Conceptual Framework of Corporate Governance

CORPORATE

Corporate or a Corporation is derived from Latin term “corpus” which means a “body”.

GOVERNANCE

The root of the **word governance** is from **‘gubernate’,** which **means to steer.**
When combined Corporate Governance means a set of systems procedures, policies, practices, standards put in place by a corporate to ensure that relationship with various stakeholders is maintained in transparent and honest manner

VARIOUS DEFINITIONS OF CORPORATE GOVERNANCE

Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.” **(ICSI)**

Corporate Governance is concerned with the way corporate entities are governed, as distinct from the way business within those companies is managed. Corporate governance addresses the issues facing Board of Directors, such as the interaction with top management and relationships with the owners and others interested in the affairs of the company” **Robert Ian (Bob) Tricker** (who introduced the words corporate governance for the first time in his book in 1984**)(James D. Wolfensohn (9th President World Bank)**

Corporate governance deals with laws, procedures, practices and implicit rules that determine a company’s ability to take informed managerial decisions **vis-a-vis** its claimants - in particular, its shareholders, creditors, customers, the State and employees. **(Confederation of Indian Industry (CII)**

ICSI PRINCIPLE FOR GOVERNANCE

1) Sustainable development of all stakeholders
2) Effective management and distribution of wealth
3) Discharge of social responsibility
4) Application of best management practices

NEED FOR CORPORATE GOVERNANCE

Corporate Governance is needed to create a corporate culture of Transparency, accountability and disclosure. It refers to compliance with all the moral & ethical values, legal framework and voluntarily adopted practices.

BENEFITS OF CORPORATE GOVERNANCE

1. Reduced Risk of Corporate Crisis and Scandals
2. Corporate Performance
3. Better Access to Global Market

4. Enhanced Investor Trust:
5. Combating Corruption
6. Easy Finance From Institutions

CORPORATE GOVERNANCE AND COMPANIES ACT, 2013

Some of the Provisions of Companies Act, 2013 related to Corporate Governance are:

1. Mandatory provisions related to independent directors, woman director, Key Managerial Personnel
2. Enhanced disclosures and assertions in Board Report, Annual Return and Directors' Report with regard to Managerial Remuneration, risk management, internal control for financial reporting, legal compliance, Related Party Transactions, Corporate Social Responsibility, shareholding pattern, public money etc.
3. Stricter yet forward-looking procedural requirements for Secretarial compliances and ICSI Secretarial Standards made mandatory.
4. Enhanced scope of Related Party Transactions and introduction of concept of arm's length pricing.
5. Introduction of mandatory provisions regarding Whistle Blower Policy, Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee, and Corporate Social Responsibility Committee.

ELEMENTS OF GOOD CORPORATE GOVERNANCE

ROLE AND POWERS OF BOARD

Good governance is decisively the manifestation of personal beliefs and values which configure the organizational values, beliefs and actions of its Board. The Board as a main functionary is primary responsible to ensure value creation for its stakeholders.

LEGISLATION

Clear and unambiguous legislation and regulations are fundamental to effective corporate governance. Legislation that requires continuing legal interpretation or is difficult to interpret on a day-to- day basis can be subject to deliberate manipulation or inadvertent misinterpretation.

MANAGEMENT ENVIRONMENT

Management environment includes setting-up of clear objectives and appropriate ethical framework, establishing due processes, providing for transparency and clear enunciation of responsibility and accountability, implementing sound business planning, encouraging business risk assessment, having right people and right skill for the jobs, establishing clear boundaries for acceptable behaviour, establishing performance evaluation measures and evaluating performance and sufficiently recognizing individual and group contribution.

BOARD SKILLS

To be able to undertake its functions efficiently and effectively, the Board must possess the necessary blend of qualities, skills, knowledge and experience. Each of the directors should make quality contribution. A Board should have a mix of the following skills, knowledge and experience:

BOARD INDUCTION AND TRAINING

Directors must have a broad understanding of the area of operation of the company's business, corporate strategy and challenges being faced by the Board.

CODE OF CONDUCT

It is essential that the organization's explicitly prescribed norms of ethical practices and code of conduct are communicated to all stakeholders and are clearly understood and followed by each member of the organization.

BOARD MEETINGS

Directors must devote sufficient time and give due attention to meet their obligations. Attending Board meetings regularly and preparing thoroughly before entering the Boardroom increases the quality of interaction at Board meetings.

EVIDENCE OF CORPORATE GOVERNANCE FROM THE ARTHASHASTRA

Kautilya's Arthashastra maintains that for good governance, all administrators, including the king were considered servants of the people. Good governance and stability were completely linked. There is stability if leaders are responsive, accountable and removable.

KAUTILYA'S FOURFOLD DUTY OF A KING			
RAKSHA	**VRIDDHI**	**PALANA**	**YOGAKSHEMA**
literally **means** protection, in the corporate scenario it can be equated with the risk management aspect.	literally means growth, in the present day context can be equated to stakeholder value enhancement	literally means maintenance/compliance, in the present day context it can be equated to compliance to the law in letter and spirit.	literally means well being and in Kautilya's Arthashastra it is used in context of a social security system. In the present day context it can be equated to corporate social responsibility.

CORPORATE GOVERNANCE THEORIES

(a) Agency Theory
According to this theory, managers act as 'Agents' of the corporation. The owners set the central objectives of the corporation. Managers are responsible for carrying out these objectives in day-to- day work of the company.
Corporate Governance is control of management through designing the structures and processes.
In agency theory, the owners are the principals. But principals may not have knowledge or skill for getting the objectives executed. Thus, principal authorises the mangers to act as 'Agents' and a contract between principal and agent is made. Under the contract of agency, the agent should act in good faith. He should protect the interest of the principal and should remain faithful to the goals.

(b) Shareholder Theory
According to this theory, it is the corporation which is considered as the property of shareholders/ stockholders.
They can dispose off this property, as they like. They want to get maximum return from this property.
The owners seek a return on their investment and that is why they invest in a corporation. But this narrow role has been expanded into overseeing the operations of the corporations and its mangers to ensure that the corporation is in compliance with ethical and legal standards set by the government.

(c) Stake Holder Theory
According to this theory, the company is seen as an input-output model and all the interest groups which include creditors, employees, customers, suppliers, local-community and the government are to be considered.
From their point of view, a corporation exists for them and not the shareholders alone.

(d) Stewardship Theory
The word 'steward' means a person who manages another's property or estate. Here, the word is used in the sense of guardian in relation to a corporation, this theory is value based. The managers and employees are to safeguard the resources of corporation and its property and interest when the owner is absent. They are like a caretaker. They have to take utmost care of the corporation. They should not use the property for their selfish ends. This theory thus makes use of the social approach to human nature.

CORPORATE GOVERNANCE DEVELOPMENTS IN USA

YEAR	PROVISIONS	DEVELOPMETS
1977	**The Foreign Corrupt Practices Act**	Provides for specific provisions regarding establishment, maintenance and review of systems of internal control.
1979	**US Securities Exchange Commission**	Prescribed mandatory reporting on internal financial controls

1985	**Tread way commission**	Emphasized the need of putting in place a proper control environment, desirability of constituting independent boards and its committees and objective internal audit function.
1992	**(COSO) issued Internal Control - Integrated Framework**	It is a framework to help businesses and other entities assess and enhance their internal control systems".
2002	**Sarbanes - Oxley Act**	The Act made fundamental changes in virtually every aspect of corporate governance in general and auditor independence, conflict of interests, corporate responsibility, enhanced financial disclosures and severe penalties for wilful default by managers and auditors, in particular.
2010	**The Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010**	This gives shareholders a powerful opportunity to hold accountable executives of the companies they own, and a chance to disapprove where they see the kind of misguided incentive schemes that threatened individual companies and in turn the broader economy.

CORPORATE GOVERNANCE DEVELOPMENTS IN UK

Historical developments in the UK for the improvement in corporate governance since the setting of Cadbury Committee are as under:

THE CADBURY REPORT 1992

Due to several scandals and financial collapses in the UK in the late 1980s and early 1990s, London Stock Exchange setup the Cadbury Committee in May 1991 to raise the standard of corporate governance.

This committee in its report known as Cadbury Report, recommended mainly:

- ✓ Separating the role of CEO and Chairman of the Board
- ✓ Balanced composition of Board of Directors with executive and non executive directors
- ✓ Selection process for non executive directors.

THE GREENBURY REPORT. 1995

The Confederation of British Industry set up a group under the Chairmanship of Sir Richard Greenbury to examine the remuneration of the directors. It recommended the formation of Remuneration committee composed of non executive directors. Its recommendations were incorporated in the Listing Rules of The London Stock Exchange.

THE HAMPEL REPORT. 1998

The Hampel Committee was set up to review the implementation of Cadbury and Greenbury Reports and to see that their purposes were being achieved. The Recommendations of the committee coupled with further consultations by the London Stock Exchange resulted in a combined code on Corporate Governance, the original combined code 1998.

THE TURNBULL REPORT

A working group under the Chairmanship of Niger Turnbull recommended the internal Control Guidance for Directors which were included in the combined code.

HIGGS REPORT

The combined code was reviewed in July 2007 by Derek Higgs about the role and effectiveness of non-executive directors.

SMITH REPORT

A group under The Chairmanship of Sir Robert Smith was set up to develop guidance for Audit Committee in the combined code.

THE TYSON REPORT

The Tyson Report was recommended on the recruitment and development of non-executive directors.

THE UK STEWARDSHIP CODE (REVISED), 2012

The Stewardship Code aims to enhance the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities. Engagement includes pursuing purposeful dialogue on strategy, performance and the management of risk, as well as on issues that are the immediate subject of votes at general meetings. The Code is addressed in the first instance to firms who manage assets on behalf of institutional shareholders such as pension funds, insurance companies, investment trusts and other collective investment vehicles.

2014 The UK Corporate Governance Code

The changes to the Code are designed to strengthen the focus of companies and investors on the longer term and the sustainability of value creation. In this update of the Code, the Financial Reporting Council (FRC) has focussed on the provision by companies of information about the risks which affect longer term viability. In doing so the information needs of investors has been balanced against setting appropriate reporting requirements. Companies will now need to present information to give a clearer and broader view of solvency, liquidity, risk management and viability. For their part, investors will need to assess these statements thoroughly and engage accordingly. In addition, boards of listed companies will need to ensure that executive remuneration is aligned to the long-term success of the company and demonstrate this more clearly to shareholders

CORPORATE GOVERNANCE DEVELOPMENTS IN SOUTH AFRICA

In 1992, former South African Supreme Court judge, Mervyn king was asked to chair a private - sector body to draft corporate governance guidelines. The body became known as the king committee, and its first report, issued in 1994, was regarded by many as ahead of its time in adopting an integrated and inclusive approach to the business life of companies, embracing stakeholders other than shareholders. Three reports were issued in 1994 (king I), 2002 (king II), and 2009 (king III). King principles of corporate governance is based on apply or explain.

KING I REPORT ON CORPORATE GOVERNANCE (1994)

In 1992, the king committee on corporate governance was formed in south Africa, and, in line with international thinking, considered corporate governance from a south African Perspective. The result was the king report 1994, which marked the institutionalization of corporate Governance in South Africa. It aimed to promote Corporate governance in south Africa and Established recommended standards of conduct for Boards and directors of listed companies, banks, And certain state-owned enterprises, with an Emphasis on the need for companies to become a Responsible part of the societies in which they Operate.

KING II REPORT ON CORPORATE GOVERNANCE (2002)

In 2002, the second king report on corporate governance was published. It contains a code of corporate practices and conduct. It refers to seven characteristic for good corporate governance

1. **Discipline** - A commitment to behaviour that is universally recognised and accepted as correct and proper.
2. **Transparency** - The ease with which an outsider is able to analyse a company's actions.
3. **Independence** - The mechanisms to avoid or manage conflict.
4. **Accountability** - The existence of mechanisms to ensure accountability.
5. **Responsibility** - Processes that allow for corrective action and acting responsibly towards all stakeholders.
6. **Fairness** - Balancing competing interests.
7. **Social Responsibility** - Being aware of and responding to social issues.

KING III REPORT ON CORPORATE GOVERNANCE (2009)

King III became necessary because of the anticipated new Companies Act, 2008 and changing trends in international governance. As with King I and King II, the King Committee endeavoured to be at the forefront of governance internationally and focused on the importance of reporting annually on how a company has both positively and negatively affected the economic life of the community in which it operated during the year under review. In addition, emphasis has been placed on the requirement to report on how the company intends to enhance those positive aspects and eradicate or ameliorate any possible negative impacts on the economic life of the community in which it will operate in the year ahead.

CORPORATE GOVERNANCE DEVELOPMENTS IN INDIA

The initiatives taken by Government in 1991, aimed at economic liberalization and globalisation of the domestic economy, led India to initiate reform process in order to suitably respond to the developments taking place world over. On account of the interest generated by Cadbury Committee Report, the Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry (ASSOCHAM) and, the Securities and Exchange Board of India (SEBI) constituted Committees to recommend initiatives in Corporate Governance.

