Rules, 2014 every listed company and every other public company having paid-up share capital of twenty five crores or more calculated at the end of the preceding financial year should include in the report by its Board of Directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Effective 10 May 2018, the equity listed entities may provide disclosures on board evaluation. Therefore, listed entities may consider the following points as a part of their disclosures on board evaluation:

a. Observations of board evaluation carried out for the year

b. Previous year's observations and actions taken

c. Proposed actions based on current year observations.

Additionally, with effect from 1 April 2019, the evaluation of independent directors is required to be done by the entire Board and would include performance of the directors and fulfilment of the independence criteria as specified in the Listing Regulations and their independence from the management. The directors whose performance is being evaluated would not take part in such an evaluation. (SEBI (LODR) Amendment Regulations, 2018)

The disclosure of board evaluation should not be a boiler plate and move the needle to substance rather than form. These disclosures are likely to bring transparency to stakeholders as they would be able to understand all the aspects of evaluation i.e. observations of board evaluation carried out for the year, previous year's observations and actions taken and proposed actions based on current year observations. This requirement is applicable from 10 May 2018 and therefore, listed entities that

have not yet issued annual reports may consider providing disclosures regarding board evaluation. It is important to note that Board of Directors have discretion in the manner of presentation of disclosures with regard to board evaluation. The circular is effective from 10 May 2018 while the compliance by companies is voluntary

Role of Nomination & Remuneration Committee in Board Evaluation

Nomination & Remuneration Committee constituted under section 178 of the Act has been made responsible for carrying out evaluation of every director's performance if required by the Board. Section 178(2) states that the Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner of effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by Nomination and remuneration committee or by an independent external agency and review its implementation and compliance. It is pertinent to note that for the smooth and timely evaluation, the Nomination and Remuneration Committee plays a crucial role starting from developing the questionnaire to overseeing the evaluation and finally analysing the feedback.

Frequency of Board Evaluation

Reading section 134(3)(p) it can be inferred that there has to be a formal annual evaluation of Board of its own performance and that of its committees and individual directors. The Company may undertake annual evaluation either in accordance with calendar year or financial year, as there is no clarity on this. Ideally, the same should be as per financial year.

Review of Methodology

The evaluation methodology may be reviewed once in a year by the Nomination and Remuneration Committee based on the recommendation of the Board and/or to ensure compliance with regulatory requirements.

Post Disclosure

Apart from disclosures in the Boards' Report, follow-up is critical for having the maximum impact. Once the evaluation is complete, directors should be encouraged to formally recognize the results and enable follow-up activities. Follow up should include developing a plan of action for addressing points that arise from the discussion and assigning follow-up responsibilities to the governance committee, if any or the Board Chair. This may include:

Communication to individual director - the feedback or concerns may be shared with directors preferably by the Chairperson in a delicate and subtle manner in one to one meeting. Such meetings should be interactive so that cordial future action can be derived.

Systemic changes can be introduced which shall include director development programmes, director dashboard, better information flow to directors, committees etc.

9.4 Individual Performance Evaluation

Evaluations of individual directors usually are more delicate. If not done properly, these could exacerbate tensions and apprehensions of individual directors. The evaluation exercises would not be fruitful if these do not result in a concrete action plan for the board, the committees and the directors. But for all this to happen, individual directors must be able to give their opinion freely and frankly about the board's and individual directors' performances, irrespective of whether the company is family-run or professionally managed.

The performance evaluation of Managing Director, Executive Director of the Company may be done by all the directors. The Code for Independent Directors also provides that Independent Directors shall review the performance of non-independent Directors, which include Managing Director / Whole time Director/ Executive Director.

The broad parameters for reviewing the performance of Managing Director/Executive Director are:

- Achievement of financial/business targets prescribed by the Board Review of competency mix ;
- Developing and managing / executing business plans, operational plans, risk management, and financial affairs of the organization;
- Display of leadership qualities i.e correctly anticipating business trends, opportunities, and priorities affecting the Company's prosperity and operations;
- Development of policies, and strategic plans aligned with the vision and mission of Company and which harmoniously balance the needs of shareholders, clients, employees, and other stakeholders;
- Establishment of an effective organization structure to ensure that there is management focus on key functions necessary for the organization to align with its mission; and
- Managing relationships with the Board, management team, regulators, bankers, industry representatives and other stakeholders

9.5 Evaluation of Non-Executive Directors

In terms of the Code for Independent Directors, the Independent director(s) on the Board of the Company can evaluate the performance of Non-independent director(s) which include non-executive director(s). Peer Review method or external evaluation may also facilitate the purpose of evaluating Non-executive directors.

The broad parameters for reviewing the performance of Non-executive Directors are

- Participation at the Board / Committee meetings
- Commitment (including guidance provided to senior management outside of Board/ Committee meetings);
- Effective deployment of knowledge and expertise
- Effective management of relationship with stakeholders

- Integrity and maintaining of confidentiality;
- Independence of behaviour and judgment; and
- Impact and influence

9.6 Evaluation of Chairperson

The performance of the Chairperson is linked to both the functioning of the Board as a whole as well as the performance of each director. In terms of Code for Independent Directors, the Independent Director shall review the performance of the Chairperson of the company taking into account the views of the executive directors and non-executive directors.

All the directors of the Board of the company thereof contribute in evaluating the performance of the Chairperson of the Board. External agencies may also be involved in evaluating the Chairperson. The broad parameters for reviewing the performance of Chairperson of the Board are:

- Managing relationship with the members of the Board and management;
- Demonstration of leadership qualities;
- Relationship and communication within the Board;
- Providing ease of raising of issues and concerns by the Board members; and
- Promoting constructive debate and effective decision making at the board;
- Relationship and effectiveness of communication with the shareholders and other stakeholders;
- Promoting shareholder confidence in the Board and
- Personal attributes i.e. Integrity, Honesty, and Knowledge etc.
- Whether the Chairperson displays efficient leadership, is open minded, decisive, courteous, displays professionalism, able to coordinate the discussion effectively and steers meetings towards consensus.
- Whether the Chairperson is impartial in conducting discussions, seeking views and dealing with dissent etc.
- Whether the Chairperson is sufficiently committed to the Board and has deep knowledge of the Company and the industry.
- Whether the Chairperson is able to keep the Shareholders and the Stakeholders interests in mind during discussions and decisions.

9.7 Evaluation of Independent Directors

The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director. The company shall disclose the criteria for performance evaluation in its Annual Report. The broad parameters for evaluation of NED/ID are:

- Exercise of objective independent judgement in the best interest of Company;
- Performance of the Directors
- Fulfillment of the independence criteria
- Ability to contribute to and monitor Corporate Governance practice; and
- Adherence to the code of conduct for Independent Directors.

9.8 Evaluation of the Committees

The performance of the committees either be evaluated by the Directors, or may be externally facilitated. The broad parameters of reviewing the performance of the Committees, inter alia, are:

- Discharge of its functions and duties as per its terms of reference;
- Process and procedures followed for discharging its functions;
- Effectiveness of suggestions and recommendations received;
- Size, structure and expertise of the Committee; and
- Conduct of its meetings and procedures followed in this regard.

9.9 Evaluation of CEO

Through evaluation, boards can systematically maintain accountability for the actions of the CEO. The evaluation process should be a regular and formal process to avoid or reduce subjective judgements of performance. By employing a formal evaluation process, performance expectations can be made clear for both the board and CEO.

The outcome of effective CEO evaluation will benefit both the CEO and the Board. The CEO will receive appropriate recognition and compensation and the board will benefit in seeing the goals of organisation realized.

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Chapter - 10

GLOBAL TRENDS

10.1 Introduction

Based on a long-standing research program, the 'Worldwide Governance Indicators' capture six key dimensions of governance (Voice & Accountability, Political Stability and Lack of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption) since 1996. They measure the quality of governance in over 200 countries, based on close to 40 data sources produced by over 30 organisations worldwide, and updated annually since 2002.

The governance indicators contribute to the growing research on governance, which has provided activists and reformers with advocacy tools for policy reform and monitoring. The indicators, and the underlying data behind them, are part of the current research and opinions. Their growing recognition of the link between good governance and successful development has stimulated demand for monitoring the quality of governance across countries. Virtually all of the individual data sources underlying the aggregate indicators are, along with the aggregate indicators themselves, publicly available.

The Worldwide Governance Indicators are a compilation of the perceptions of a very diverse group of respondents, collected in large number of surveys and other cross-country assessments of governance. Some of these instruments capture the views of firms, individuals, and public officials in the countries being assessed. Others reflect the views of NGOs and aid donors, with considerable experience in the countries being assessed, while others are based on the assessments of commercial risk-rating agencies.

10.2 Corporate Governance in Emerging markets

Corporate governance has, from being a subject of debate within the academic, regulatory, and investor circles, of late become an issue of national concern across the world. Key in this debate is the role that corporate governance plays not just in the generation of returns, economic and others, to owners and stakeholders but also as an engine for economic growth and cultural change in a country. Corporate governance has often come under close scrutiny across the globe, following large-scale corporate scandals such as Enron, Satyam and Vivendi and also because of the perceived power that multinational organisations wield.