Confederation of Indian Industry (CII) - Desirable Corporate Governance

CII took a special initiative on Corporate Governance, the first institution initiative in Indian Industry. The objective was to develop and promote a code for Corporate Governance to be adopted and followed by Indian companies, whether in the Private Sector, the Public Sector, Banks or Financial Institutions, all of which are corporate entities. The final draft of the said Code was widely circulated in 1997. In April 1998, the Code was released. It was called Desirable Corporate Governance.

Recommendation I

The full board should meet a minimum of 6 times a year, preferably at an interval of 2 months, and each meeting should have agenda items that require at least half a day's discussion.

Recommendation II

Any listed company with a turnover ≥ Rs.100 Cr. should have professionally competent, independent, nonexecutive directors, who should constitute:

- ✓ At least 30 % of the board if the Chairman of the company is a non-executive director, or
- ✓ At least 50 % of the board if the Chairman and MD is the same person.

Recommendation III

No single person should hold directorships in more than 10 listed companies. This ceiling excludes directorships in subsidiaries (where the group has over 50% equity stake) or associate companies (where the group has over 25 % but no more than 50 % equity stake).

Recommendation IV

For non-executive directors to play a material role in corporate decision making and maximising long term shareholder value, they need to:

- ✓ become active participants in boards, not passive advisors;
- ✓ have clearly defined responsibilities within the board such as the Audit Committee; and
- ✓ know how to read a balance sheet, profit and loss account, cash flow statements and financial ratios and have some knowledge of various company laws. This, of course, excludes those who are invited to join boards as experts in other fields such as science and technology.

Recommendation V

To secure better effort from non-executive directors companies should Pay a commission over and above the sitting fees for the use of the professional inputs. The present commission of 1% of net profits (if the company has a MD), or 3% (if there is no MD) is sufficient.

Recommendation VI

While re-appointing members of the board, companies should give the attendance record of the concerned directors. If a director has not been present (absent with or without leave) for 50 % or more meetings, then this should be explicitly stated in the resolution that is put to vote.

Recommendation VII

Kev information that must be reported to, and placed before, the board must contain:

1. Annual operating plans and budgets, together with up-dated long term plans.
2. Capital budgets, manpower and overhead budgets.
3. Quarterly results for the company as a whole and its operating divisions or business segments.
4. Internal audit reports, including cases of theft and dishonesty of a material nature.
5. Show cause, demand and prosecution notices received from revenue authorities which are considered to be materially important (Material nature if any exposure that exceeds 1 % of the company's net worth).
6. Default in payment of interest or non-payment of the principal on any public deposit and/or to any secured creditor or financial institution.
7. Fatal or serious accidents, dangerous occurrences, and any effluent or pollution problems.
8. Defaults such as non-payment of inter-corporate deposits by or to the company, or materially substantial non-payment for goods sold by the company.
9. Any issue which involves possible public or product liability claims of a substantial nature, including any judgment or order which may have either passed strictures on the conduct of the company, or taken an adverse view regarding another enterprise that can have negative implications for the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Recruitment and remuneration of senior officers just below the board level, including appointment or removal of the Chief Financial Officer and the Company Secretary.
13. Labour problems and their proposed solutions.
14. Quarterly details of foreign exchange exposure and the steps taken by management to limit the risks of adverse exchange rate movement, if material.

Recommendation VIII

Listed companies with either a turnover of over Rs.100 Cr OR a paid-up capital of Rs.20 Cr should set up Audit Committees within 2 years.

Composition: at least 3 members, all drawn from a company's non-executive directors, who should have adequate knowledge of finance, accounts and basic elements of company law.

Audit Committees should periodically interact with the statutory auditors and the internal auditors to ascertain the quality and veracity of the company's accounts as well as the capability of the auditors themselves.

Recommendation IX

Under "Additional Shareholder's Information", listed companies should give data on: High and low monthly averages of share prices in a major Stock Exchange where the company is listed for the reporting year.

Statement on value added, which is total income minus the cost of all inputs and administrative expenses.

SEBI had set up a Committee under the Chairmanship of KUMAR MANGALAM BIRLA to promote and raise standards of corporate governance.

The Report of the committee was the 1st formal and comprehensive attempt to evolve a Code of Corporate Governance, in the context of prevailing conditions of governance in Indian companies, as well as the state of capital markets at that time.

The recommendations of the Report, led to inclusion of Clause 49 in the Listing Agreement in the year 2000. These recommendations, aimed at improving the standards of Corporate Governance, are divided into mandatory and non-mandatory recommendations. The said recommendations have been made applicable to all listed companies with the paid-up capital ≥ 3 Cr. **OR** net worth ≥ Rs. 25 Cr. at any time in the history of the company.

A summary of the Report is reproduced hereunder:

1) The Board should have an optimum combination of Executive and Non- Executive Directors with not less than 50 % of the Board consisting of non-executive directors. In the case of Non-executive Chairman, at least 1/3rd of the Board should consist of independent directors and in the case of an executive Chairman, at least half of the Board should consist of independent directors.
2) Board meetings should be held at least 4 times in a year, with a maximum time gap of 4 months between any 2 meetings. A director should not be a member in more than 10 committees or act as Chairman of more than 5 committees across all companies in which he is a director.
3) Financial Institutions should appoint nominee directors on a selective basis and nominee director should have the same responsibility, be subject to the same discipline and be accountable to the shareholders in the same manner as any other director of the company
4) Non-executive Chairman should be entitled to maintain Chairman's office at the expense of the company and also allowed reimbursement of expenses incurred in performance of his duties.
5) Audit Committee - a qualified and independent audit committee should be set up by the board of a company.

Composition

1) The audit committee should have minimum 3 members, all being non-executive directors, with the majority being independent, and with at least 1 director having financial and accounting knowledge;
2) The chairman of the committee should be an independent director;
3) The chairman should be present at AGM to answer shareholder queries;
4) The audit committee should invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee but on occasions it may also meet without the presence of any executives of the company. Finance director and head of internal audit and when required, a representative of the external auditor should be present as invitees for the meetings of the audit committee;

5) The Company Secretary should act as the secretary to the committee.

Frequency of Meeting

The audit committee should meet at least thrice a year. One meeting must be held before finalisation of annual accounts and one necessarily every 6 months.

Quorum

The quorum should be either 2 members or 1/3rd of the members of the audit committee, whichever is higher and there should be a minimum of 2 independent directors.

Powers of Audit Committee

- ✓ 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.

Remuneration Committee

Remuneration Committee should comprise of at least 3 directors, all of whom should be non-executive directors, the chairman of committee being an independent director. All the members of the remuneration committee should be present at the meeting. These recommendations are non- mandatory.

Shareholders/Investors' Grievance Committee of Directors

The Board should set up a Committee to specifically look into share holder issues including share transfers and redressal of shareholders' complaint

N.R. NARAYANA MURTHY COMMITTEE REPORT ON CORPORATE GOVERNECE

In the year 2002, SEBI analyzed the statistics of compliance with the clause 49 by listed companies and felt that there was a need to look beyond the mere systems and procedures if corporate governance was to be made effective in protecting the interest of investors. SEBI therefore constituted a Committee under the Chairmanship of Shri N.R. Narayana Murthy, for reviewing implementation of the corporate governance code by listed companies and for issue of revised clause 49 based on its recommendations.

Following are the highlights of recommendations.

1) **Audit committees** of publicly listed companies should be required to review the following information mandatorily:
   - ✓ Financial statements and draft audit report, including quarterly/half yearly financial information;
   - ✓ Management discussion and analysis of financial condition and results of operations;
   - ✓ Reports relating to compliance with laws and to risk management;
   - ✓ Management letters/letters of internal control weaknesses issued by statutory/internal auditors; and

- ✓ Records of related party transactions

2) All audit committee members should be **"financially literate"** and at least one member should have accounting or related financial management expertise.

   Explanation 1: The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

3) In case a company has followed a treatment different from that prescribed in an accounting standard, management should justify why they believe such alternative treatment is more representative of the underlying business transaction.
4) Companies should be encouraged to move towards a regime of unqualified financial statements.
5) A statement of all transactions with **related parties** including their bases should be placed before the independent audit committee for formal approval/ratification.
6) To inform Board members about the **risk assessment and minimization procedures.**
7) Management should place a report before the entire Board of Directors every quarter documenting the business risks faced by the company, measures to address and minimize such risks, and any limitations to the risk taking capacity of the corporation.
8) Companies raising money through an Initial Public Offering ("IPO") should disclose to the Audit Committee, the uses/applications of funds by major category (capital expenditure, sales and marketing, working capital, etc.), on a quarterly basis.
9) It should be obligatory for the Board of a company to lay down the code of conduct for all Board members and senior management of a company.
10) There shall be no nominee directors.
11) All compensation paid to non-executive directors may be fixed by the Board of Directors and should be approved by shareholders in general meeting.
12) Personnel who observe an **unethical or improper practice** (not necessarily a violation of law) should be able to approach the audit committee without necessarily informing their supervisors.

NARESH CHANDRA COMMITTEE REPORT 2002

In the year **2002, Naresh Chandra Committee** was appointed to examine and recommend inter alia amendments to the law involving the **auditor-client relationships and the role of independent directors.**

Recommendations of Naresh Chandra committee report

1) **In line with international best practices, the Committee recommends an abbreviated list of disqualifications for auditing assignments, which includes:**
   - ✓ Prohibition of any direct financial interest in the audit client
   - ✓ Prohibition of receiving any loans and/or guarantees from or on behalf of the audit client
   - ✓ Prohibition of any business relationship with the audit client
   - ✓ Prohibition of undue dependence on an audit client.
2) **The following services should not be provided by an audit firm to any audit client**

- ✓ Accounting and bookkeeping services, related to the accounting records or financial statements of the audit client.
- ✓ Internal audit services.
- ✓ Actuarial services.
- ✓ Broker, dealer, investment adviser or investment banking services.
- ✓ Outsourced financial services. Management functions, including the provision of temporary staff to audit clients
- ✓ Any form of staff recruitment, and particularly hiring of senior management staff for the audit client.
- ✓ Valuation services and fairness opinion.

3) Compulsory Audit Partner Rotation

- ✓ There is no need to legislate in favour of compulsory rotation of audit firms.
- ✓ However, the partners and at least 50 % of the engagement team (excluding article clerks and trainees) responsible for the audit of either a listed company, or companies whose paid up capital and free reserves exceeds Rs.10 crore, or companies whose turnover exceeds Rs. 50 crore, should be rotated every 5 years.
- ✓ Persons who are compulsorily rotated could, if need be, allowed to return after a break of 3 years.

4) Auditor's disclosure of contingent liabilities

It is important for investors and shareholders to get a clear idea of a company's contingent liabilities because these may be significant risk factors that could adversely affect the corporation's future health.

5) Auditor's disclosure of qualifications and consequent action

Qualifications to accounts, if any, must form a distinct, and adequately highlighted, section of the auditor's report to the shareholders.

6) Auditor's annual certification of independence

Before agreeing to be appointed (along with 224(1)(b)), the audit firm must submit a certificate of independence to the Audit Committee or to the board of directors of the client company certifying that the firm, together with its consulting and specialised services affiliates, subsidiaries and associated companies:

7) Appointment of auditors

The Audit Committee of the board of directors shall be the first point of reference regarding the appointment of auditors.

8) Percentage of independent directors

Not less than 50 % of the board of directors of any listed company, as well as unlisted public limited companies with a paid-up share capital and free reserves of Rs.10 crore and above, or turnover of Rs.50 crore and above, should consist of independent directors

DR. J J IRANI EXPERT COMMITTEE ON COMPANY LAW (2005)

In 2004, the Government constituted a committee under the Chairmanship of Dr. **J.J.** Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that would be able to address the changes taking place in the national and international scenario, enable adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever-changing business models.

The recommendations of the committee are:

S.NO.	PARTICULARS	PROVISIONS
1	**Board Composition:**	Law should provide for only the minimum number of directors necessary for various classes of companies. There need not be any limit to maximum number of directors. Other than procedures for appointments, no age limit for directors need be specified in the Act.
2	**Appointment and resignation of director:**	Every company to have at least one director resident in India. Requirement of obtaining approval of Central Govt, under Companies Act for appointment of non- resident managerial persons should be done away with. Duty to inform the Registrar of particulars regarding appointment/resignation/death etc. of directors should be that of the company.
3	**Independent Directors:**	Presence of independent director on the boards of companies will lead to greater transparency in company's dealings. Law should recognize the principle of independent directors and spell out their attributes, role, qualifications and liabilities
4	**Remuneration of Directors:**	Decision on remuneration of directors should not be based on a "Government approval based system" but should be left to the company. However, this should be transparent, based on principles that ensure fairness, reasonableness and accountability and should be properly disclosed. No limits need be prescribed.
5	**Disqualification of director**	Failure to attend board meetings for a continuous period of one year to be made a ground for vacation of office regardless of whether or not leave of absence was granted to such director. Specific provisions to be made in the Law to regulate the process of resignation by a director.
6	**Board meetings:**	Board Meetings by electronic means to be allowed. In the case of companies where Independent Directors are prescribed, notice period of 7 days has been recommended for Board Meetings with provisions for holding emergency meetings at a shorter notice. Consent of shareholders by way of special resolution should be mandatory for certain important matters.
7	**Annual General Meetings:**	Use of postal ballot during meetings of members should be allowed to be more widely used by companies. Law should provide for voting through electronic mode.
8	**Appointment of MD/WTD:**	MD,WTD/Executive Director (ED) should be in the whole-time employment of only 1 company at a time
9	**Key managerial Personnel**	Every company should be required to appoint, a Chief Executive Officer, Chief Finance Office and Company Secretary as its KMP whose appointment and removal shall be by the BOD.