While in the developed countries corporate governance issues are more concerned with accountability and responsibility, stemming mainly from suspect accounting and auditing practices and pressures to provide a wider stakeholder perspective, the developing countries have much larger issues at hand to address. Internal and external economic and political liberalisation was the mainstay of reforms that commenced in many developing countries in 1990s. Yet, countries swiftly came to realise that liberalisation and privatisation alone were not sufficient in creating incentives

for changes in managerial behaviour and improved company performance. Institutional reforms, including those of governance mechanisms, were needed to promote balanced and sustainable economic and social development. This, in turn, raised questions over the type of governance models and mechanisms that developing countries ought to adopt and adapt. Whilst there has been a proliferation of literature on why better governance is needed in developing countries, empirical research on the types of evolving governance mechanisms and their effectiveness is relatively scarce.

Emerging markets offer higher opportunity to achieve better results through improvements in governance quality. However, there are multifaceted risks associated at the country and company levels. These risks require investors to have a much better understanding of the governance factors in different markets. Most cross country analysis on corporate governance focus on the relationships between economic performance and countries' legal systems.

Emerging Markets and various complexities

Identifying areas where corporate governance is relatively strong and weak, and areas where regulation might usefully be either relaxed or strengthened can be a hassle. As certain governance rules will be more appropriate for larger companies. Governance methods that are beneficial for investor protection in one country could be suboptimal for companies in another. For example, in some circumstances, "friendly" outside directors may also be more trusted and more knowledgeable than "independent" directors. Some of the complexities are:

1. **Laws framed:** Though laws are effectively framed, problem lies in implementation, because the judiciary system in some markets are corrupt and lethargic.
2. **Ownership Structure:** The ownership pattern in such markets are relationship based, this way the minority shareholders aren't given their right, which leads to lack of transparency. Therefore, it is essential to come up with indigenous governance framework.
3. **Cultural and social differences:** Due to significant cultural and social differences, difficulties arise in implementation.
4. **Contrasting financial and institutional structures:** The contrasting financial and institutional structures, may lead to divergence in measuring results.

Overcome Complexities:

1. Stringent norms: Stringent norms and their effective implementation are required. Rewarding the best practices can lead to more followers.
2. Principle based approach: Corporate Governance should be principle-based, rather than rule based as rules are easier to mend.
3. Minority shareholders- Independent Directors: The more diluted an organisation is, more is the perception of trust created in the minds of investors.
4. Third party monitoring- Banks and Rating Agencies: Independent credit rating agencies can go a long way in ensuring good corporate governance practices in a company.

5. Disclosures on ownership: The owner's relationships with third-party affiliates, and their economic stake and voting control.
6. Related-party transactions: Related-party transactions of a material nature need to be scrutinized and be adequately disclosed.

For the successful implementation of the corporate governance framework, it is necessary that all the stakeholders, including shareholders of the company realize that corporate governance is an integral part of company's core values. Emerging markets therefore should adopt the above techniques and overcome such complexities for successful implementation.

10.3 Global Corporate Governance Practices

The introduction of corporate governance regulations and best practices in one country or region increasingly affect corporate governance practices elsewhere in the world. For example, in 2002 the United Kingdom became the first country to require companies to submit executive compensation proposals to a shareholder vote. Though non binding, the votes enable shareholders to voice their concerns on corporate compensation packages. A year later, the Netherlands took the same practice one step further by requiring companies to submit compensation reports to a binding vote by shareholders. If shareholders vote the report down, the company must either keep the previous compensation plan, or else call an Extraordinary General Meeting of shareholders for a new vote. In 2005, Sweden and Australia both adopted requirements for non-binding shareholder votes on compensation. As noted earlier, in the United States, new SEC rules mandate disclosure of executive compensation plans. In addition, a number of recent shareholder resolutions seek an advisory vote on compensation committee reports.

The U.S. Sarbanes-Oxley, along with the implementing requirements that followed, is another example of a standard, whose impact extends well beyond national borders. Investors throughout the world have taken notice of Sarbanes-Oxley, and their responses, positive or negative, are shaping the development of regulations and standards in their own countries.

In Japan, perhaps more than anywhere else, the global pressures for governance reform are being felt. And, while change is slow, progress has been made toward providing greater accountability and transparency, a key concern of international investors. A new governance code has been adopted by Japan in 2015.

Increasingly, investors use the power of the ballot box to shape corporate governance standards overseas. The 2006 Institutional Shareholder Services Global's 'Institutional Investor Study' shows that investors in the United States, Canada, and the United Kingdom are the most likely to cast proxy votes outside their home markets, with 73% of U.S., 67% of Canadian, and 60% of U.K. investors voting at least 50% of the shares they hold outside of their home market.

The globalization of corporate governance is also influenced by regulators and governments, especially in developing markets. Markets compete with each other to attract global capital, and that competition includes corporate governance standards and ease of doing business. Increasingly, high–corporate governance standards are viewed as a way to make their markets more attractive to

international investors.

10.3.1 Japan

- The Japanese economy has for many years been characterised by a low corporate return on equity. Increasing returns requires better corporate governance that improves investment and the use of corporate resources, including cash holdings.
- Measures should include better corporate board practices, the re-examination of cross shareholding between companies and more active stewardship by institutional investors.
- Japan has taken a first step by introducing a stewardship code for institutional investors and by developing a national corporate governance code for publicly listed companies.
- Going forward, Japanese authorities, the Tokyo Stock Exchange and the business community need to support effective implementation and widespread use of these codes.

Japanese companies show considerably lower profitability than their European and US counterparts. This is partly attributed to shortcomings in corporate governance practices, and how corporate resources, including cash holdings, are used.

There is growing recognition of the importance of the role of institutional investors, both domestic and foreign, to enhance corporate governance practices, as they hold more than 50% of Japanese listed stocks, up from slightly over 30% in 1990.In Japan, the share of foreign investors doubled from 14% to 28% in the last 15 years. This trend has been accompanied by a surge in new types of intermediaries, such as asset management funds and proxy advisors. Listed companies in Japan often hold the shares of other listed companies for reasons related to strengthening of business links rather than purely for investment purposes. This has led to a hollowing out of capital and has been criticised by institutional investors as weakening minority shareholders' influence. These cross shareholdings represent another 11% of market capitalisation.

Against this background, the government has recently taken a number of steps to enhance corporate governance. They include the adoption in February 2014 of Japan's Stewardship Code to promote institutional investors' engagement in the mid to long-term growth of companies through constructive dialogue; the amendment in June 2014 of the Companies Act to introduce a provision requiring companies to explain the reasons if they do not appoint outside directors; and the adoption in March 2015 of a final proposal of Japan's Corporate Governance Code, establishing for the first time in Japan a “Comply or Explain” framework for reporting on good corporate governance practices. The draft code addresses major issues, including recommendations to appoint at least two independent directors, to assess the mid- to long-run economic rationale for and the future perspective of cross shareholdings at the board level, to clearly explain their logic and objective, and to disclose the company's cross shareholding policy.

What should policymakers do?

- Support and monitor the implementation of the Stewardship Code.
- Ensure immediate adoption and implementation of the Japanese Corporate Governance Code.

- Re-examine the economic rationale for cross shareholdings between companies.

10.3.2 Australia

The ASX Corporate Governance Council 'Principles and Recommendations' were introduced in 2003. A substantially re-written second edition was released in 2007 and new recommendations on diversity and the composition of the remuneration committee were added in 2010. Since the release of the second edition in 2007, there has been considerable focus across the world on corporate governance practices in light of the events leading up to, and during, the Global Financial Crisis.

Good corporate governance promotes investor confidence, which is crucial to the ability of entities listed on the Australian Securities Exchange, to compete for capital.

The purpose of the 'Principles and Recommendations'

These Principles and Recommendations set out recommended corporate governance practices for entities listed on the Australian Securities Exchange that, in the Council's view, are likely to achieve good governance outcomes and meet the reasonable expectations of most investors in most situations.

The Council recognises, however, that different entities may legitimately adopt different governance practices, based on a range of factors, including their size, complexity, history and corporate culture. For that reason, the Principles and Recommendations are not mandatory and do not seek to prescribe the corporate governance practices, that a listed entity must adopt.

The basis of the Principles and Recommendations - the "if not, why not" approach

Which governance practices a listed entity chooses to adopt is fundamentally a matter for its board of directors, the body charged with the legal responsibility for managing its business with due care and diligence, and therefore for ensuring that it has appropriate governance arrangements in place.

Under the Principles and Recommendations, if the board of a listed entity considers that a Council recommendation is not appropriate to its particular circumstances, it is entitled not to adopt it. If it does so, however, it must explain why it has not adopted the recommendation - the "if not, why not" approach.

Requiring this explanation ensures that the market receives an appropriate level of information about the entity's governance arrangements, so that:

- Security holders and other stakeholders in the investment community can have a meaningful dialogue with the board and management on governance matters;
- Security holders can factor that information into their decision on how to vote on particular resolutions; and
- Investors can factor that information into their decision on whether or not to invest in the entity's securities.

The "if not, why not" approach is fundamental to the operation of the 'Principles and Recommendations'.

The structure of the 'Principles and Recommendations':

The Principles and Recommendations are structured around, and seek to promote, 8 central principles:

1. Lay solid foundations for management and oversight: A listed entity should establish and disclose the respective roles and responsibilities of its board and management and how their performance is monitored and evaluated.
2. Structure the board to add value: A listed entity should have a board of an appropriate size, composition, skills and commitment, to enable it to discharge its duties effectively.
3. Act ethically and responsibly: A listed entity should act ethically and responsibly.
4. Safeguard integrity in corporate reporting: A listed entity should have formal and rigorous processes that independently verify and safeguard the integrity of its corporate reporting.
5. Make timely and balanced disclosure: A listed entity should make timely and balanced disclosure of all matters concerning it, that a reasonable person would expect to have a material effect on the price or value of its securities.
6. Respect the rights of security holders: A listed entity should respect the rights of its security holders by providing them with appropriate information and facilities, to allow them to exercise those rights effectively.
7. Recognise and manage risk: A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.
8. Remunerate fairly and responsibly: A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives, and to align their interests with the creation of value for security holders.

10.3.3 United Kingdom

The UK approach combines high standards of corporate governance with relatively low associated costs. In a September 2009 report by Governance Metrics International, the UK ranked second in a table showing average governance performance by companies in different countries. There is a relative lack of prescription as to how a company's board organises itself and exercises its responsibilities.

The UK Corporate Governance Code, 2014 by Financial Reporting Council, identifies good governance practices, but companies can choose to adopt a different approach if that is more appropriate to their circumstances.

The key relationship is between the company and its shareholders, not between the company and the securities regulator or stock exchange. Boards and shareholders are encouraged to engage in dialogue on corporate governance matters. Shareholders have voting rights and rights to information, set out in company law and the Listing Rules, which enable them to hold the board to

account.

The essential features of UK Corporate Governance Code are, as under:

- A single board with members collectively responsible for the long term success of the company.
- A clear division of responsibilities for running the board, and running the company with a separate chairman and chief executive.
- An appropriate balance of skills, experience and independence, on the board and its committees.
- Formal and transparent procedures for appointing directors, with all appointments and re appointments to be ratified by shareholders.
- Regular evaluation of the effectiveness of the board, it's committees and individual directors. A single board to the collectively responsible for the sustainable success of the company
- Separate Chairman and Chief Executive.
- A balance of executive and independent non-executive directors.
- Strong, independent audit and remuneration committees.
- Annual evaluation by the board of it's performance.
- Transparency on appointments and remuneration
- Effective rights for shareholders, who are encouraged to engage with the companies in which they invest

Accountability

- The board must present a balanced assessment of the company's position.
- The board must determine the nature and extent of the significant risks it is willing to take, and oversee sound risk management and internal control systems.
- Formal and transparent procedures for carrying out these responsibilities, including an audit committee made up of independent directors and with the necessary experience.

Remuneration

- Formal and transparent procedures for setting executive remuneration, including a remuneration committee made up of independent directors and an advisory vote for shareholders.
- A significant proportion of remuneration to be linked to performance conditions, designed to promote the long-term success of the company.

Relations with shareholders

- Regular contact with shareholders, to understand their opinions and concerns.
- Separate resolutions on all substantial issues, at general meetings.
- Shareholders to monitor and engage with the companies, in which they invest.

10.3.4 South Africa

Principles of good governance are not only regulated in terms of legislation and the common law, but

important recommendations are also contained in 'Codes of Best Practices'. The King II Report on Corporate Governance of 2002 (hereafter referred to as 'King II') was applicable to South African enterprises, until the end of February 2010.

In view of the anticipated new Companies Act 2008, (South Africa) it became necessary to draft a new King Report on Corporate Governance. The King III Committee consisted of 11 subcommittees, namely:

- boards and directors
- accounting and auditing
- risk management
- internal audit
- integrated sustainability reporting
- compliance and stakeholder relationships
- business rescue
- fundamental and affected transactions
- IT governance
- alternative dispute resolutions
- editing

The King III Report deals with more or less the same issues as dealt with in King II. It provides general principles regarding ethical leadership and corporate governance, as well as principles of good governance relating to the board and directors, audit committees, the governance of risk and information technology, compliance with laws, codes, rules and standards, internal audit, governing stakeholder relationships and integrated reporting and disclosure.

The King III Report applies to all entities regardless of the manner and form of incorporation or establishment, whether in the public, private or non-profit sectors

Recommendations were also added dealing with fundamental transactions as directors need to be aware of their duties in regard to mergers, acquisitions and amalgamations. King III also refers to business rescue proceedings as provided for in the new Companies Act 2008. This is, however, not dealt with in detail in King III Report. 'The King III Report' operates on an 'apply and explain' basis. This is similar to the 'comply and explain' basis that King II operated on. The King III committee found the word 'apply' more appropriate than 'comply'.

The key principles of the King III Report are leadership, sustainability and corporate citizenship. Good governance is essentially about effective leadership. It is stated that effective leaders are characterised by the values of responsibility, accountability, fairness and transparency. Sustainability is also very important as nature, society and business are interrelated and directors need to understand this. Sustainability reporting is one of the core aspects of good corporate governance, but has to be cost-effective. Corporate citizenship refers to the fact that a company is a

person that has to operate in a sustainable manner. The responsibilities placed on individuals and juristic persons in terms of the constitution, are relevant in this regard.

The board should consider the interests of all legitimate stakeholders and not just those of the shareholders. Two approaches are referred to – namely the enlightened shareholder value approach, where stakeholders are only considered in so far as it would benefit the shareholders collectively, and the stakeholder inclusive approach, where the board would consider the interest of the stakeholders on the basis that it is in the best interests of the company. In the stakeholder inclusive model, recognised in the report, the legitimate interests of all stakeholders are considered, when determining what is in the best interest of the company. The various interests of different stakeholders are determined on a case-by-case basis, to act in the best interests of the company. A certain stakeholder may receive preferential treatment if that serves the interests of the company best.

Integrated sustainability performance and integrated reporting is also recommended in the report to enable stakeholders to make informed assessments on the economic value of a company. Emerging governance trends like alternative dispute resolutions, risk-based internal auditing and policies on remuneration were also included in the report. In short, the board should ensure that disputes are resolved effectively, efficiently and expeditiously as possible. Internal audit should be risk-based and the auditors should provide the board with an assessment on an annual basis regarding the systems of internal control and also to the audit committee on the effectiveness of internal financial controls. Companies should remunerate directors and executives fairly and responsibly.

10.4 Challenges in Global trends of Corporate Governance

Global scenario in Corporate Governance trends depicts attention on effective board with focus on independence, composition, director's responsibility and diversity, scrutiny of individual directors by investors or their advisors, constant addition of regulations, rules on disclosure and revision of corporate governance codes to drive increased transparency.

The analysis of corporate governance from cross-country perspective embarks upon a primary concern of suitability of a common global framework for all. Therefore, challenges in global trends of corporate governance are due to several factors other than the board including political, economic, social and/ or environmental challenges.

Barriers that Delay:

Some of the barriers that delay the optimal results are distinct country Corporate Governance code, tailored to fit local conditions, different national cultures, contrasting financial and institutional structures, rigid norms, lack of effective communication technologies to disseminate company's information to raise awareness of corporate governance and/ or facilitate the exercising of shareholders right, distinct levels of sophistication/ market development and time-consuming judiciary system in emerging countries like China, India and Brazil not necessarily ensure optimal results.

1. LAX Board

Lax board means a board, which is not sufficiently strict, severe, or careful. The famous case of lax board was the Satyam Scam. The Satyam Board was composed of chairman friendly directors, who failed to question management's strategy and use of leverage in recasting the company; they were also extremely slow to act, when it was already clear that the company was in financial distress.

2. Fraud

Fraud is generally defined as an intentional misrepresentation of existing fact made by one person to another with knowledge of its falsity, and for the purpose of inducing the other person to act, and upon which the other person relies with resulting injury or damage.

One example is Maxwell Communications Corporation in UK in the year 1991 was found doing fraud in pension funds. The company started taking out money from pension funds as loans for its private companies that were used as collateral for taking loans from banks required by Maxwell to finance corporate debt, takeovers and lavish lifestyle of Robert Maxwell. Thus, millions of pounds were borrowed from companies' pension funds to prop up the financial position of Maxwell group of companies, as most of them were running into losses.

3. Unchallenged Powers of Decision Making

Board of Directors is responsible for the performance of the company and is accountable to the shareholders. In practice, day-to-day operational decision-making powers are delegated through the chief executive officer to the executive management. The management carries out most of the detailed tasks of planning, considering different planning options, assessing risk, putting plans into action and monitoring performance.

A key issue here for corporate governance is that the board of directors should not delegate important decisions to management and allow chief executive officer to become the unchallenged centre of power in the company.