Corporate Governance Voluntary Guidelines 2009

- ✓ Good corporate governance practices enhance companies' value and stakeholders' trust resulting into robust development of capital market, the economy and also help in the evolution of a vibrant and constructive shareholders' activism.
- ✓ Considering the above, the MCA issued Corporate Governance Voluntary Guidelines, 2009 after duly examining committee reports and suggestions received from various stakeholders on issues related to corporate governance.
- ✓ These guidelines provide a set of good practices which may be voluntary adopted by the public companies and private companies, particularly the bigger ones. These guidelines are not substitute for or addition to the existing laws but is recommendatory in nature.

'Comply or Explain' Basis

While the guidelines are expected to be adopted by more and more corporates, there may be genuine reasons for some companies for not being able to adopt them. In such a case it is expected that such companies should inform their shareholders about the reasons for not adopting these guidelines either fully or partially

Legislative Framework of Corporate Governance – An International Perspective

INTRODUCTION

International bodies, governments, financial institutions, public and private sector bodies are encouraging debate and spearheading initiatives towards good corporate governance. Better regulatory and self-regulatory corporate governance frameworks and enforcement mechanisms are being implemented through tougher legislations and Corporate Governance Codes.

AUSTRALIA

Australia's corporate governance framework contains a range of measures that promote accountability of management and transparency of financial and other information.

The Australian Securities Exchange

The Australian Securities Exchange through its listing rules, regulates the behaviour of ASX listed companies.

In addition to the listing rules, which are mandatory, the ASX has a set of guidance notes to assist listed companies to comply with both the spirit and letter of the rules. In Australia it is called "if not, why not approach".

If a company considers that a recommendation is inappropriate to a particular circumstance, it has the flexibility not to adopt it and explain why it has not adopted.

THE RECOMMENDATIONS OF THE COUNCIL ARE AS UNDER:

Board Structure

Companies should have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties. Majority of the board should be independent directors.

Independent Director

The Board of directors to determine the independent status of a director. While determining the independent status of a director, the board should consider whether the director

1) Is a substantial shareholder of the company or an officer of, or otherwise associated directly with, a substantial shareholder of the company.
2) Is employed, or has previously been employed in an executive capacity by the company or another group member, and there has not been a period of at least three years between ceasing such employment and serving on the board.
3) Has within the last three years been a principal of a material professional adviser or a material consultant to the company or another group member, or an employee materially associated with the service provided.

4) Is a material supplier or customer of the company or other group member, or an officer of or otherwise associated directly or indirectly with a material supplier or customer.
5) Has a material contractual relationship with the company or another group member other than as a director.

The chairman of the Board

The chairman of the Board should be an independent director. The chairman is responsible for leadership of the board and for the efficient organisation and conduct of the board's functioning. Where the chairman is not an independent director, companies should consider the appointment of a lead independent director.

The role of chairman and chief executive officer (Managing Director) should not be exercised by the same individual.

Audit Committee

The board is required to constitute an audit committee. The audit committee should be of sufficient size, independence and technical expertise to discharge its mandate effectively.

Composition

The Audit Committee should:

- ✓ Consist only of non-executive directors.
- ✓ Consist of a majority of independent directors.
- ✓ Be chaired by an independent chairman. The chairman of the board should not be the chairman of the Audit Committee.
- ✓ Have at least three members.

Remuneration Committee

The board should establish a remuneration committee. The remuneration committee should have a charter that clearly sets out its role and responsibilities, composition, structure and membership requirements and the procedures for non-committee members to attend meetings.

Composition of remuneration committee

- ✓ consists of a majority of independent directors
- ✓ is chaired by an independent director
- ✓ has at least three members.

Nomination Committee

The board is required to constitute a nomination committee.

The nomination committee should:

- ✓ consist of a majority of independent directors
- ✓ be chaired by an independent director

✓ have at least three members.

SINGAPORE

Corporate Governance in Singapore

Singapore requires listed companies to describe in company's Annual Reports their corporate governance practices with specific reference to the principles of the Code of Corporate Governance (the Code), as well as disclose and explain any deviation from any guideline of the Code. The Code of Corporate Governance was first issued by the Corporate Governance Committee ("CGC") on 21 March 2001. Compliance with the Code is not mandatory but listed companies are required under the Singapore Exchange Listing Rules to disclose their corporate governance practices and give explanations for deviations from the Code in their annual reports. A revised Code was issued on 14 July, 2005.

FOLLOWING PRINCIPLES ARE PRESCRIBED UNDER THE CODE:

Board of Directors

Every company should be headed by an effective Board to lead and control the company. The Board is collectively responsible for the long-term success of the company. The Board works with Management to achieve this objective and Management remains accountable to the Board.

Board Composition and Guidance

There should be a strong and independent element on the Board, which is able to exercise objective judgement on corporate affairs independently, in particular, from Management and 10% shareholders. No individual or small group of individuals should be allowed to dominate the Board's decision making.

Normally, at least one-third of the Board should consist of Independent Directors. However, the independent directors should make up at least half of the Board, where:

1. The Chairman and Chief Executive Officer (or equivalent) is the same person
2. The Chairman and the CEO are immediate family members
3. The Chairman is part of the management team
4. The Chairman is not an independent director.

Division of Responsibilities between Chairman and CEO

There should be a clear division of responsibilities between the leadership of the Board and the executives responsible for managing the company's business to ensure an appropriate balance of power, increased accountability and greater capacity of the Board for independent decision making. No one individual should represent a considerable concentration of power.

1. The Chairman and the CEO is the same person
2. The Chairman and the CEO are immediate family members;
3. The Chairman is part of the management team
4. The Chairman is not an independent director.

Board Membership

There should be a formal and transparent process for the appointment and re-appointment of directors to the Board. The Board should establish a Nomination Committee (NC) to make recommendations to the Board on all board appointments, with written terms of reference which clearly set out its authority and duties.

The Nomination Committee should make recommendations to the Board on relevant matters relating to:

1. The review of board succession plans for directors, in particular, the Chairman and for the CEO
2. The development of a process for evaluation of the performance of the Board, its board committees and directors
3. The review of training and professional development programs for the Board.
4. The appointment and re-appointment of directors (including alternate directors, if applicable).

Remuneration matter

There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his own remuneration. The Board should establish a Remuneration Committee (RC) with written terms of reference which clearly set out its authority and duties. The RC should comprise at least three directors, the majority of whom, including the Chairman, should be independent. All the committee members should be non-executive directors.

UNITED KINGDOM

UK combined Code 2008, has set standards of good practice in relation to issues such as board composition and development, remuneration, accountability and audit and relations with shareholders. Significant decline in economic conditions led to revision of the Combined Code by Financial Reporting Council during 2009 by Sir David Walker. It was announced that the Code would be known as the UK Corporate Governance Code 2010, in order to make the Code's status as the UK's recognised corporate governance standard known to foreign investors, and to foreign companies listed in the UK.

UK Corporate Governance Code, 2014:

Whilst primarily aimed at companies with a Premium Listing of shares in the UK, who are required under the Listing Rules to "comply or explain" in their annual report and accounts, the broad principles of the Code may be of interest to other companies who may consider that it would be beneficial to adopt certain of the provisions.

The FRC has emphasised the importance of the board in establishing the correct "tone from the top" and that the board should lead by example to prevent misconduct, unethical practices and support the delivery of long-term success.

The FRC was also keen to establish the appropriate relationship between the board's risk assessment and management responsibilities.

The FRC has proposed that companies make two separate statements in its annual report:

- ✓ one stating whether they consider it appropriate to adopt the going concern basis of accounting in preparing the annual and half-yearly financial statements and
- ✓ Another statement relating to a broad assessment of the company's viability over a specified period, which is expected to be significantly longer than twelve months.

Board Composition

The board should include an appropriate combination of executive and nonexecutive directors (and, in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board s decision taking.

The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

1) Has been an employee of the company or group within the last five years
2) Has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
3) Has received or receives additional remuneration from the company apart from a directors fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
4) Has close family ties with any of the company's advisers, directors or senior employees;
5) Holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
6) represents a significant shareholder; or
7) Has served on the board for more than nine years from the date of their first election.

Role of the Board

UK Corporate Governance Code clearly provides that every company shall be headed by an effective Board which shall collectively be responsible for the long term success of the company. 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. The board should set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance.

Chairman

In addition to separation of roles between the chairman and chief executive officer the chairman is also held responsible for leadership of the board and ensuring its effectiveness on all aspects of its role.

Senior Independent Directors

The board should appoint one of the independent non-executive directors to be the senior independent director to provide a representing board for the chairman and to serve as an intermediary for the other directors when necessary. The senior independent director should be available to shareholders if they have concerns which contact through the normal channels of chairman, chief executive or other executive directors has failed to resolve or for which such contact is inappropriate. The senior independent director is also expected to attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders.

Performance Evaluation of Directors

The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board. The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted.

Election of Directors

The code provides that all directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. It provides that the directors of FTSE 350 companies should be subject to annual election by shareholders. All other directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. Non-executive directors who have served longer than nine years should be subject to annual re- election. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to take an informed decision on their election.

UNITED STATES OF AMERICA

U.S. Securities and Exchange Commission (SEC) is one of the most powerful machineries for exerting pressure on behalf of Federal Government on the companies. It regulates many processes affecting companies, stakeholders and the market. There are elaborate and important rules on disclosures and procedure for complying with the same. SEC regulations are the vital part of US corporate governance as it largely controls information.

The Sarbanes Oxley Act (SOX), 2002

The SOX Act was signed into law by the US President on 30th July, 2002.
The Sarbanes Oxley Act is also known as the 'Public Company Accounting Reform and Investor Protection Act of 2002 \ This legislation brought with it fundamental changes in virtually every area of corporate governance and particularly in auditor independence, conflicts of interest, corporate responsibility, enhanced financial disclosures, and severe penalties, both fines and imprisonment for willful default by managers and auditors.

THE MAIN PROVISIONS OF THE ACT ARE:

1. The Act called for establishment of the Public Company Accounting Oversight Board, whose duties are to:
   - ✓ Register and regulate all public accounting firms that prepare audit reports;
   - ✓ Establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports;
   - ✓ Conduct inspections of registered public accounting firms; conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms;

2. It prohibits any public accounting firm from providing non-audit services while auditing firm. These services include:
   - ✓ Bookkeeping or other services related to the accounting records or financial statements of the audit client;
   - ✓ Actuarial services;
   - ✓ Internal audit outsourcing services;
   - ✓ Legal services and expert services unrelated to the audit; and
   - ✓ Any other service that the Board determines, by regulation, is impermissible.

3. The lead audit and reviewing partner must rotate off the audit every 5 years. It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years.
4. The Act calls for the formation of an independent and competent audit committee, which is directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm and of auditor's activities. It requires that each member of a firm's audit committee be a member of the board of directors and be 'independent'. In order to be considered independent, a member of an audit committee may not accept any consulting, advisory, or other compensatory fee from the issuer; or be an affiliated person of the issuer or any subsidiary thereof.

MALASIYA

The Malaysian Code on Corporate Governance 2012 effective from December 31, 2012 is the first deliverable of the CG Blueprint and supersedes the Malaysian Code on Corporate Governance. It sets out broad principles and specific recommendations on structures and processes which companies should adopt in making good corporate governance an integral part of their business dealings and culture.

The Principles and Recommendation as enumerated under the Malaysian Code on Corporate Governance 2012 are as under:

Principle 1: Establish clear roles and responsibilities

The responsibilities of the board, which should be set out in a board charter, include management oversight, setting strategic direction premised on sustainability and promoting ethical conduct in business dealings.

Recommendation 1.1: The board should establish clear functions reserved for the board and those delegated to management.

Recommendation 1.2: The board should establish clear roles and responsibilities in discharging its fiduciary and leadership functions.

Recommendation 1.3: The board should formalise ethical standards through a code of conduct and ensure its compliance.

Principle 2: Strengthen Composition

The board should have transparent policies and procedures that will assist in the selection of board members. The board should comprise members who bring value to board deliberations.

Recommendation 2.1: The board should establish a Nominating Committee which should comprise exclusively of non-executive directors, a majority of whom must be independent.

Recommendation 2.2: The Nominating Committee should develop, maintain and review the criteria to be used in the recruitment process and annual assessment of directors.

Principle 3: Reinforce Independence

The board should have policies and procedures to ensure effectiveness of independent directors.

Recommendation 3.1: The board should undertake an assessment of its independent directors annually.

Recommendation 3.2: The tenure of an independent director should not exceed a cumulative term of nine years. Upon completion of the nine years, an independent director may continue to serve on the board subject to the director's re-designation as a non- independent director.

Recommendation 3.3: The board must justify and seek shareholders' approval in the event it retains as an independent director, a person who has served in that capacity for more than nine years.