4. Cooking of Books, Accounts and Insider Trading

The best case to explain this point is Gujarat Heavy Chemicals Limited (GHCL). Here, the investigations revealed that the promoter entities of GHCL and the top officials conspired to disclose inflated shareholding to the exchanges, by including shareholding of the third party with the shareholding of the promoter.

The company secretary and the chairman transmitted incorrect shareholding of ten promoters to the stock exchanges.

5. Failure of External Audit

External audit means periodic or specific purpose (ad hoc) audit conducted by external (independent) qualified accountants. Its objective is to determine, among other things, whether the accounting records are accurate and complete, prepared in accordance with the provisions of GAAP, and the statements prepared from the accounts present fairly the organisation's financial position, and the results of its financial operations.

6. Lack of Proper Internal Audit

Internal audit means frequent or ongoing audit conducted by a firm's own directors to monitor operating results, verify financial records, evaluate internal controls, and assist with increasing efficiency and effectiveness of operations and, to detect fraud.

Internal audit can identify control problems, and aims at correcting lapses before they are discovered by an external audit. Although the internal auditors are the firm's employees, they normally do not audit themselves or their own departments, but entrust it usually to independent directors.

Toshiba, a 140-year-old pillar of Japan Inc, was caught up in the country's biggest accounting scandal. This scandal took place due to lack of proper internal audit. The investigators found that the company inflated earnings by at least $1.2 billion during the period 2009-2014.

10.5 Reforms to address Challenges:

- Improving interaction amongst various stakeholders: The manner in which a management board interacts with its managers, shareholders , employees, creditors, key customers and communities play a key role in providing shape to a company's strategy reduces resistance in adapting internationally accepted benchmark on corporate governance.
- Company law reforms: Reforms in all key areas of shareholder protection like independent board and committees structures, accountability issues, related party disclosure, independence of auditors etc.
- Shareholder activism: Shareholders improved activism and involvement acts as positive force for improving corporate governance.
- Utilisation of new information and effective communication technologies: Using improved communication modes to disseminate company information, raises awareness and helps to reduce resistance in adapting global trends.

Harmonisation of financial reporting standards: To ensure collective responsibility and accountability, harmonisation of financial reporting standards is must. Practice of disclosing all guarantees or investments, particulars of contract or arrangement with related party, state of affairs of the company, material changes and commitments disclosing responsibility statement, go a long way in meeting above challenges.

■

Annexures

Annexure - 1

GLOSSARY

Associate Company in relation to another company means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purpose of this clause,—

(a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

(a) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;

Board of Directors or "Board", in relation to a company, means the collective body of the directors of the company.

Directors are persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company.

Director Identification Number (DIN) is a unique identification number given to an existing or a potential Director of any company which is incorporated.

Electronic mode means any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

Financial statement in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (I) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

Financial year, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a

year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up.

Holding Company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Explanation.—For the purposes of this clause, the expression "company" includes any body corporate.

Independent director is a director (member) of a board of directors who does not have a material or pecuniary relationship with company or related persons, except sitting fees.

Key managerial personnel, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed

Listed Company means a company which has any of its securities listed on any recognised stock exchange.

Managing Director means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

One Person Company means a company which has only one person as a member.

Small Company means a company, other than a public company,—

(I) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

Subsidiary Company or Subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together

with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Turnover means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year.

Whistleblower is a person who publicly complaints concealed misconduct on the part of an organisation or body of people, usually from within that same organisation. ■

Annexure - 2

CORPORATE GOVERNANCE - LEGAL COMPLIANCES

Regulations under the SEBI (LODR) Regulations 2015	Requirements	Section of the Companies Act, 2013	Requirements
4 (d)	**Role of Stakeholders in Corporate Governance** Listed entity to recognize rights of stakeholders established by law and encourages cooperation shall have the opportunity to obtain effective redress for violation of their rights; and devise effective whistle blower mechanisms.	166 (2)	**Role of Directors in Corporate Governance** Directors to act in the best interest of the company, its employees, the shareholders, the community and for the protection of environment.
16 (b)	**Criteria of Independence** In addition to the Companies Act 2013 requirements, to qualify as independent, a director ought not to be a material supplier, service provider or customer or lessor or lessee of the company; and should be at least twenty one years old.	149 (6) and (7)	**Criteria of Independence** Criteria of independence set out; managing director, whole time director nominee directors not to qualify as independent.
17	**Composition of Board of Directors of Listed Companies** • At least one woman director • Not less than fifty per cent of the total number of directors should be non-executive directors • If chairman is an executive chairman- at least half of the total number of directors should be independent directors. • If the chairman is a non-executive chairman, at least one third of the total number of directors should comprise of independent directors. • Top 500 and 1000 listed entities would be required to appoint at least one independent woman director on their Board from April 1, 2019 and April 1, 2020 respectively.	149	**Composition of Board of Directors** • Every listed company to appoint one woman director. • Every Public companies with a paid up capital of Rupees one hundred crore or more or turnover of Rupees three hundred crore or more, to have at least one woman director on their Board. • Every listed company to have at least one third of its Board qualifying as Independent Directors.

17 (2)	**Frequency of Board Meetings** The Board meetings shall be held at least four times a year, with a maximum time gap of one twenty days between any two meetings	173	**Frequency of Board Meetings** Every company shall hold a minimum of four board meetings every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board .
17 (2A)	**Quorum for Meetings of Board** The quorum for every meeting of the Board of the top 1000 and 2000 listed entity would be one-third of its total strength or three directors, whichever is higher, including at least one independent director from April 1, 2019 and April 1, 2020 respectively.	174	**Quorum for Meetings of Board** A quorum for every meeting of the Board would be one-third of the total strength of the Board or two directors, whichever is higher.
17(6)(a)	**Remuneration of Directors** The remuneration of non- executive directors to be decided by the Board of directors with previous approval of shareholders in general meeting.	197	**Remuneration of Directors** Remuneration of directors of a company to be determined by the resolution of the Board and the shareholders.
18 (1)	**Composition of Audit Committee** • The Audit Committee to consist of— - Minimum of three members, two thirds of which must be independent directors. - All directors shall be financially literate and at least one member shall have accounting or related financial management expertise. • Chairman to be an independent director • Chairman to attend Annual General Meeting. • Committee to invite Finance Director, head of Internal Audit, representative of statutory auditor to attend the meetings. • Company Secretary to act as Secretary to the committee.	177 (1)	**Composition of Audit Committee** • Listed companies to have audit committees of at least three directors, with a majority of them being independent and (including its chairman) financially literate. • All public companies with paid-up-capital of Rupees ten crore or more or turnover of Rupees one hundred crore or more or aggregate of borrowings, loans, debentures and deposit of Rupees fifty crore or more , to have Audit Committees of at least three directors, with a majority of them being independent and (including its Chairman) financially literate.

18 (2)	**Meetings of Audit Committee** • To meet at least four times in a year • Gap between one meeting and another should not be more than four months. **Quorum** Two members or one third of the members of the audit committee, whichever is higher and minimum of two independent directors.	177	**Meetings of Audit Committee** The frequency of meetings is not specified under section 177 of the 2013 Act. However, it states that Audit Committee should have periodical discussions with the auditors regarding the scope of audit and audit observations and review of half- yearly and annual financial statements before submission to the Board and also ensuring compliance of internal control systems. **Quorum** No quorum has been specified in section 177 of the 2013 Act. The quorum should, thus be as per the Article of Association of the company.
18 (2)(C)	**Power of Audit Committee** • To investigate any activity within its terms of reference • To seek information from an employee • To obtain outside legal or other professional advice • To secure attendance of outsiders with relevant expertise, if it considers necessary.	292A(7) of the 1956 Act	**Power of Audit Committee** • To investigate into any matter in relation to items specified in section 177 or referred to it by the Board • To have full access to information contained in the records of the company.
20	**Composition of Stakeholders Relationship Committee in a listed entity** • Stakeholders Relationship Committee should consist of at least three directors / as member, with at least one being independent director • They should look into various aspects of interest of shareholders, debenture holders and other security holders. • The chairperson of the SRC should be present in the Annual General Meeting (AGM) to answer queries of the security holders	178 (5)	**Composition of Stakeholders Relationship Committee in a listed entity** All companies with more than thousand shareholders, debenture holders, deposit holders and any other security holders at any time during a financial year to constitute a Stakeholder Relationship Committee chaired by a non-executive director and comprising other members as necessary, to consider and resolve security holders' grievances.