Principle 4: Foster Commitment

Directors should devote sufficient time to carry out their responsibilities, regularly update their knowledge and enhance their skills.

Recommendation 4.1: The board should set out expectations on time commitment for its members and protocols for accepting new directorships.

Recommendation 4.2: The board should ensure its members have access to appropriate continuing education programmes.

Principle 5: uphold integrity in financial reporting

Recommendation 5.1: The Audit Committee should ensure financial statements comply with applicable financial reporting standards.

Recommendation 5.2: The Audit Committee should have policies and procedures to assess the suitability and independence of external auditors.

Principle 6: Recognise and Manage risks

The board should establish a sound risk management framework £ internal controls system.

Recommendation 6.1: The board should establish a sound framework to manage risks.

Recommendation 6.2: The board should establish an internal audit function which reports directly to the Audit Committee.

Principle 7: ensure timely and high quality disclosure

Companies should establish corporate disclosure policies and procedures to ensure comprehensive, accurate and timely disclosures.

Recommendation 7.1: The board should ensure the company has appropriate corporate disclosure policies and procedures. **Recommendation 7.2:** The board should encourage the company to leverage on information technology for effective dissemination of information.

Principle 8: Strengthen Relationship between company and shareholders

The board should facilitate the exercise of ownership rights by shareholders.

Recommendation 8.1: The board should take reasonable steps to encourage shareholder participation at general meetings.

Recommendation 8.2: The board should encourage poll voting.

Recommendation 8.3: The board should promote effective communication and proactive engagements with shareholder.

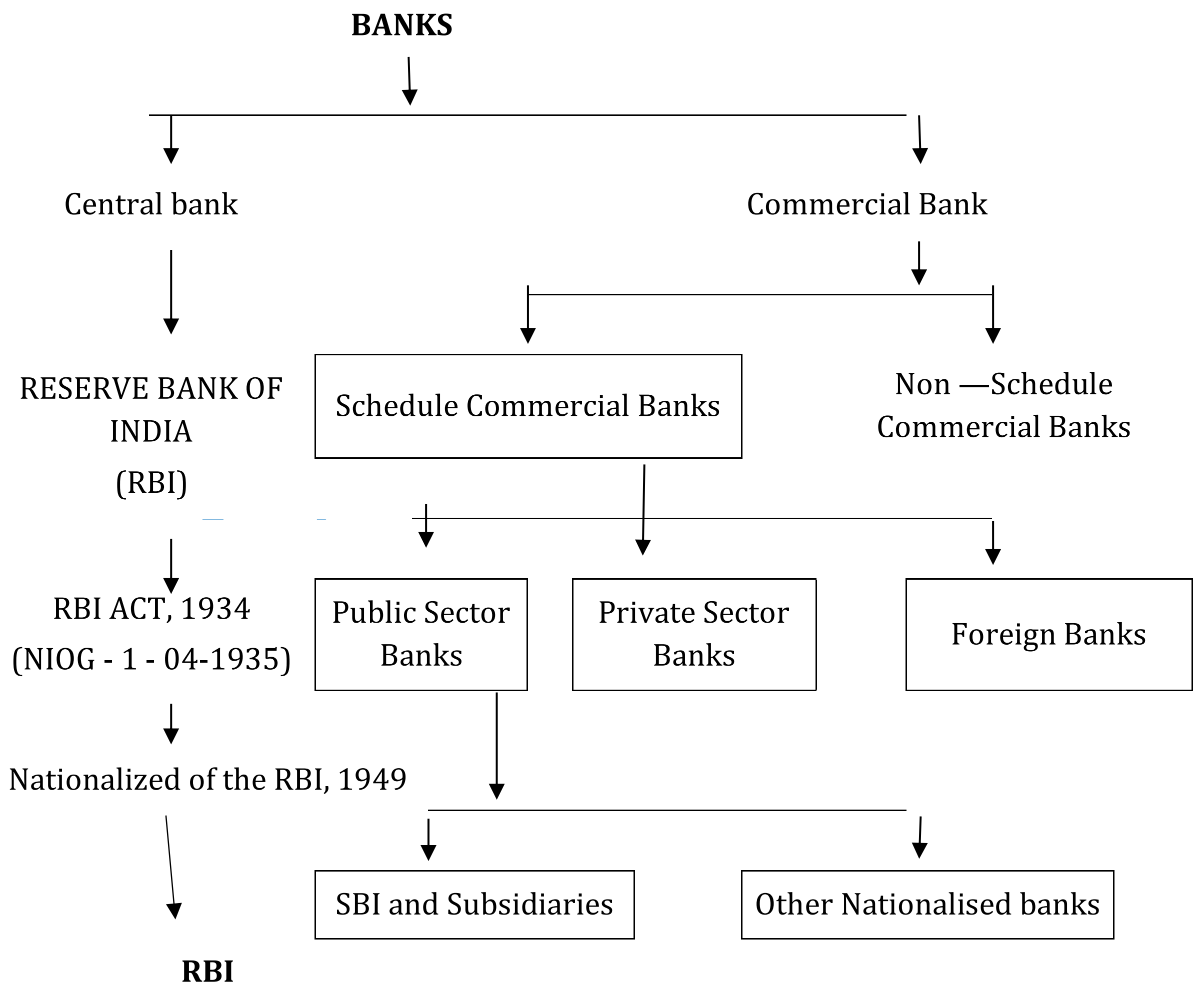
Corporate Governance in Banks, Insurance and Public Sector Companies

CORPORATE GOVERNANCE IN BANKS

The economic development of a country in the modem age can be judged from the efficiency of its banking system. They are central to market development and socio-economic growth, regulatory and economic reforms.

- ✓ By the very nature of their business, banks are highly leveraged.
- ✓ They accept large amounts of public funds as deposits in a fiduciary capacity and further leverage those funds through credit creation.

In the Indian context banks can be classified as Scheduled Bank and Unscheduled Bank.



Regulation of Banks

)
The Reserve Bank of India, the central bank of the country, is the primary regulator of banks. The Banking Regulation Act, 1949 applies to all banks. The provisions of this Act shall be in addition to, and not, unless expressly provided, in derogation of the Companies Act, 2013 and any other law for the time being in force.

- ✓ Companies Act, 2013 is applicable to all private sector banks registered under the Companies Act, 2013.
- ✓ Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and 1980 is applicable to all nationalized banks except State Bank of India, which is governed by the State Bank of India Act.

CLASSIFICATION OF BANKS

Schedule bank means a bank mentioned in 2nd schedule of RBI Act 1934

Conditions for inclusion of name of a bank in 2nd schedule:

Section 42(6)(a) of the RBI act, 1934 narrates the following conditions for inclusion of the name of a bank in the 2nd schedule:

- ✓ Has a paid-up capital and reserves of an aggregate value of not less than Rs. 5 lakhs, and
- ✓ Satisfies the RBI that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and
- ✓ Is a state co-operative bank or a company, or an institution notified by the central government in this behalf or a corporation or a company incorporated by or under any law in force in any place outside India.

Non-scheduled bank:

It means those banks, whose names have not been included in the 2nd schedule of the RBI act, 1934. The non-scheduled banks are required to maintain by way of cash reserve with itself or with RBI in terms of section 18 of the banking regulation act, 1949.

The banks may also be classified in the following way:

State bank of India: The state bank of India act, 1955 came into force w.e.f 1st July, 1955.

SBI associate banks: To provide for the formation of certain government or government Associated banks as subsidiaries of the state bank of India, an act called as the state bank of India (subsidiary banks) act, 1959 was enacted and it came into force 10th September, 1959. These SBI and associate banks are called the govt of India undertakings.

Nationalised banks: In 1969, the government of India issued an ordinance, banking companies (acquisition and transfer of undertakings) ordinance, 1969, and 14 scheduled commercial banks were nationalised in order to expand the branch network, followed by six more in 1980. The ordinance was thereafter enacted as act namely the banking companies (acquisition and transfer of undertakings) act, 1970 and the banking companies (acquisition and transfer of undertakings) act, 1980. These nationalised banks are called the Govt. of India undertakings.

Old/New private sector banks: The Ownership of these banks are scattered among the individuals, institutions, mutual funds and companies and are not the government banks, but they are governed and controlled by the RBI guidelines and directives. Among old private sector banks, it includes J & K bank, federal bank etc. and ICICI bank, HDFC bank, axis bank etc. Are the new generation banks.

State/district co-operative banks: a cooperative bank is a cooperative society registered or deemed to have been registered under any state or central act. If a cooperative bank is operating in more than one state, the central cooperative societies act is applicable. In other cases the state laws are applicable. Apart from various other laws like the banking laws (application to co-operative societies) act, 1965 and banking regulation (amendment) and miscellaneous provisions act, 2004, the provisions of the RBI act, 1934 and the BR Act, 1949 would also be applicable for governing the banking activities.

Regional rural banks (RRB): These banks were established under the regional rural banks act, 1976. These banks are sponsored by nationalized banks and the capital contribution is in the ratio of 50% by CG, 15% by SG and 35% by the concerned sponsored bank. These banks established with the focused attention of the local villagers financial needs.

Local area banks (LAB): Local area banks with operations in two or three contiguous districts were conceived in the 1996 union budget to mobilise rural savings and make them available for investments in local areas. They are expected to bridge the gaps in credit availability and enhance the institutional credit framework in rural and semi-urban areas. Although the geographical area of operation of such banks is limited, they are allowed to perform all functions of a scheduled commercial bank.

Foreign banks: The other important segment of the commercial banking is that of foreign banks. Foreign banks have their registered offices outside India, and through their branches they operate in India. Foreign banks are allowed on reciprocal basis. They are allowed to operate through branches or wholly owned subsidiaries.

NATIONALISED BANKS (MANAGEMENT AND MISCELLANEOUS PROVISIONS) SCHEME, 1970

In exercise of the powers conferred by Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government, after consultation with the Reserve Bank, makes this Scheme called as the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970.

The scheme deals with the manner of nomination of directors, retirement of nominee directors/excess elected directors, terms of office of Managing and other directors etc.

S.NO.	PARTICULARS	PROVISIONS
1	**Terms of Officer for Whole Time Directors**	The scheme provides that a WTD, including the MD, shall devote his whole time to the affairs of the Nationalised Bank and shall hold office for such term not exceeding 5 years and shall be eligible for re-appointment. The CG shall have the right to terminate the term of office of a WTD, including the MD, at any time before the expiry of the term specified under that sub clause by giving to him notice of not less than 3 months in writing or 3 month's salary and allowances in lieu of notice; and the WTD, including the MD, shall also have the right to relinquish his office by giving to the CG notice of not less than 3 months in writing.
2	**Disqualification of directors**	The Scheme provides that a person shall be disqualified for being appointed as, and for being, a Director: ✓ If he has at any time been adjudicated an insolvent or has suspended payment or has compounded with his creditors; or ✓ If he has been found to be of unsound mind and stands so declared by a competent court; or ✓ If he has been convicted by a criminal court of an offence which involves moral turpitude.
3	**Chairman**	The CG shall, after consultation with the RBI, appoint one of the Directors to be the Chairman of the Board and The CG may also appoint the same person to hold, at the same time, both the Offices of the Chairman and the MD.

4	**Meeting of the board**	Board Meeting shall ordinarily be held at least 6 times in a year and at least once in each quarter. A board meeting shall be held at the head office of the Nationalised Bank or such other place as the board may decide. Ordinarily, not less than 15 days notice shall be given of any board meeting and such notice shall be sent to every Director at the address specified by him in this behalf.
5	**Constitution of committees**	Some of the stipulated committees of the Board are as under: ✓ Management Committee of the Board ✓ Audit Committee: ✓ Risk Management Committee ✓ Nomination Committee ✓ Committee of High Value Frauds ✓ IT Strategy Committee ✓ Remuneration Committee ✓ Credit Approvals Committee ✓ Customer Service Committee ✓ Committee of Directors ✓ Human Resources Committee

GANGULY COMMITTEE RECOMMENDATIONS ON CORPORATE GOVERNANCE IN BANKS

The RBI vide its circular dated 20th June 2002, circulated to all scheduled commercial banks, a report of the consultative group of directors of banks/financial institutions (Dr. Ganguly group) - implementation of recommendations. The RBI through this circular urged the banks to place the report as well as the list of recommendations enclosed in circular before the board of directors of respective banks. Based on the decision taken by the board, these recommendations be adopted and implemented in banks.

Recommendations which may be implemented by all banks:

Responsibilities of the BOD:

A strong corporate board should fulfil the following 4 major roles viz.

- ✓ Overseeing the risk profile of the bank,
- ✓ monitoring the integrity of its business and control mechanisms,
- ✓ ensuring the expert management, and
- ✓ maximising the interests of its stakeholders.

The BOD should ensure that responsibilities of directors are well defined and every director should be familiarised on the functioning of the bank before his induction

Role and responsibility of independent and non-executive directors:

The independent/non-executive directors have a prominent role in inducting and sustaining a proactive governance framework in banks.

In order to familiarise the independent /non-executive directors with the environment of the bank, banks may circulate among the new directors a brief note on the profile of the bank, the sub committees of the board, their role, details on delegation of powers, the profiles of the top executives etc.