21	**Risk Management Committee** • The majority of members of Risk Management Committee shall consist of members of the Board of Directors. • The Chairperson of the Risk Management Committee shall be a member of the Board of Directors and senior executives of the listed entity may be members of the Committee. • The Board of the Directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the Committee and such other functions as it may deem fir • The provisions of this regulation shall be applicable to top one hundred listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year. • Should meet at least once in a year • The constitution of RMC would be applicable to top 500 listed entities and the role of RMC would specifically include cyber security		**Risk Management Committee** No such requirement under the 2013 Act.
26(1)	**No. of Directorships** Directors not to be a member of more than ten committees or chairs of more than five Committees across all public companies where they are directors; for this purpose, only Audit Committees and Stakeholders' Relationship Committees are to be reckoned.	165	**No. of Directorships** Persons not to be directors in more than twenty companies, of which not more than ten may be public companies
26(5)	**Disclosure in respect of personal interest of the members of the management of the company** Disclosure to be made by the senior management to the Board relating to all material, financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large	184	**Disclosure of Interest** Disclosure of interest under Section 184 relates to disclosure by the directors in respect of director or indirect interest in any contract or arrangement with the company.

27	**Report on Corporate Governance** Listed entity has to submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchanges with 15 days from the close of the quarter.		**Report on Corporate Governance** No separate report on corporate governance is required under the 2013 Act.
Schedule V	**Compliance Certificate from Auditors** The company has to • Obtain a certificate from the auditors of the company regarding compliance of conditions of corporate governance as stipulated in this clause. • Annex the certificate with the director's report which sent annually to all the shareholders of the company. • Send the same to the Stock exchanges along with the annual returns filed by the company.		**Compliance Certificate from Auditors** No such requirement under the 2013 Act.

Annexure - 3

CHECKLIST FOR CORPORATE GOVERNANCE

Corporate governance is a strategic activity that ensures that all processes that are necessary for directing and controlling a business enterprise are implemented effectively. Audit of corporate governance processes provides assurance to the various stakeholders that all the required governance activities have been accomplished and what remains otherwise thereby assisting stakeholders in making an informed decision.

Accountability

- Check there is separation of ownership and control.
- Check whether executive management is accountable to Board
- Check whether Board is accountable to shareowners
- Check whether there is a Board Charter
- Check whether the independent directors have powers to play their role effectively
- Check whether the auditors of the company have full access to information and authority to present their view points at Board meetings
- Check whether the company has policies on ethical marketing practices, bribery and dishonesty, employee and customer privacy, fair employment practices, gifts, entertainment, related party transactions and conflict of interests

Fairness

- Check whether all shareowners, including minorities are treated equitably
- Check whether there are defined procedure for effective resolutions of violations
- Check whether the company has pricing policy and fair market practice code

Transparency

- Investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase. Any changes in voting rights should be subject to approval by those classes of shares which are negatively affected.
- Check whether there is a timely, accurate disclosure on all material matters, including: financial and non-financial information, performance, ownership, frauds, going concern crisis and governance
- Check whether the company has a policy for making political contributions

- Check whether the company has comprehensive insider trading disclosure and compliance practices
- Check whether shareholders should be able to make their views known on the remuneration policy for board members and key executives. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.
- Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.

Responsibility

- Check whether there is recognition of stakeholders rights, social responsibility and business sustainability requirements
- Check whether the Board's responsibility includes review and guiding of corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.

Shareholder Interests

- Check whether shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as: 1) amendments to the statutes, or articles of incorporation or similar governing documents of the company; 2) the authorisation of additional shares; and 3) extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.
- Check whether capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.
- There exist rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.
- The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.
- Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress.
- Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Annexure - 4

CODE OF CONDUCT OF CORPORATE DIRECTORS

Sample Code of Conduct for Directors & Senior Management of XYZ Limited

The members of the Board of Directors of XYZ LTD. acknowledge and accept the scope and extent of their duties as Directors. They have a responsibility to carry out their duties in an honest and business like manner and within the scope of their authority, as set forth in the laws of India as well as in the Memorandum and Articles of Association of the Company. They are entrusted with and are responsible for the oversight of the assets and business affairs of XYZ Ltd. in an honest, fair, diligent and ethical manner. As Directors, they must act within the bounds of the authority conferred upon them and with the duty to make and enact informed decisions and policies in the best interests of the Company. The Board of Directors has adopted the following Code of Conduct and the Directors and senior managers are expected to adhere to the standards of care, loyalty, good faith and the avoidance of conflicts of interest that follow.

Code of Conduct

Board Members and senior managers will:

- act in the best interests of, and fulfil their fiduciary obligations to the Company
- act honestly, fairly, ethically and with integrity;
- conduct themselves in a professional, courteous and respectful manner and not take improper advantage of their position;
- will deal fairly with all stakeholders;
- comply with all applicable laws, rules and regulations;
- act in good faith, responsibly, with due care, competence and diligence, without allowing their independent judgment to be subordinated;
- not use the Company's property or position for personal gain;
- will not accept from or give to stakeholders, gifts or other benefits not customary in normal social intercourse;
- not use any information or opportunity received by them in their capacity as Directors or senior management in a manner that would be detrimental to the Company's interests;
- act in a manner to enhance and maintain the reputation of the Company;
- disclose any personal interest that they may have regarding any matters that may come before the Board and abstain from discussion, voting or otherwise influencing a decision on any matter in which the concerned Director has or may have such an interest;

- abstain from discussion, voting or otherwise influencing a decision on any matters that may come before the board in which they may have a conflict or potential conflict of interest;
- respect the confidentiality of information relating to the affairs of the Company acquired in the course of their service as Directors or senior management, except when authorized or legally required to disclose such information;
- not use confidential information acquired in the course of their service as Directors or senior management for their personal advantage or for the advantage of any other entity;
- help create and maintain a culture of high ethical standards and commitment to compliance;

A Director or senior manager who has concerns regarding compliance with this Code should raise those concerns with the Chairman of the Board and the Chairman of the Audit Committee, who will determine what action shall be taken to deal with the concern. In the extremely unlikely event that a waiver of this Code for a Director would be in the best interest of the Company, the Audit Committee and the Board of Directors must approve it.

There may be situations in which a Director would be in breach of his duty of confidentiality to another entity were he to disclose a conflict of interest to the Board of the Company. In such a situation, it shall be sufficient for the Director concerned to abstain from any participation in the matter concerned, without disclosing the nature of the conflict.

For this purpose "senior management" shall mean members of management one level below the executive directors and shall include all functional heads.

Directors and senior managers will annually sign a confirmation that they have read, have complied with and will continue to comply with this Code.

Adopted by the Board of Directors of XYZ Limited on __________________

Annexure - 5

CODE OF CORPORATE ETHICS

A. SEBI's Listing Regulations requires, as part of Corporate Governance the listed entities to lay down a Code of Conduct for Directors on the Board of an entity and its Senior Management. Senior Management has been defined to include personnel who are members of its Core Management and functional heads excluding the Board of Directors.

The ABC Company is committed to conducting business in accordance with the highest standards of business ethics and complying with applicable laws, rules and regulations. In furtherance of this commitment, the Board of Directors (the "Board") promotes ethical behaviour, and has adopted this Code of Business Conduct & Ethics for Directors.

B. The Code of Ethics states the principles and expectations governing the behaviour of individuals and organisations in the conduct of business. This Code is intended to focus the Board and each Director on areas of ethical risk, provide guidance to directors to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help foster a culture of honesty and accountability.

C. Every Director must:

i. Represent the interests of the shareholders of the company;

ii. Exhibit high standards of integrity, commitment and independence of thought and judgement;

iii. Dedicate sufficient time, energy and attention to ensure the diligent performance of his or her duties; and

iv. Comply with every provisions of this code.

D. Company must maintain a set of standards towards its

i. Customers:

- It will conduct business with customers only by lawful and ethical means.
- It will not compromise on the quality of their products and services. All advertising, labelling, literature and public statements shall be accurate.
- It will make every effort to honour legitimate commitments made by their representatives and partners.
- It will proactively offer relief to customers, if any of their products or services do not match their quality standards.
- All transactions including billing shall accurately reflect the customer's order or any other agreement.

- It will innovate in products and services that are focused on its current and future customers.
- It will welcome and enthusiastically work at product challenges presented by customers.
- It will strive for a consistent customer experience across all touch points.
- It will respond to customer requirements, queries, complaints with speed and comprehensive information.

ii. Partners:

- It will conduct business only with partners who follow lawful and fair practices, and will debar those found indulging in business and practices or misleading the customers.
- It shall honour its Code of Conduct and the terms of contract with the partners. In case there is a need to part ways, it shall settle fairly and in a transparent manner.
- It will actively work on ideas given by channel partners and suppliers.
- It will support its partners in creating new processes, which add value to both.
- It will provide a platform for partners to benchmark; share best practices and learn from each other.
- It shall evaluate its partner's effectiveness on the basis of speed and quality of transactions.

iii. Employees:

- It will treat all employees with dignity and respect.
- It will hire and promote employees based solely on merit & suitability.
- It will follow applicable employment laws, wherever they operate.
- It shall strengthen policies and processes to facilitate roles/location transition for employees and their families.
- It encourages diversity is hiring decisions and shall leverage the perspectives that such diversity provides in decision-making.
- Information will be discussed across relevant segments and communicated effectively to all concerned.
- Performance feedback to the employee shall be prompt and constructive.

iv. Investors:

- It shall take all decisions to create long-term shareholder value.
- It will abide by the laws, regulations and norms of Corporate Governance to provide truly and comprehensive information to investors.
- It shall proactively communicate organisation's performance, financial results and other

information of interest through appropriate media to investors and public.

v. Government:

- It shall conduct its business as a law abiding Corporate Citizen, in each of the countries where it operates.
- It shall stand by the written commitment made by our representatives to government agencies.
- It shall proactively seek guidelines; advance rulings from government on new business matters that are currently unclear under the law.

vi. Communities:

- It shall always operate keeping in mind the health, environment and safety concerns of the community amongst which we live.
- It shall deal with the public in fair and transparent manner.

vii. National Interest:

- It shall be committed in all its actions to benefit the economic development of the countries in which it operates and shall not engage in any activity that would adversely affect such objective.

viii. Financial Reporting & Records:

- It shall prepare and maintain its accounts fairly and accurately in accordance with the accounting and financial regulatory standards which represent the generally accepted guidelines, principles, standards, laws and regulations of the country in which it conducts its business affairs.

ix. Competition:

- It shall fully strive for the establishment and support of a competitive open market economy in India and abroad and shall cooperate in the effort to promote the progressive and judicious liberalization of trade and investment by a country.
- It shall not engage in activities, which generate or support the formation of monopolies, dominant market positions, cartels and similar unfair trade practices.

E. Conflicts of Interest

i. Directors must avoid conflicts of interests. A conflict of interest occurs when an individuals' private interest interferes in any way with the interests of the company or any of its subsidiary and affiliated companies (collectively, the “Company). A conflict of interest may also arise when a Director, or a member of his or her immediate family*, receives improper personal benefits as a result of his or her position in the company. Directors should also be mindful of, and seek to avoid conduct, which could reasonably be construed as creating an appearance of a conflict of interest.

ii. While the Code does not attempt to describe all possible conflicts of interest that could develop, the following are examples of conflicts of interests:

- Receiving loans or guarantees of obligations as a result of one's position as a Director.
- Engaging in conduct or activity that improperly interferes with the company's existing or prospective business relations with a third party.
- Accepting bribes, kickbacks or any other improper payments for services relating to the conduct of the business of the company; and
- Accepting, or having a member of a Directors' immediate family accept, a gift from persons or entities that deal with the company, in cases where gift is being made in order to influence the Directors' actions as a member of the Board, or where acceptance of the gift could otherwise reasonably create the appearance of a conflict of interest.
- Participates in any entertainment that is unsavoury, sexually oriented, or otherwise violates company's commitment to mutual respect.

iii. Any question about a Directors' actual or potential conflicts of interests with the company should be brought promptly to the attention of the Chairman of the Governance and Nominating Committee and the Chairman of the Board, who will review the question and determine an appropriate course of action, including whether consideration or action by the full board is necessary. Directors involved in any conflict or potential conflict situation shall recuse themselves from any decision relating thereto.

F. Business Relationships with Directors

For the purpose of minimizing the risk of conflicts of interest, the Board shall adopt a policy providing for the review of transactions with the company or any of its affiliates in which any Director, including his or her immediate family has direct or indirect material interests.

G. Use of Corporate information, Opportunities and Assets

Directors may not compete with the company, or use opportunities that are discovered through the use of company property, company information or position, for their personal benefit or the benefit of persons or entities outside the company. No Director may improperly use or waste any company asset.

H. Data Protection & Information Systems Security

The IT equipment, computer systems, software & all available data/information represent major business assets which have to be safeguarded against accidental as well as deliberate threats & risks from within the company and outside.

· All data owners should ensure:

Confidentiality - information should be protected from unauthorized access, disclosure, alterations, and modifications.

Integrity - information should be accurate and complete.

Availability - information should be made available, as and when required, to authorized users only.

Safety - use IT facilities for company business purposes only.

- Adhere to standards, procedures and guidelines specified by the information technology department from time to time.
- Do not discuss any company related matters or those relating to clients, business partners, suppliers, staff, etc. in public.
- All confidential reports/communications should be password protected.
- Follow 'Clear Desk' policy for paper & diskettes to reduce risk of unauthorized access and loss or damage to information.
- Immediately report any 'security incidents'.
- Ensure maintenance of backups of all files in a secure, fireproof place and only specified individuals should have access to their backup devices.
- Head of IT will design procedures, standards and guidelines to ensure compliance with data security controls.
- Head of Business Process Improvement & Audit will evaluate security control procedures & ensure adequate compliance with this policy.
- Head of IT should periodically disseminate knowledge about information systems security & conduct training programmes to correct use of IT facilities.

I. Protection of Confidential Information

Pursuant to their fiduciary duties of loyalty and care, Directors are required to protect and hold confidential all non-public information obtained due to their directorship position absent the express or implied permission of the Board of Directors to disclose such information. Accordingly,

- No Director shall use confidential information for his or her own personal benefit or to benefit persons or entities outside the company; and
- No Director shall disclose confidential information outside the company, either during or after his or her service as a Director of the company, except with authorization of the Board of Directors or as may be otherwise required by law.

"Confidential Information" is all non-public information entrusted to or obtained by a Director by reason of his or her position as a Director of the company. It includes, but is not limited to, non-public information that might be of use to competitors or harmful to the company or its customers if disclosed, such as:

- non-public information about the company's financial conditions, prospects or plans, its marketing and sales programs and research and development information, as well as

information relating to mergers and acquisitions, stock splits and divestitures;

- non-public information concerning possible transactions with other companies or information about the company's customers, suppliers or joint venture partners, which the company is under an obligation to maintain as confidential; and
- non-public information about discussions and deliberations relating to business issues and decisions, between and among employees, officers and Directors.

J. Compliance with Laws, Rules and Regulations

The company requires strict compliance by all its Directors with applicable laws, rules and regulations. These include federal and other securities law, including Insider Trading laws, and the Company's Insider Trading Compliance policies.

K. Fair Dealing

Directors must deal fairly with the company's employees, customers, suppliers and competitors. No Director may take unfair advantage of the Company's employees, customers, suppliers, or competitors through manipulation, concealment, abuse of privileged information, misrepresentations of material facts, or any other unfair-dealing practice.

L. Accountability

The Code referred to herein is mandatory and applies to all Directors, who are accountable for compliance with the Code.

Directors should communicate any suspected violation of this Code promptly to the Chairman of the Governance & Nominating Committee and the Chairman of the Board. Suspected violations will be investigated by or at the direction of the Board or the Governance & Nominating Committee, and appropriate action will be taken in the event that a violation is confirmed.

M. Political Contributions & Activities

Any political contributions made by or on behalf of the company and any solicitations for political contributions of any kind must be lawful and in compliance with company policies. This policy applies solely to the use of company assets and is not intended to discourage or prevent individual Directors from making political contributions or engaging in political activities on their own behalf. No one may be reimbursed directly or indirectly by the Company for personal political contribution.

N. Foreign Payments

Except in certain circumstances, the “Foreign Corrupt Practices Act” (FCPA) and other laws prohibit giving anything of value directly or indirectly to any “foreign official” for the purpose of obtaining or retaining business or other improper purposes such as reducing taxes. The meaning of “Foreign official” can be surprisingly broad – UN Officials, Candidates of political office, employees of state owned business, etc. When in doubt as to whether a possible

arrangement, payment or gift may violate these laws, contact the Chair of the Nominating and Corporate Governance Committee, before taking any action. The Chair will consult with legal counsel as appropriate.

O. Waivers & Amendments

Any waiver of any provision of the Code for any Director may be made only by the Board or by the Governance and Nominating Committee, and must be promptly disclosed to the Company's shareholders as required by applicable laws and regulations. Amendments to this Code must be approved by the Board and must be promptly disclosed to shareholders.

*As used herein, the term, “immediate family” means a Directors' spouse, parents, children, siblings, mothers – and fathers- in- law, sons-and daughters – in – law, brothers – and sisters – in – law and anyone – other than an employee – sharing the Directors home. ■

Annexure - 6

COMPANIES (AMENDMENT) ORDINANCE, 2018: KEY TAKE AWAY

The Companies (Amendment) Ordinance, 2018 promulgated on November 02, 2018 thereby amending some of the sections of the Companies Act, 2013.

Giving effect to the recommendations placed in the Report of the Committee to review Offences under the Companies Act, 2013, the Companies (Amendment) Ordinance, 2018 provides much needed relief to the corporates and professionals alike by decriminalising a host of offences. Considering re-categorisation of certain 'acts' punishable as compoundable offences to 'acts' carrying civil liabilities, the Ordinance further promotes the Indian Government's intent to promote ease of doing business.

The main amendments are as under:

Section 2(41) - An application for change of financial year shall be made to the Central Government. Further, any applications pending with NCLT w.r.t change of financial year shall be disposed off in the manner prescribed before the commencement of the Companies (Amendment) Ordinance, 2018.

Section 10A - A company having share capital shall not commence its business:

a.) Until a declaration is filed within 180 days from the date of incorporation of the Company that every subscriber has paid the value of the shares agreed to be taken by him on the date of making such declaration; and

b.) The Company has filed a verification of its registered office within 30 days in e-Form INC-22.