Training facilities for directors:

Need-based training programmes/seminars/ workshops may be designed by banks to acquaint their directors with emerging developments/challenges facing the banking sector and participation in such programmes could make the directors more sensitive to their role.

The board should ensure that the directors are exposed to the latest managerial techniques, technological developments in banks, and financial markets, risk management systems etc. So as to discharge their duties to the best of their abilities.

Submission of routine information to the board: Reviews dealing with various performance areas may be put up to the management committee of the board and only a summary on each of the reviews may be put up to the board of directors at periodic intervals. This will provide the board more time to concentrate on more strategic issues such as risk profile, internal control systems, overall performance of the bank. Etc.

RECOMMENDATIONS APPLICABLE ONLY TO PUBLIC SECTOR BANK

1. INFORMATION FLOW:

In order to improve manner in which the proceedings are recorded and followed up in public sector banks, they may initiate measures to provide the following information to the board:

• A summary of key observations made by the directors which should be submitted in the next board meeting.

• A more detailed recording of the proceedings which will clearly bring out the observations, dissents, etc. By the individual directors which could be forwarded to them for their confirmation.

2. COMPANY SECRETARY

The company secretary has important fiduciary and company law responsibilities. The company secretary is the nodal point for the board to get feedback on the status of compliance by the organisation in regard to provisions of the company law, listing agreements, SEBI regulations, shareholder grievances, etc. In view of the important role performed by the company secretary vis-a- vis the functioning of the boards of the banks, as also in the context of some of the public sector banks having made public issue it may be necessary to have company secretary for these banks also. Banks should therefore consider appointing qualified company secretary as the secretary to the board and have a compliance officer (reporting to the secretary) for ensuring compliance with various regulatory/accounting requirements.

RECOMMENDATIONS APPLICABLE ONLY TO PRIVATE SECTOR BANK

Eligibility criteria and 'fit and proper' norms for nomination of directors:

The board of directors of the banks while nominating/ co-opting directors should be guided by certain broad **'fit and proper'** norms for directors, viz. formal qualification, experience, track record, integrity etc. For assessing integrity and suitability features like criminal records, financial position, civil actions initiated to pursue personal debts, refusal of admission to or expulsion from professional bodies, sanctions applied by regulators or similar bodies, previous questionable business practices etc. should be considered. The board of directors may, therefore, evolve appropriate systems for ensuring 'fit and proper' norms for directors, which may include calling for information by way of self-declaration, verification reports from market, etc.

The following criteria, which is in vogue in respect of nomination to the boards of public sector banks, may also be followed for nominating independent/ non-executive directors on private sector banks:

- ✓ The candidate should normally be a graduate (which can be relaxed while selecting directors for the categories of farmers, depositors, artisans, etc.)
- ✓ He/she should be between 35 and 65 years of age.
- ✓ He/she should not be a member of parliament/member of legislative assembly/ member of legislative council.

Composition of the board:

in the context of banking becoming more complex and competitive, the composition of the board should be commensurate with the business needs of the banks. There is an urgent need for making the boards of banks more contemporarily professional by inducting technical and specially qualified personnel. Efforts should be aimed at bringing about a blend of 'historical skills' set, i.e. regulation based representation of sectors like agriculture, SSI, cooperation etc. And the 'new skills' set, i.e. need based representation of skills such as, marketing, technology and systems, risk management, strategic planning, treasury operations, credit recovery etc. The above suggestions may be kept in view while electing/co-opting directors to their boards.

BASEL COMMITTEE ON CORPORATE GOVERNANCE

Banks are the custodians of the public money. The objective of the corporate governance in banks is first the protections of the depositor's interest and then to optimise the share holders/ stake holders interest.

A consultative document of guidelines on corporate governance for banks was released by the BASEL committee on banking supervision in October 2014 and comments were invited by the central banks of the countries. Once the comments received from all the central banking authority is debated and deliberated, the BASEL committee will circulate to the member banks for its implementation.

The principles of corporate governance of this consultative document are as under:

Principle 1: Board's overall responsibilities: The board has overall responsibility for the bank, including approving and overseeing the implementation of the bank's strategic objectives, governance framework and corporate culture. The board is also responsible for providing oversight of senior management.

Principle 2: Board qualifications and composition: Board members should be and remain qualified, individually and collectively, for their positions. They should understand their oversight and corporate governance role and be able to exercise sound, objective judgment about the affairs of the bank.

Principle 3: Board's own structure and practices: The board should define appropriate governance structures and practices for its own work, and put in place the means for such practices to be followed and periodically reviewed for ongoing effectiveness.

Principle 4: Senior management: Under the direction and oversight of the board, senior management should carry out and manage the bank's activities in a manner consistent with the business strategy, risk appetite, incentive compensation and other policies approved by the board.

Principle 5: Governance of group structures: In a group structure, the board of the parent company has the overall responsibility for the group and for ensuring that there is a clear governance framework appropriate to the structure, business and risks of the group and its entities. 17 the board and senior management should know and understand the bank's operational structure and the risks that it poses.

Principle 6: Risk Management: Banks should have an effective independent risk management function, under the direction of a Chief Risk Officer (CRO), with sufficient stature, independence, resources and access to the board

Principle 7: Risk identification, monitoring and controlling: Risks should be identified, monitored and controlled on an ongoing bank-wide and individual entity basis. The sophistication of the bank's risk management and internal control infrastructure should keep pace with changes to the bank's risk profile, to the external risk landscape and in industry practice.

Principle 8: Risk communication: An effective risk governance framework requires robust communication within the bank about risk, both across the organisation and through reporting to the board and senior management.

Principle 9: Compliance: The bank's board of directors is responsible for overseeing the management of the bank's compliance risk. The board should approve the bank's compliance approach and policies, including the establishment of a permanent compliance function.

Principle 10: Internal Audit: The internal audit function provides independent assurance to the board and supports board and senior management in promoting an effective governance process and the long-term soundness of the bank. The internal audit function should have a clear mandate, be accountable to the board, be independent of the audited activities and have sufficient standing, skills, resources and authority within the bank.

CORPORATE GOVERNANCE IN INSURANCE COMPANIES

The Insurance Regulatory and Development Authority (IRDA) has outlined in general terms, governance responsibilities of the Board in the management of the insurance functions under various Regulations notified by it covering different operational areas. These guidelines are in addition to provisions of the Companies Act, 2013, Insurance Act, 1938 and requirement of any other laws or regulations framed thereunder. Where any provisions of these guidelines appear to be in conflict with the provisions contained in any law or regulations, the legal provisions will prevail.

The objective of the guidelines is to ensure that the structure, responsibilities and functions of Board of Directors and the senior management of the company fully recognize the expectations of all stakeholders as well as those of the regulator.

1) Composition of the Board	Insurance companies in India would be public companies & will require properly constituted Board. The size of the Board in addition to being compliant with legal requirements (where applicable), should be consistent with scale, nature and complexity of business. **No. of Independent Directors** **For Listed companies** ✓ If company has a non-executive Chairman, then at least 1/3rd of the directors and in other cases at least 50% of the directors. **For Unlisted companies** ✓ 2 Independent Directors As a matter of prudence, not more than one family member or a close relative as defined in the Companies Act or an associate (partner, director etc.) should be on the Board of an Insurer as 'Independent Director'.
2) Conduct of Meetings	The Board should also lay down systems that would make the CS responsible for proper conduct of the Board meetings and with adequate time to deliberate on the major issues in detail. There should be a system of familiarizing new Directors with the background of the company's governance philosophy, duties and responsibilities of the Directors, etc. Well-structured arrangements should be in place for ongoing briefing of Directors on dynamic changes in the insurance in particular and in the financial sector in general and for updating the Directors through formal and informal programmes covering regulatory systems, market growth trends, future strategic plans/operations, etc.

3) Control Functions	Given the risks that an insurer takes in carrying out its operations, and the potential impact it has on its business, it is important that the Board lays down the policy framework to put in place: Robust and efficient mechanisms for the identification, assessment, quantification, control, mitigation and monitoring of the risks; Appropriate processes for ensuring compliance with the Board approved policy, and applicable laws and regulations; Appropriate internal controls to ensure that the risk management and compliance policies are observed; An internal audit function capable of reviewing and assessing the adequacy and effectiveness of, and the insurer's adherence to its internal controls as well as reporting on its strategies, policies and procedures; and Independence of the control functions, including the risk management function, from business operations demonstrated by a credible reporting arrangement.
4) Committees	IRDA has advised insurers that it is mandatory to establish Audit; Investment; Risk Management; Policyholder Protection; and Asset Liability Management (in case of life insurers) Committees that have a critical role in strengthening the control environment in the company. Establishment of the other Committees is left to the option of the insurer.

CORPORATE GOVERNANCE IN PUBLIC SECTOR ENTERPRISES

Department of Public Enterprises (DPE) is the nodal department for issuing the corporate governance guidelines for the Public Sector Enterprises for both at centre and state level.

To bring in more transparency and accountability in the functioning of CPSEs, the Government in June, 2007 introduced, for an experimental period of one year, the Guidelines on Corporate Governance for CPSEs.

These Guidelines were of voluntary nature. Since the issue of these guidelines, the CPSEs have had the opportunity to implement them for the whole of the financial year 2008-09. These Guidelines have been modified and improved upon based on the experience gained during the experimental period of one year.

The Government have felt the need for continuing the adoption of good Corporate Governance Guidelines by CPSEs for ensuring higher level of transparency and decided to make these Guidelines mandatory and applicable to all CPSEs. Accordingly, revised Guidelines on Corporate Governance for Central Public Sector Enterprises was issued by DPE in 2010.

For the purpose of DPE Guidelines on Corporate Governance, CPSEs have been categorised into 2 groups, namely

1. Those listed on the Stock Exchanges
2. Those not listed on the Stock Exchanges

CPSEs listed on Stock Exchanges	Unlisted CPSEs
In so far as listed CPSEs are concerned, they have to follow the SEBI Guidelines on Corporate Governance. In addition, they shall follow those provisions in these Guidelines which do not exist in the SEBI Guidelines and also do not contradict any of the provisions of the SEBI Guidelines	Each CPSE should strive to institutionalize good Corporate Governance practices broadly in conformity with the SEBI Guidelines. The listing of the non-listed CPSEs on the stock exchanges may also be considered within a reasonable time frame to be set by the Administrative Ministry concerned in consultation with the CPSEs concerned. The non-listed CPSEs shall follow the Guidelines on Corporate Governance on a mandatory basis.

DPE Guidelines on Corporate Social Responsibility (CSR) and Sustainability for Central Public Sector Enterprises

Department of Public Enterprises (DPE) has issued New Guidelines on CSR and Sustainability for CPSEs w.e.f. April 1, 2013.

The guidelines issued are in consonance with the National Voluntary Guidelines for Social, Environmental & Economic Responsibilities of Business issued by the Ministry of Corporate Affairs in July 2011.

In the revised guidelines the thrust of CSR and Sustainability is clearly on capacity building, empowerment of communities, inclusive socio-economic growth, environment protection, promotion of green and energy efficient technologies, development of backward regions, and upliftment of the marginalized and under-privileged sections of the society.

Making it mandatory in the revised guidelines for CPSEs to take up at least one major project for development of a backward district has the potential of contributing significantly in the long run to socio-economic growth in all the backward regions of the country.


Special Offer!
CS Praveen Choudhary
CS Executive New Syllabus
FLAT 50% OFF
All Law Subjects
(CLAW, SBEC, JIGL, SLCM, EBCL)
Call @ 7744859960 / 7276368299


CSCartIndia
One Stop Solution for CS Students
Flat 50% OFF on CS Video Lectures
7744859960 / 7276368299
India's Best Faculties @ Unbelievable Prices
Unlimited Views | Free Mock Tests | Personalised Guidance | Many More

Board Effectiveness – Issues and challenges

Role of Director

- ✓ To establish the Vision & Mission Statement
- ✓ Strategic Direction and advice
- ✓ Overseeing Strategy Implementation and performance
- ✓ Appointing and evaluation of CEO and Senior management
- ✓ Ensuring Stakeholder Relations
- ✓ Risk Mitigation
- ✓ Procuring resources

Board of Directors (Sec 2(10))

- ✓ The collective body of directors of the company.
- ✓ A board of directors is a body of elected or appointed members who jointly oversee the activities of a company. They are also referred as board of governors, board of managers, board of regents, board of trustees, or simply referred to as "**THE BOARD**".

Types of Board

1. **Unitary Board**

   The unitary board, remains in full control of every aspect of the company's activities. It initiates action and it is responsible for ensuring that the action which it has initiated is carried out. All the directors, whether executive or outside, share the same aims and responsibilities and are on the same platform.

2. **Two-tier Boards**

   The alternative board model to unitary board is the two-tier board, which was developed in its present form in Germany. A two-tier board fulfils the same basic functions as a unitary board, but it does so through a clear separation between the tasks of monitoring and that of management. The supervisory board oversees the direction of the business and the management board is responsible for the running of the company. The supervisory board controls the management board through appointing its members and through its statutory right to have the final say in major decisions affecting the company. The structure rigorously separates the control function from the management function and members of the one board cannot be members of the other. This separation is enshrined in law and the legal responsibilities of the two sets of board members are different. The supervisory board system was introduced to strengthen the control of shareholders, particularly the banks, over the companies in which they had invested. Shareholdings are more concentrated in Germany and most quoted companies have at least one major shareholder, often a family or another company. Banks play an important part in governance as investors, lenders and through the votes of individual shareholders for which they hold proxies. They are, therefore, well represented on supervisory boards.

Directors

Definition

Sec 2(34) of companies Act 2013 defines the term director as "A director appointed to the Board of the Company."

Governance Functionary

1. Executive Director
2. Non Executive Director
3. Shadow Director
4. Woman Director
5. Resident Director
6. Independent Director

Kumar Mangalam Birla Committee agreed on the following definition of "Independence":

Independent directors are directors who apart from receiving director's remuneration do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in the judgment of the Board may affect their independence of judgment.

The Naresh Chandra Committee defined an independent director as follows:

An independent director of a company is a non-executive director who -

a) Apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its senior management or its holding company, its subsidiaries and associated companies;
b) Is not related to promoters or management at the Board level, or one level below the Board (spouse and dependent, parents, children or siblings);
c) Has not been an executive of the company in the last **3 years**;
d) Is not a partner or an executive of the statutory auditing firm, the internal audit firm that is associated with the company, and has not been a partner or an executive of any such firm for the last 3 years.
e) Is not a significant supplier, vendor or customer of the company;
f) Is not a substantial shareholder of the company, i.e. owing 2 % or more of the block of voting shares;

g) Has not been a director, independent or otherwise, of the company for more than 3 terms of 3 years each (not exceeding 9 years in any case):
h) An employee, executive director or nominee of any bank, financial institution, corporations or trustees of debenture and bond holders, who is normally called a "nominee director" will be excluded from the pool of directors in the determination of the number of independent directors. In other words, such a director will not feature either in the numerator or the denominator.

7. Nominee Director
8. Lead Independent Director
9. Chairman
10. Chief Executive Officer (CEO)
11. Company Secretary

Board Composition [Sec 149]

(1) Every company shall have a Board of Directors consisting of individuals as directors and shall

(a) Minimum 3 directors in the case of a public company, 2 directors in the case of a private company, and 1 director in the case of a OPC; and

(b) Maximum of 15 directors:

Provided that a company may appoint more than 15 directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least 1-woman director.

(2) Every company shall have at least one director who has stayed in India for a total period of not less than 182 in the previous calendar year.

(3) Every listed public company shall have at least 1/3rd of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Regulation 17 of the SEBI (LODR) Regulations, mandates as under:

(i) The Board of Directors of the company shall have an optimum combination of executive and non-executive directors with at least one-woman director and not less than 50 % of the BOD comprising non-executive directors.

(ii) Where the Chairperson of the Board is a non-executive director, at least 1/3rd of the Board should comprise independent directors and in case the listed entity does not have a regular non- executive Chairman, at least half of the Board should comprise independent directors.
Provided that where the regular non-executive Chairperson is a promoter of the listed entity 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.

BOARD CHARTER

As a good practice companies may have a Board Charter which is intended as a tool to assist directors in fulfilling their responsibilities as Board members. It sets out the respective roles, responsibilities and authorities of the Board and of Management in the governance, management and control of the organization. This charter should be read in conjunction with the Company's MOA and AOA.

A Model Charter may include the following:

The Role of the Board

The principal functions and responsibilities of the Board relating to

✓ Strategies

✓ Corporate Governance

✓ Financial Management

- ✓ Relationship with Senior Management
- ✓ Directors Code of Conduct
- ✓ Conflicts of Interests
- ✓ Related Party transactions
- ✓ Board Members
- ✓ Qualifications,
- ✓ skills
- ✓ Board Meetings
- ✓ Delegation of Authority by the Board
- ✓ Board Evaluation
- ✓ Protocol for media contact and comment

RESPONSIBILITIES OF BOARD

The purpose of having a board in a company is:

- ✓ To contribute to the business of the company through their knowledge and skills.
- ✓ To advise on such matters as need their attention and influence.
- ✓ To critically analyze the performance and operations of the company.
- ✓ To be able to act as a professional aide.
- ✓ To be able to offer their professional expertise in the relevant field.
- ✓ To establish sound business principles and ethics.
- ✓ To act as a mentor to the management.

The responsibilities of the directors can be summarized as below:

Responsibilities towards the company

The board should ensure that:

a) It acts in the best interest of the company.

b) The decisions it takes do not serve the personal interests of its members.

c) It helps the company in increasing its profits and turnover by following principles of equity, ethics and values.

d) It helps the company in building its goodwill.

e) It shares with the management the decision taken by them and the reasons thereof.

f) That the company has systems and means to best utilize the resources of the company and especially its intangible resources.

Responsibilities towards management

The board must ensure that:

a) It gives its guidance, support and direction to the management in every decision.

b) It acts as leader to inspire and motivate the management to perform their duties.

c) It encourages compliance and disclosures.

d) It trusts the management and gives it the freedom to act.

e) It does not dictate terms but take objective decisions.

f) It follows the company's code of conduct and the other rules and the regulations of the company.

Responsibilities towards stakeholders

The board must ensure that:

a) Its every decision helps in the increasing the stakeholders value.

b) It does not act in a manner by which any stakeholder is prejudiced.

c) One stakeholder should not be benefited at the cost of the other.

d) It must discourage restrictive or monopolistic activities for the undue benefit of the company.

e) That proper system is established and followed which helps in resolving the grievances of the stakeholders.

f) The company has policies for different class of stakeholders which are equally applicable. Such policies should be based on the principles of equity and justice.

g) The company discloses its policies to all the stakeholders.

h) The stakeholders are able to establish long term relationships based on trust and confidence.

Corporate Social Responsibility

The board must ensure that

a) The company has policies which encourage social activities on purely non profitable basis.

b) Such policies are followed ethically and resources are provided to give effect to these policies.

c) The actual benefit is actually passed on to the society by doing such activities.

d) That these policies cover activities such as upliftment of society, providing education to the needy, promoting employment, preservation of environment, etc.

e) That the company's products are eco-friendly and comply with all the related norms.

f) That the company does not take any decision which affects the society adversely.

Responsibility towards government

The board must ensure that:

a) The company complies with all the laws applicable to it whether they are the central laws or state laws.

b) There are systems and checks to ensure that the above is complied.

c) That all the dues towards the government in the form of taxes, rates, etc. are paid on time.

d) It supports the initiatives taken by the government for the promotion of welfare and security of the nation.

Inter-se responsibilities

The board must ensure that:

a) True and full disclosure of all the transactions, where there is an interest, is made to the other members of the board.

b) It follows board decorum and code for conduct of meetings.

c) All relevant information is shared among themselves for a proper decision making.

d) It is able to take independent, unbiased and objective decisions.

e) The executive directors respect and give due regard to the presence and opinions of the non-executive independent directors.

Barriers to Visionary Leadership

(i) Lack of Time Management

(ii) Resistance to risk taking

(iii) Lack of Strategic Planning

(iv) Complexity

(v) Micro Management

(vi) Clinging to Tradition

(vii) Confused Roles

(viii) Past Habit

Board Committees

Introduction

A board committee is a small working group identified by the board, consisting of board members, for the purpose of supporting the board's work. Committees are generally formed to perform some expertise work. Members of the committee are expected to have expertise in the specified field.

Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth scrutiny and focused attention.

Committee may be formed for the following purposes:

- ✓ To select Board members, to select a CEO, to select KMP and senior management personnel.
- ✓ To look after/ administer/support Board members and committee members and other executive positions.
- ✓ For advising to the board for investments.
- ✓ To report to the board about potential risks factor and to suggest action point for risk mitigation.
- ✓ Safety, Health & Environment Committee.
- ✓ To inquire into particular questions (disciplinary, technical, etc.).
- ✓ To be responsible for financial reporting, organising audits, etc.
- ✓ To identify new markets; build relationship with media and public, etc.

Committees thus have an important role

a) **To strengthen the governance arrangements** of the company and support the Board **in the achievement of the strategic objectives** of the company.

b) To strengthen the role of the Board in **strategic decision** making and supports the role of non-executive directors in challenging executive management actions;

c) To maximise the value of the input from non-executive directors, given their limited time commitment;

d) To support the Board in fulfilling its role, given the nature and magnitude of the agenda.

RATIONAL BEHIND BOARD COMMITTEES:

1. To improve Board effectiveness and efficiency
2. Minor details need to be evaluated/ analysed to arrive at a logical conclusion- This requires body having expertise in subject matter, a Board Committee shall in such cases assist the Board and give well considered recommendations to the Board. e.g. Audit Committee go through minor details of internal audit reports which is not possible and give suitable recommendations, this is not possible for entire Board to consider.
3. Insulate Board from potential undue influence of controlling shareholders and managers
4. Committees prepare groundwork for decision making & submit their recommendations to the Board for decision making.
5. Enables better management of Board's time and allows in-depth scrutiny of proposals
6. Establishing committees is one way of managing the work of the Board and strengthening the Board's governance role.

Mandatory committees of Board

1. **Under Companies Act 2013**
   a) Audit
   b) NRC
   c) SRC
   d) CSR committee

2. **Under SEBI (LODR) Regulation 2015**
    a. audit
    b. NRC
    c. SRC
    d. Risk Management committee

Audit Committee

Sec 177 read with Rule 6 of companies (meeting of board & its power) Rules 2014

The Board of directors of following companies are required to constitute a Audit Committee of the Board-

1. All listed companies
2. All public companies with a paid up capital ≥ Rs. 10 Cr.;
3. All public companies having turnover ≥ Rs. 100 Cr.
4. All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs .50 Cr. or more.

Composition

As per companies Act 2013	As per SEBI (LODR)
Minimum of 3 directors	Minimum of 3 directors
Majority should be independent directors	2/3rd members 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.	All members shall be financially literate and at least 1 member shall have accounting or financial management related expertise. The chairperson shall be independent director. The CS shall act as the secretary to the audit committee.

Function/Role of Audit Committee

As per companies Act 2013	As per SEBI (LODR)
1. the recommendation for appointment, remuneration and terms of appointment of auditors of the company. 2. review and monitor the auditor's independence and performance, and effectiveness of audit process; 3. examination of the financial statement and the auditors' report thereon; 4. approval or any subsequent modification of transactions of the company with related parties; 5. scrutiny of inter-corporate loans and investments; 6. valuation of undertakings or assets of the company, wherever it is necessary; 7. evaluation of internal financial controls and risk management systems; monitoring the end use of funds raised through public offers and related matters	1. oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible; 2. recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity; 3. approval of payment to statutory auditors for any other services rendered by the statutory auditors; 4. reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to: a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of Section 134(3)(c) of the Companies Act, 2013; b) changes, if any, in accounting policies and practices and reasons

	for the same; c) Major accounting entries involving estimates based on the exercise of judgment by management; d) Significant adjustments made in the financial statements arising out of audit findings; e) Compliance with listing and other legal requirements relating to financial statements; f) Disclosure of any related party transactions; g) Modified opinion(s) in the draft audit report; 5. Reviewing, with the management, the quarterly financial statements before submission to the board.

Number of Meetings and Quorum:

SEBI Listing Regulations, 2015 provides for the minimum number of meetings and quorum of the audit committee.

1. The Audit Committee of a listed entity shall meet at least four (4) times in a year and not more than 120 shall elapse between two meetings.
2. The quorum for audit committee meeting shall either be

- ✓ 2 members or
- ✓ 1/3rd of the members of the audit committee, whichever is greater;
- ✓ with at least 2 independent directors.

The requirement of minimum 2 independent directors in the meeting of Audit Committee is new provision which must be complied by all the listed entities.

Disclosure in Board's Report

Section 177(8) of the Act provides that the board's report shall disclose following –

- ✓ Composition of an Audit Committee
- ✓ Where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in the report along with the reasons therefor.

Nomination and Remuneration committee

Constitution of the Committee

a. All listed companies

b. All public companies with a paid up capital ≥ Rs. 10 Cr.

c. All public companies having turnover ≥ Rs. 100 Cr.

d. All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.

Composition

Under companies Act 2013	Under LODR 2015
Comprise of three or more directors;	comprise of at least 3 directors
all directors shall be non-executive directors;	all directors of the committee shall be non-executive directors;
not less than one-half shall be independent directors;	at least 50% of the directors shall be independent directors.
The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Committee but he shall not chair such Committee.	The chairperson of the listed entity, may be appointed as a member of the Committee but shall not chair such Committee. The Chairperson of the committee shall be

	an independent director. The Chairperson of the committee may be present at the annual general meeting, to answer the shareholders' queries.

Functions of the Committee

Under Companies Act 2013

1. 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. Further it has been attached with a wider responsibility of carrying out evaluation of every director's performance.
2. 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.
3. While formulating the policy, the Committee shall consider the following:
   (a) 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;
   (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
   (c) 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.

The remuneration policy formulated by the Committee is required under the Act to be disclosed in the Board's report.

Under SEBI (LODR) Regulation 2015

(1) formulation of the criteria for determining qualifications, positive attributes and

independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;

(2) formulation of criteria for evaluation of performance of independent directors and the board of directors;

(3) devising a policy on diversity of board of directors;

(4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.