Section 12- The Registrar may cause physical verification of the registered office of the Company in case he has reasonable cause to believe that the Company is not carrying on any business or operations and in case the default is found, the" Registrar may initiate action for removal of name of the Company from the register of Companies.

Section 14 - Application for conversion of a public Company into private Company shall be filed with the Central Government.

Further, existing application shall be disposed off in accordance with the earlier provisions.

Section 53 – Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also

be liable to refund all monies received with interest at the rate of twelve per cent per annum from the date of issue of such shares to the persons to whom such shares have been issued.

Section 64 – Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.

Section 77- The Registrar may, on an application by the company, allow such registration to be made—

(a) in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2018, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2018, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified—

(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2018, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such additional fees as may be prescribed.

Section 86 - In case of wilfully submission of wrong/false information or suppression of any material information w.r.t. registration of charges then the liability of Section 447 i.e. fraud shall be attracted.

Section 90 - a) An aggrieved person may make an application to the Tribunal within a period of one year and further, no such application shall be entertained.

b) Penal provisions: Imprisonment for period of one year has been inserted.

Section 92 - If any company fails to file Annual Return u/s 4 before expiry of 60 days, such company and its officer who is in default shall be liable to a penalty of "50,000/ " and in case of continuing failure, with further penalty of "Rs. 100" for each day during which such failure continues.

Section 102 - In case of default in explanatory statement, every promoter, Director, Manager, Other KMP shall be liable to penalty of Rs. 50,000 or 5 times amount of benefit

accruing, whichever is higher.

Section 117 – In case MGT -14 is not filed within 30 days , company should be liable to Rs. 1 lakh and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues , subject to a maximum of twenty five lakh rupees and every officer of the company who is in default including liquidator of the company, if any shall be liable to a penalty of fifty thousand rupees and in case of continuing failure , with a further penalty of five hundred rupees for each day after the first during which such failure continues subject to a maximum of five lakh rupees.

Section 164 - As per Section 165, No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time.

If default made in Section 165, then director shall be considered as disqualified under Section 164. "Breach in Maximum no of Directorships to be a Ground for Disqualification.

Section 197 - Remuneration to Independent Directors in form of sitting fees has been removed from the Act. "Stricter norms for IDs & capping of their sitting fee & remuneration**."**

Section 2013 - Breach of Section 203 will attract penalty of 5 lakh rupees on company and Rs. 50,000 on directors

Section 248 - Following two grounds has been added for compulsory striking off the Companies by the Registrar:

a) Not filed declaration as discussed in point no. 2.

b) Company has not filed e-Form INC-22

Section 441- Compounding threshold for going to NCLT to be revised to 25 lakhs from 5 lakh. Any offence which is punishable under Companies Act, 2013 with imprisonment only or with imprisonment and fine shall not be compoundable.

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Annexure - 7

INTERNATIONAL INTEGRATED REPORTING AND GLOBAL REPORTING INITIATIVE

Integrated Reporting is one step ahead of sustainability reporting and it's set to become the way companies report their annual financial and sustainability information together in one report. The aim of an integrated report is to clearly and concisely tell the organisation's stakeholders about the company and its strategy and risks, linking its financial and sustainability performance in a way that gives stakeholders a holistic view of the organisation and its future prospects. Ideally, an integrated report should be the organisation's primary report and from which all other detailed reports, such as the annual financial statements and sustainability report, flow. Importantly, integrated reporting includes forward-looking information to allow stakeholders to make a more informed assessment of the future of a company, as well as of how the organisation is dealing with its sustainability risks and opportunities.

Forging a path to Integrated Reporting

- The board should ensure the integrity of the company's integrated report.
- Sustainability reporting and disclosure should be integrated with the company's financial reporting
- Sustainability reporting and disclosure should be independently assured
- The audit committee should assist the board by reviewing the integrated report to ensure that the information contained in it is reliable and that it does not contradict the financial aspects of the report
- The audit committee should oversee the provision of assurance over sustainability issues.

The “GRI” refers to the global network of many thousands worldwide that create the Reporting Framework, use it in disclosing their sustainability performance, demand its use by organisations as the basis for information disclosure, or are actively engaged in improving the standard. It is an international independent standards organisation that helps businesses, governments and other organisations understand and communicate their impacts on issues such as climate change, human rights and corruption.

The GRI Reporting Framework is intended to serve as a generally accepted framework for reporting of an organisation's economic, environmental, and social performance. It is designed for use by organisations of any size, sector, or location. It takes into account the practical considerations faced by a diverse range of organisations – from small enterprises to those with extensive and geographically dispersed operations. The GRI Sustainability Reporting Guidelines offer Reporting Principles, Standard Disclosures and an Implementation Manual for the preparation of sustainability reports by organisations, regardless of their size, sector or location.

Here are some of challenges and opportunities that directors' faces in their companies as they seek to drive the effective integration of sustainability issues into their annual reporting process:

a) Developing the right organisational mind-set

A prominent concern facing many companies has been the need to address pockets of internal resistance regarding the uptake of integrated thinking and reporting. This is often underpinned by a failure of certain executives to see any direct financial benefits in addressing sustainability issues, a lack of interest from investors or simply a case of institutional inertia across different departments and organisational functions.

b) Addressing specific process related reporting challenges

This includes understanding and presenting the company business model and developing an effective materiality process and improving the process and disclosure of any stakeholder dialogue undertaken in developing the report.

c) Clarifying the relationship between the various reporting frameworks

There is a need for greater clarity in understanding the respective roles and relationships between the GRI Standards and the IIRC's International Framework and its usage in company's integrated reporting process.

d) Identifying the right performance indicators

There exist difficulties in identifying the most appropriate set of key performance indicators (KPIs) to most effectively track and report on the value creation process across their company's value chain. However, IIRC's International Framework, gives insufficient guidance on what should be reported.

e) Enhancing the impact of the integrated report

One challenge many reporting companies face is how to find the right balance between being very concise and focused, while being sufficiently comprehensive in disclosure, therefore enabling comparability. Many recognized the potential for more effective use of technology and improving the overall structure and design of the report.

GRI is continuing to work with the IIRC with a shared vision for the evolution of corporate reporting, in which alignment and clarity of frameworks, standards and requirements will lead to improved efficiency and effectiveness in reporting. ■

Annexure - 8

COMPARATIVE CHART OF CG PRACTICES IN ADVANCED COUNTRIES

Particulars	Description
BASIS OF COMPARISON	**UK** – The UK Corporate Governance Code2014 (hereinafter called UK Code) **Singapore** – Code of Corporate Governance 2012 **Australia** – Corporate Governance Principles and Recommendations, 2014 **South Africa** – King III Report **India** – SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015
THE BOARD Separation of role of Chairman and Chief Executive	**UK** – The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established set out in writing and agreed by the board. **Singapore** – The chairman and chief executive officer ("CEO") should in principle be separate persons, to ensure an appropriate balance of power, increased accountability and greater capacity of the Board for independent decision making. The division of responsibilities between the Chairman and CEO should be clearly established, set out in writing and agreed by the Board. In addition, the Board should disclose the relationship between the Chairman and CEO if they are immediate family member. **South Africa** – The Board should be led by an independent non executive Chairman who should not be the CEO of the company. **Australia** – The roles of the Chair and Chief Executive Officer should not be exercised by the same individuals. **India** – Separation of roles not mandatory
PRESCRIBED BOARD COMMITTEES	**UK** – Audit Committee, Nomination Committee and Remuneration Committees **Singapore** – Audit Committee, Nominating Committee and Remuneration Committee. **South Africa** – Audit Committee, Risk Committee, Remuneration and Nomination Committee. **Australia** – Nomination Committee, Audit Committee, Remuneration Committee **India** – Audit Committee, Nomination & Remuneration Committee , Stakeholders Relationship and CSR Committee

BOARD MEETING	**UK**	-	The board should meet sufficiently regularly to discharge its duties effectively.
	Singapore	-	The board should meet regularly and as warranted by particular circumstances, as deemed appropriate by the board members. Companies are encouraged to amend their Articles of Association to provide for telephonic and video conference meetings. The number of board and board committee meetings held in the year, as well as the attendance of every board member at these meetings, should be disclosed in the company's annual report.
	South Africa	-	The Board should meet at least once per annum to consider the Board appraisal results.
	India	-	The Board shall meet at least four times a year, with a maximum time gap of four months between any two meetings
RESPONSIBILITY OF THE BOARD IN FINANCIAL REPORTING	**UK**	-	The board should present a balanced and understandable assessment of the company's position and prospects. The board's responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements.
	Singapore	-	The duties of audit Committee includes reviewing the significant financial reporting issues and judgements so as to ensure the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance.
	South Africa	-	The Board should ensure the integrity of financial reporting.
	Australia	-	Companies should have a structure to independently verify and safeguard the integrity of their financial reporting. Ultimate responsibility for the integrity of a company's financial reporting rests with the full board whether or not a separate audit committee exists.
	India	-	The Audit Committee shall perform an oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
SHAREHOLDER COMMUNICATION	**UK**	-	There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.
	Singapore	-	Companies should engage in regular, effective and fair communication with shareholders.
	South Africa	-	Effective communication with stakeholders is essential.
	Australia	-	Companies should design a communications policy for promoting effective communication with shareholders and encouraging their participation and general meeting and disclose their policy or a summary of that policy.
	India	-	A number of disclosures to be made in the CG Report has been provided.