(5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

Stakeholders Relationship committee

Constitution of the Committee

Sec 178(5) of companies act 2013	Regulation 20 of LODR 2015
Any company which have more than 1000 security holder	Every Listed entity

Composition

- ✓ A chairperson who shall be non executive director
- ✓ Other members to be decided by board

Functions

To consider and resolve the grievances of security holders of the company.

CSR committee

Section 135 (1) read with rule 3 of Companies (Corporate Social Responsibility Policy) Rules, 2014, mandates that every company which fulfils any of the following criteria during any of the three preceding financial years shall constitute a CSR Committee -

Companies having

- ➢ Net worth ≥ Rs. 500 Cr. or

- Turnover ≥ Rs. 1000 Cr. or
- Net profit ≥ Rs. 5 Cr.

Composition of the Committee

- ✓ The CSR Committee shall consist of three or more directors.
- ✓ At-least one director shall be an independent director.

Functions

In accordance with section 135 the functions of the CSR committee include:

a) Formulating and recommending to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

b) Recommending the amount of expenditure to be incurred on the CSR activities.

c) Monitoring the Corporate Social Responsibility Policy of the company from time to time.

d) Further the rules provide that the CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

Risk Management Committee

A company needs to have a proactive approach to convert a risk into an opportunity. It is important for the company to have a structured framework to satisfy that it has sound policies, procedures and practices in place to manage the key risks under risk framework of the company. A risk management Committee's role is to assist the Board in establishing risk management policy, overseeing and monitoring its implementation.

Regulation 21 of the SEBI (LODR) Regulations, 2015 provides that the BOD of top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year shall constitute a 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 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 committee shall be constituted with at least three directors, majority being independent directors.

Major functions include:

1. Assisting the Board in fulfilling its risk management oversight responsibilities with regard to identification, evaluation and mitigation of operational, strategic and external environment risks.
2. To ensure that management has instituted adequate process to evaluate major risks faced by the company
3. Establishing the role and responsibilities of officers/team who shall be responsible for:
   i. Facilitating the execution of risk management practices in the enterprise
   ii. Reviewing enterprise risks from time to time, initiating mitigation actions, identifying owners and reviewing progress
   iii. Reporting risk events and incidents in a timely manner.
4. Monitoring and reviewing risk management practices of the Company
5. Reviewing and approving risk-related disclosures.

Corporate Policies and Disclosures

Disclosure under Various laws

DISCLOSURES UNDER ICDR REGULATIONS

FILING OF OFFER DOCUMENT (REGULATION 6)

No Issuer shall make

- ✓ A public issue; or
- ✓ A right issue, where the aggregate value of the specified securities offered is ≥ Rs. 50 Lakh,

  Unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the SEBI through the lead merchant banker, at least 30 days prior to registering the prospectus, red herring prospectus or shelf prospectus with the ROC or filing the letter of offer with the designated stock exchange, as the case may be.

COPIES OF OFFER DOCUMENTS TO BE AVAILABLE TO PUBLIC (REGULATION 6)

1. The issuer and lead merchant bankers shall ensure that the contents of offer documents hosted on the websites as required in these regulations are the same as that of their printed versions as filed with the ROC, SEBI and the stock exchanges.
2. The lead merchant bankers and the recognised stock exchange shall provide copies of the draft offer document and final offer document to the public as and when requested.
3. However, the lead merchant bankers or the recognised stock exchange may charge a reasonable sum for providing the copy of the offer document.

MANNER OF DISCLOSURES IN THE OFFER DOCUMENT (REGULATION 57)

The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

Without prejudice to the generality of sub-regulation (1):

(a) The red-herring prospectus, shelf prospectus and prospectus shall contain:
- ✓ The disclosures specified in section 26 of the Companies Act, 2013
- ✓ The disclosures specified in the Schedule attached to the Regulations.

(b) The letter of offer shall contain disclosures as specified in the Schedule attached to the regulations.

PRE-ISSUE ADVERTISEMENT FOR PUBLIC ISSUE (REGULATION 47)

1. Subject to the provisions of section 30 of the Companies Act, 2013, the issuer shall, after registering the red herring prospectus or prospectus with the ROC, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.

2. It shall be in the format and shall contain the disclosures specified in the schedule attached to the regulations.

ISSUE OPENING AND ISSUE CLOSING ADVERTISEMENT FOR PUBLIC ISSUE (REGULATION 48)

An issuer may issue advertisements for issue opening and issue closing in the formats specified in Schedule XIII of the regulations.

POST- ISSUE REPORTS (REGULATION 65)

In public issue, the lead merchant banker shall submit final post-issue report as specified in Part C of Schedule XVI, **within 7 days** of the date of finalization of basis of allotment or **within 7 days** of refund of money in case of failure of issue.

In rights issue, the lead merchant banker shall submit post-issue reports as follows:-

a) Initial post issue report, within 3 days of closure of the issue;
b) Final post issue report, within 15 days of the date of finalization of basis of allotment or within 15 days of refund of money in case of failure of issue. "

The lead merchant banker shall submit a due diligence certificate in the prescribed format along with the final post issue report.

POST-ISSUE ADVERTISEMENTS (REGULATION 66)

The post-issue merchant banker shall ensure that advertisement giving details relating to

- ✓ Oversubscription,
- ✓ Basis of allotment,
- ✓ Number,
- ✓ Value and percentage of all applications including ASBA (Application Supported by Blocked Amount) number,
- ✓ Value and percentage of successful allottees for all applications,
- ✓ Date of completion of despatch of refund orders or instructions to Self Certified Syndicate Banks by the ROC,
- ✓ Date of despatch of certificates and
- ✓ Date of filing of listing application, etc.

is released **within 10 days** from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.

The post-issue merchant banker shall ensure that issuer, advisors, brokers or any other entity connected with the issue shall not publish any advertisement stating that issue has been oversubscribed or indicating investors' response to the issue, during the period when the public issue is still open for subscription by the public.

DISCLOSURES UNDER SEBI TAKEOVER CODE 2011

DISCLOSURES OF SHAREHOLDING AND CONTROL [REGULATIONS 28-31]

Regulation	Made by	shareholding	Timing	Made to
29(1)	Acquirer	acquiring 5% or more shares of the target company	Within 2 working days	Stock exchange and target company
29(2)	Acquirer	if there has been change in shareholding since last disclosure and such change exceeds 2% of total shareholding or voting rights in the target company by the Acquirer + PAC holding 5% or more shares of the target company.	Within 2 working days	Stock exchange and target company
30(1)	Acquirer	Any Person + PAC holding more than 25% shares or voting rights in the target to disclose their aggregate shareholding and voting rights	Within 7 working days from 31st March	Stock exchange and target company
30(2)	Acquirer	Promoters + PAC to disclose their aggregate shareholding and voting rights	Within 7 working days from31st march	Stock exchange and target company
31(1)	Acquirer	Promoter + PAC pledging or creating encumbrance on the shares of the target company	Within 7 working days from pledge	Stock exchange and target company
31(2)	Acquirer	Invocation or release of the pledge or encumbrance on the shares of the target company	Within 7 working days from invocation	Stock exchange and target company

DISCLOSURES UNDER BOARD REPORT

DISCLOSURES BY BOARD OF DIRECTORS IN THE BOARD'S REPORT

Disclosures under Section 134

(a) An extract of annual return u/s 92(3)
(b) Board report shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period.
(c) Number of Board Meetings.
(d) Director's Responsibility Statement.
(e) Statement on declaration given by independent director u/s 149(6).
(f) Particulars of loan, guarantees or investments u/s 186.

(g) The state of company's affairs.
(h) Particulars of contracts and arrangements with related parties.
(i) Statement relating to risk management policy.
(j) Statement on corporate social responsibility.
(k) The amount proposed to carry to any reserve conservation of energy.
(l) Technology absorption.
(m) Foreign exchange earnings and out flow.

Directors' Responsibility Statement 134(5)

It shall state that -

1. In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
2. The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
3. The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
4. The directors had prepared the annual accounts on a going concern basis; and
5. The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
6. The directors, had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

FORMAL ANNUAL EVALUATION [Rule 8(4) of Companies (Accounts) Rules 2014]

- ✓ Every listed company and
- ✓ Every other public company having a PSC ≥ Rs. 25 Cr. calculated at the end of the preceding financial year

Shall include, in its Board's Report, 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

REPORTING OF CORPORATE SOCIAL RESPONSIBILITY (CSR)

According to Rule 8 of the Companies (Corporate social Responsibility Policy) Rules 2014 The Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure to these rules.

MANAGEMENT DISCUSSION AND ANALYSIS REPORT (MDAR)

In case of listed companies, the MDAR should either form a part of the Board's Report or be given as an addition thereto in the annual report to the shareholders. The MDAR should include a discussion on the following matters within the limits set by the company's competitive position: -

- ✓ Industry structure and developments
- ✓ Opportunities and threats

- ✓ Segment-wise or product-wise performance
- ✓ Outlook
- ✓ Risks and areas of concern
- ✓ Internal control systems and their adequacy
- ✓ Discussion on financial performance with respect to operational performance

MDAR should be considered and approved by the Board in a meeting of the Board and not through resolution passed by circulation. It is desirable that MDAR is signed in the same manner as in the case of the Board's Report.

DECLARATION FROM INDEPENDENT DIRECTORS
Every Independent Director in his 1st board meeting participated after appointment and 1st board meeting in every financial year or whenever there is any change give declaration that he meets the criteria of independence.
The Company may obtain from every independent director a declaration to this effect as a matter of good practice. The declaration placed before the Board shall be reviewed and its decision recorded in the minutes.

Other Disclosures under Companies Act. 2013
a) Appointment of independent director
b) Disclosure about the composition of audit committee u/s 177(8) and also the recommendation of audit committee
c) Details of establishment of vigil mechanism [section 177(9)]
d) Policies by the nomination and remuneration committee
e) Secretarial report given by a company secretary in practice.

DISCLOSURES UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015
It was issued by SEBI on **15th January, 2015** based on recommendations of Sodhi committee. These Regulations were effective from 120th day of the date of notification i.e. on and from **15th May, 2015,** by repealing SEBI (Prohibition of Insider Trading) Regulations 1992.

The Disclosure requirements under these Regulations are discussed below
Disclosures of trading by Insiders
Regulations 6 (2)
The disclosures to be made by any person shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.
It is intended that disclosure of trades would need to be of not only those executed by the person concerned but also by the immediate relatives and of other persons for whom the person concerned takes trading decisions.
These regulations are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information and therefore, what matters is whether the person who takes trading decisions is in possession of such information rather than whether the person who has title to the trades is in such possession.

Regulations 6(3)

The disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of the derivatives shall be taken into account for purposes of this Chapter, provided that trading in derivatives of securities is permitted by any law for the time being in force.

Regulations 6(4)
The disclosures made shall be maintained by the company, for a minimum period of 5 years, in such form as may be specified.

Disclosures by certain persons - Initial Disclosure
Regulation 7 (1)
(a) Every promoter, KMP and director of every Listed company shall disclose his security holding, to the company **within 30 days** of these regulations taking effect;
(b) Every person on appointment as a KMP or a director of the company or upon becoming a promoter shall disclose his security holding of the company as on the date of appointment or becoming a promoter, to the company **within 7 days** of such appointment or becoming a promoter.

CONTINUAL DISCLOSURES
Regulation 7(2)
(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within 2 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;
(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within 2 trading days of receipt of the disclosure or from becoming aware of such information.

CODE OF FAIR DISCLOSURE
REGULATION 8 (1)
The BOD of Listed company, shall formulate and publish on its official website, **a code of practices** and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the designated stock exchanges. This provision is aimed at requiring transparent disclosure of the policy formulated.

Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information -
Regulation 81:
1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.

2. Uniform and universal dissemination of unpublished price sensitive unpublished price sensitive information to avoid selective disclosure.
3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
5. Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.

Corporate Governance and Shareholders Rights

INTRODUCTION

Protection of shareholder rights is very important for good corporate governance.

It is one of the pillars of corporate governance.

INVESTOR PROTECTION IN INDIA

SEBI is the capital market regulator and nodal agency in India who regulates the security market. One of the objectives of the SEBI is to provide a degree of protection to the investors and to safeguard their rights, steady flow of savings into market and to promote the development of and regulate the securities market. Investors should be safeguarded not only against **frauds** and **cheating** but also against the **losses arising out of unfair practices.**

Such practices may include:

- ✓ Deliberate misstatement in offer statements to investors.
- ✓ Price manipulations.
- ✓ Insider trading.

SEBI has issued many guidelines and regulations to regulate the capital market and to protect the investors.

Some of the guidelines are:

- ✓ SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
- ✓ SEBI (Ombudsman) Regulation 2003 - designed to redress the investor's grievance against listed companies or intermediaries or both for amicable settlement
- ✓ SEBI (Prohibition of fraudulent and unfair Trade Practices relating to securities market) Regulations 2003
- ✓ SEBI (Prohibition of Insider Trading) Regulations 1992 and amended in 2002. The basic objective is to prohibit persons who have more access to company's information which can be used to benefit the individual or group of individual or agency.
- ✓ SEBI has set up a separate cell to address the grievances of investors - SEBI Complaints Redressal System (SCORES)

Companies Act, 2013 provides for some measures to protect the interest of minority shareholders.