Annexure - 9

BIBLIOGRAPHY & REFERENCES

Government Publications and Circulars

1. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
2. SEBI(Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018
3. SS-1 Secretarial Standards on Board Meetings by ICSI.
4. SS-2 Secretarial Standards on General Meetings by ICSI.
5. SEBI (Prohibition of Insider Trading) Regulations, 2015.
6. FAQs on SEBI (Listing Obligations and Disclosure Requirements) Regulations, Jan 2015.
7. MCA FAQs of Corporate social responsibility, Jan 2015
8. Companies (Meetings of board and its powers) Second Amendment Rules, 2015.
9. Ministry of Corporate Affairs circular dated 24th October, 2014.
10. Chapters XI, XII, XIII of the Companies Act, 2013.
11. Rules to Chapters XI, XII and XIII of the Companies Act, 2013.
12. Report of Kumar Mangalam Birla committee, Jan 2000 on Corporate Governance.
13. Naresh Chandra Committee Report, 2002 on Corporate Governance.
14. Narayana Murthy Committee Report, 2003 on Corporate Governance.
15. Cadbury Committee Report, 1992 - the code of Best Practice.
16. Corporate Governance in India - Evolution and challenges by Rajesh Chakrabarti, 2005.
17. The Role of Independent Directors in Controlled Firms in India by Vikramaditya Khanna and Sham J Mathew.
18. CII code of Corporate Governance, 1998.
19. Sarbanes Oxley Act, 2002 of USA.
20. OECD Principles of Corporate Governance 1999 and revised Principles 2002.
21. Independent Directors - a research study on corporate practices in India by the Institute of Company Secretaries of India – Dec 2010.
22. Companies Act, 2013.
23. Companies (Amendment) Act, 2017
24. Companies (Amendment) Ordinance, 2018

25. Chartered Secretary, Institute of Company Secretaries of India

Articles

1. Performance Evaluation of Boards and Directors by Deloitte.
2. A Guide to Board Evaluation by ICSI, April 2015.
3. KPMG's Guide to Directors' Remuneration 2013
4. Recent changes in Listing Compliance requirements by Avinash Kharkar, Oct 2015.
5. Role and Responsibilities of Independent Directors by S. Gopalakrishnan, Jan 2005.
6. Boards: When Best practice isn't enough by Simon CY Wong, Aug 2011.
7. Effective Board Meetings by Julie Garland Mclellan, July 2011.
8. Independent Directors - Roles and Responsibilities under the Companies Act, 2013 by Dr. S.D Israni and Satyan S Israni.
9. The concept of CSR, under the Companies Act, 2013 by T.N Pandey, Sept 2013.
10. New Company legislation - Directors by T.V Narayaswamy, Sept 2013.
11. Offences, Prosecution and Penalties, under the Companies Act, 2013 by D.K Prahlada Rao, Sept 2013.
12. Inspection, Investigation, Serious fraud Investigation office, Companies Act, 2013 by T Ramappa, Sept 2013.
13. Business Ethics in an Organisation - Role of Directors by N Jayakrishnan Nair, Aug 2012.
14. The role of Independent Directors in Corporate Governance by Pranav Mittal.
15. SEBI's consultative paper on review of Corporate Governance Norms in India by Ado Godrej committee.
16. Powerful Independent Directors by Kathy Fogal and LIPING MA and RANDALL MORCK 2014.
17. Evaluation of Board Reforms by MIN BYUNG SEONG.
18. A note on Corporate Governance in PSU's in India by Pankaj Sinha and Anushree Singhal.
19. Corporate Governance from Wikipedia – the free encyclopedia.
20. 'Independent Directors: To be or not to be ' by Chewang Phunsog and Nitish Sengupta published in Bureaucracy Today, 22 Dec 2011.
21. ACCA (2016) Mapping the sustainability reporting landscape: Lost in the right direction
22. GRI (2016) The Next Era of Corporate Disclosure (Digital, Responsible, Interactive)
23. IIRC (2016) Creating Value: Integrated Reporting and investor benefits

Websites

1. www.mca.gov.in

Ministry of Corporate Affairs, Govt. of India

2. www.sebi.gov.in

Securities and Exchange Board of India

3. www.taxmann.com

Taxes and Corporate Law`s, Accounting and Auditing, Banking, Finance and Management (India)

4. www.charteredsecretary.net and www.icsa.org.uk

Institute of Chartered Secretaries and Administrators (UK)

5. www.companydirectors.com.au

Australian Institute of Directors

6. www.conference-board.org

The Conference Board (USA)

7. www.hkiod.com

Hong Kong Institute of Directors

8. www.iasb.org/Home.htm

International Accounting Standards Board

9. www.iod.com

Institute of Directors (UK)

10. www.iodsa.co.za

The Institute of Directors – South Africa

11. www.nacdonline.org

National Association of Corporate Directors (USA)

12. www.sid.org.sg

The Singapore Institute of Directors

13. www.ibe.org.uk

The Institute of Business Ethics, UK

14. http://www.brefigroup.co.uk /directors/ecourse/stakeholders/ manage_relations_ with_ stake holders.html

Brefi Group, UK

15. www.wheel.ie

The Wheel, Ireland

16. www.unisa.ac.za

University of South Africa

17.www.taxguru.in

Tax Guru Complete Tax Solution

Books

1. The Role of Independent Directors after Sarbanes-Oxley by Bruce F. Davis.
2. Independent Director by R.I. Tricker.
3. The ID; The Role and Contribution of Non-Executive Director by IOD, UK with E&Y.
4. Boards that Lead by Prof Ram Charan, Prof Dennis Carrey and Prof Michael Useem.
5. Corporate Directors– Roles, Responsibilities, Powers and Duties of Directors, Ashish Makhija (2016), LexisNexis India
6. A Handbook on Business Ethics- Institute Of Directors, India.
7. Corporate Governance Board Leadership Training Resources Kit – International Finance Corporation

■

Golden Peacock Awards

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Golden Peacock series of Awards, established by the Institute Of Directors, India in 1991 are regarded as a competitive benchmark of Corporate Excellence. The winning of the Golden Peacock Award is the most powerful way to build your brand image, and global recognition. Today, no other business award receives the kind of respect, recognition, prestige and adulation among peers, that Golden Peacock does. The winning organization gets a competitive advantage, in driving business in this tumultuous world.

If corporates are to leverage human capital for competitiveness, much will depend on their ability to nurture knowledge and entrepreneurship in tandem. Awards are the most powerful way, to motivate and mobilize intellectual assets and spur them to achieve greater heights in business performance. It is a strategic tool, to lead the competition.

These Annual Awards, 15 National and 3 Global, have a meticulously defined and transparent selection criterias, and are determined by a highly elaborate and independent three layer assessment process. Any organization, large, medium or small, in manufacturing or service sector, in government, public or private sector, research organizations and NGOs are eligible to apply for these awards. The Individual Leadership Awards are based on service profile and national achievements, and determined through nominations only. ▪

Institute Of Directors

Institute Of Directors (IOD) was established in India on 12 July 1990, as an apex association of Directors under the India's 'Societies Registration Act XXI of 1860' to improve their professional competence. It has since grown to associate with more than 31,000 senior executives from Govt, PSU and Private organisations. IOD organises a number of international events each year, in India and certain other select countries.

From the personal development of directors, IOD soon embraced the role of Corporate Governance and boardroom development, followed by organisation-wide transformation as a whole. It consolidated its position further through MOUs, with related associations globally. IOD publishes a number of professional books, handbooks, and periodicals throughout the year, to keep the directors updated.

IOD's **'Masterclass for Directors'** covers training in corporate directorship, and **'Golden Peacock Awards'** in 15 different corporate disciplines, and other flagship initiatives aim to improve the competitiveness of individual directors and their organisations. The 'Masterclass', is a condensed programme for top management and also prepares participants for the role of Independent Directors of companies. No business award today, receives the kind of recognition and adulation among peers that Golden Peacock does. Both have become global benchmarks.

IOD has also setup a special wing called **'Organisation for Non-Executive Independent Directors' (ONEID)**, mandated to look after the training, placement and networking of Independent Directors. IOD's **'Board Research and Advisory'** wing provides specialised advisory services in the areas of Board & Directors' Performance Evaluation and Corporate Governance Compliances.

IOD's activities extend from training, publications, and monthly lectures to workshops and Global networking through national and international directors Conventions, on issues such as Risk Management, Corporate Ethics, Leadership, Quality, Environment, Climate Change, Occupational Health and Safety, Corporate Governance, Cyber Security, Competition Law, Sustainability and Corporate Social Responsibility etc. ▪

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