It includes the following:

Where a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised and which proposes to change its objects, then the promoter and shareholders having control of a company are **required to provide an exit to the dissenting shareholders** in accordance with regulations to be specified by SEBI.

Where any benefit accrues to promoter, director, manager, KMP, or their relatives, either directly or indirectly **as a result of non-disclosure or insufficient disclosure** in the explanatory statement annexed to the notice of general meeting then such persons shall hold such benefit in trust for the company and shall be liable to compensate the company to the extent of the benefit received by him.

Class action suit:

In case of oppression / mismanagement, specified number of members or depositors are entitled to file class action suit before NCLT for seeking prescribed reliefs. They may also claim damages / compensation for fraudulent / unlawful / wrongful acts from or against the company / directors / auditors / experts / advisors etc.

Some of the actions that can be taken are as under:

1. Restrain company from any act which is ultra vires the AOA / MOA.
2. Restrain company for breach of provisions of MOA / AOA, act or any other law.
3. Declare a resolution void if material facts are not provided.
4. Restrain company/ directors from acting on such resolutions.
5. Restrain company from taking action contrary to any resolution passed by shareholders.
6. Claim damages or compensation or demand any other suitable action.
7. Seek other remedies as tribunal may deem fit.

RIGHTS OF SHAREHOLDERS

GENERAL RIGHTS OF SHAREHOLDERS

1) Voting rights on issues that affect the corporation as a whole.
2) Rights related to the assets of the company.
3) Rights related to the transfer of stock.
4) Rights to receive dividends as declared by the BOD of the company.
5) Right to receive financial statements.
6) Rights to inspect the records and books of the company.
7) Rights to bring suit against the corporation for wrongful acts by the directors and officers of the company.
8) Rights to share in the proceeds recovered when the corporation liquidates its assets.

SHAREHOLDERS RIGHT UNDER COMPANIES ACT 2013

1. Right to receive copies of the Audited Financial statements.
2. Right to receive copies of the Report of the Cost Auditor, if so directed by the Government.
3. Right to receive copies of the Contract for the appointment of the MD or WTD.
4. Right to receive copies of the Notices of the general meetings of the company
5. Right to inspect Debenture trust deed.
6. Right to inspect Register of Charges.
7. Right to inspect Register of Members, Debenture holders and Index Registers, Annual Returns.

SHAREHOLDER ACTIVISM

Shareholder activism refers to the active involvement of stockholders in their organization.

Shareholders can ensure that the company follows good corporate governance practices and implements beneficial policies.

THE SHAREHOLDER ACTIVISM MEANS

a. Establishing dialogue with the management on issues that concern.

b. Influencing the corporate culture.
c. Using the corporate democracy provided by law.
d. Increasing general awareness on social and human rights issues concerning the organization.

BENEFITS OF SHAREHOLDER ACTIVISM

1) Shareholders can ensure that the company follows good corporate governance practices and implements beneficial policies.
2) Active participation in company meetings is a healthy practice. They can resolve issues laid down in the annual and other general meetings and can raise concerns over financial matters or even social causes such as protection of the environment.
3) Shareholder activists include public pension funds, mutual funds, unions, religious institutions, universities, foundations, environmental activists and human rights groups.

INVESTOR RELATIONS (IR)

Investor Relations (IR) is a **strategic management responsibility** that integrates finance, communication, marketing and securities law compliance to enable the most effective **two- way communication** between a company, the financial community, and other constituencies, which ultimately contributes to a company's securities achieving fair valuation.

Typically, investor relation is a department or person reporting to the Chief Financial Officer. In some companies, investor relation is managed by the public relations or corporate communications departments, and can also be referred to as financial public relations or financial communications.

The investor relations function must be aware of current and upcoming issues that an organization or issuer may face, particularly those that relate to fiduciary duty and organizational impact.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

OECD Principles of Corporate Governance were 1st released in May 1999 and revised in 2004. The principles are **one of the 12 key standards** for International Financial stability of the Financial Stability Board and form the basis for the corporate governance component of the Report on the Observance of Standards and Codes of the World Bank Group.

The OECD Principles of Corporate Governance are:

1) Ensuring the Basis for an Effective Corporate Governance Framework.
2) **The Rights of Shareholders and Key Ownership Functions**
3) **The Equitable Treatment of Shareholders**
4) The Role of Stakeholders in Corporate Governance
5) Disclosure and Transparency
6) The Responsibilities of the Board

The OECD Principles II and III are very much relevant for this chapter and are described as under:

Principle II :

The Rights of Shareholders and Key Ownership Functions

1) Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes
2) 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:
3) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.
4) Markets for corporate control should be allowed to function in an efficient and transparent manner.
5) The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.
6) 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.

Principle III:

The Equitable Treatment of Shareholders

1) All shareholders of the same series of a class should be treated equally.
2) Insider trading and abusive self-dealing should be prohibited.
3) 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.

ROLE OF INSTITUTIONAL INVESTORS IN CORPORATE GOVERNANCE

Institutional investors are organizations which pool large sums of money and invest those sums in companies. Their role in the economy is to act as highly specialized investors on behalf of others.

In India, there are broadly the following types of institutional investors

1. Development oriented financial institutions such as IFCI, IDBI.
2. State financial corporations & Insurance Companies- LIC, GIC.
3. Banks.
4. Mutual funds etc.

INSTITUTIONAL SHAREHOLDERS SHOULD REFLECT THE FOLLOWING CHARACTERISTICS:

1. Take active interest in the composition of BOD.
2. Be vigilant.
3. Ensure that voting intentions are translated into practice.
4. Evaluate Corporate Governance performance of the company.

THE PROS AND CONS ON THE ROLE OF THE INSTITUTIONAL INVESTORS IN PROMOTING THE GOOD CORPORATE GOVERNANCE

Pros	Cons
The institutional investors have significant stakes in the companies and so of the voting power.	Mutual fund investors have the **short term vision** hence their performance measurement may not be a significant evaluation in assessing the corporate

	governance while making the investment decision.
They are in better position to have the access of the information about the company.	The investment objectives are also a deciding factor while making the investment decision.
The stock market performance can visualised with the adoption of the better corporate governance.	Institutional investors may off-load the holding if there is mis-matching in their asset-liability / liquidity position.
They may influence in attracting the FDI in India.	A common man's investment portfolio is effected with the decision of the investment by the institutional investors.

INSTITUTIONAL INVESTORS — GLOBAL TRENDS

THE UK STEWARDSHIP CODE

The UK stewardship code traces its origins to 'the responsibilities of institutional shareholders and agents: statement of principles,' 1st published in 2002 by the institutional shareholders committee (ISC), and which the ISC converted to a code in 2009.

Following the 2009 walker review of governance in financial institutions, the Financial Reporting Council (FRC) was invited to take responsibility for the code. In 2010, the FRC published the 1st version of the UK stewardship code, which closely mirrored the ISC code.

This edition of the code does not change the spirit of the 2010 code.

1) Stewardship aims to promote the **long term success** of companies in such a way that the ultimate providers of capital also prosper. Effective stewardship benefits companies, investors and the economy as a whole.
2) In publicly listed companies responsibility for stewardship is shared. The primary responsibility rests with the board of the company, which oversees the actions of its

management. Investors in the company also play an important role in holding the board to account for the fulfilment of its responsibilities.

3) The UK corporate governance code identifies the principles that underlie an effective board. The UK stewardship code sets out the principles of effective stewardship by investors. In so doing, the code assists institutional investors better to exercise their stewardship responsibilities, which in turn gives force to the "comply or explain" system.
4) For investors, stewardship is more than just voting. Activities may include monitoring and engaging with companies on matters such as strategy, performance, risk, capital structure, and corporate governance, including culture and remuneration. Engagement is purposeful dialogue with companies on these matters as well as on issues that are the immediate subject of votes at general meetings.
5) Institutional investors' activities include decision-making on matters such as allocating assets, awarding investment mandates, designing investment strategies, and buying or selling specific securities. The division of duties within and between institutions may span a spectrum, such that some may be considered asset owners and others asset managers.
6) Broadly speaking, asset owners include pension funds, insurance companies, investment trusts and other collective investment vehicles. As the providers of capital, they set the tone for stewardship and may influence behavioural changes that lead to better stewardship by asset managers and companies. Asset managers, with day-to-day responsibility for managing investments, are well positioned to influence companies' long-term performance through stewardship.
7) Compliance with the Code does not constitute an invitation to manage the affairs of a company or preclude a decision to sell a holding, where this is considered in the best interest of clients or beneficiaries.

Seven Principles for Institutional Investors under UK Stewardship

1) They should publicly disclose their policy on how they will discharge their stewardship responsibilities.
2) They should have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed.

3) They should monitor their investee companies.
4) They should establish clear guidelines on when and how they will escalate their stewardship activities.
5) They should be willing to act collectively with other investors where appropriate.
6) They should have a clear policy on voting and disclosure of voting activity.
7) They should report periodically on their stewardship and voting activities.

PRINCIPLES FOR RESPONSIBLE INVESTMENT (PRI)

The united nations-supported Principles for Responsible Investment (PRI) initiative is an international network of investors working together to put the 6 principles for responsible investment into practice. Its goal is to understand the implications of sustainability for investors and support signatories to incorporate these issues into their investment decision making and ownership practices.

The principles are **voluntary and aspirational**. The principles are designed to be compatible with the investment styles of large, diversified, institutional investors that operate within a traditional fiduciary framework.

Principle 1: we will incorporate ESG issues into investment analysis and decision-making processes.

Principle 2: we will be active owners and incorporate ESG issues into our ownership policies and practices.

Principle 3: we will seek appropriate disclosure on ESG issues by the entities in which we invest.

Principle 4: we will promote acceptance and implementation of the principles within the investment industry.

Principle 5: we will work together to enhance our effectiveness in implementing the principles.

Principle 6: we will scrutinise each report on our activities and progress towards implementing the principles.

CODE FOR RESPONSIBLE INVESTING IN SOUTH AFRICA (CRISA)

The code for responsible investing in South Africa (CRISA) gives guidance on how the institutional investor should execute investment analysis and investment activities and exercise rights so as to promote sound governance.

CRISA applies to:

Institutional investors as asset owners, for example, pension funds and insurance companies.

Service providers of institutional investors, for example, asset and fund managers and consultants.

Purpose:

The king code was written from the perspective of the board of the company as the focal point of corporate governance.

CRISA is intended to give guidance on how the institutional investor should execute investment analysis and investment activities and exercise rights so as to promote sound governance. Read together, the king code and CRISA provide a framework that relates to the function of all role players in the overall governance system, including boards of companies, institutional shareholders, their service providers And the ultimate beneficiaries.

The objective of providing such a framework is to ensure that sound governance is practised

which results in better performing companies that deliver both economic value as well as value within its broader meaning.

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPER) (MARCH 16, 2015)

The California public employees' retirement system (CALPERS, system) is the largest U.S. Public pension fund, with assets totalling approximately $300 billion spanning domestic and international markets **as of June 30, 2014.**

Its mission is to provide responsible and efficient stewardship of the system to deliver promised retirement and health benefits, while promoting wellness and retirement security for members and beneficiaries. This mission was adopted by the CALPERS board of administration in serving more than 1.6 million members and retirees.

The CALPERS board of administration is guided by the CALPERS board's investment committee, investment beliefs and core values: quality, respect, accountability, integrity, openness, and balance.

CALPERS management and more than 380 investment office staff carry out the daily activities of the investment program.

The CALPERS board, through its investment committee, has adopted the global governance principles (global principles). The global principles create the framework by which CALPERS:

1) Executes its shareowner's proxy voting responsibilities.
2) Engages investee companies to achieve long-term sustainable risk-adjusted returns.
3) Requests internal and external managers of CALPERS capital to take into consideration when making investment decisions.

THE SARBANES-OXLEY ACT

The Sarbanes-Oxley Act of 2002 significantly increased the importance of investor relations in the financial markets. The act established new requirements for corporate compliance and regulatory governance, with an increased emphasis on accuracy in auditing and public disclosure. Notable provisions of the act which apply to investor relations include enhanced financial disclosures and accuracy of financial reports, real-time disclosures, off- balance-sheet transaction disclosures, pro-forma financial disclosures, management assessment of internal controls, and corporate responsibility for financial reports.

REPORTING STANDARDS

Companies these days need to disclose much more. The current legal requirements are prompting companies to refine their reporting standards too.

CORPORATE GOVERNANCE AND OTHER STAKEHOLDERS

STAKEHOLDER CONCEPT

In a business context, customers, investors and shareholders, employees, suppliers, government agencies, communities, and many others who have a "stake" or claim in some aspect of a company's products, operations, markets, industry, and outcomes are known as stakeholders. These groups are influenced by business, but they also have the ability to affect businesses.

STAKEHOLDER CONCEPT DEPENDS UPON TWO PRINCIPLES

Principles of corporate legitimacy

The corporation should be managed for the benefit of its stakeholders:

- ✓ Customers
- ✓ Suppliers
- ✓ Owners
- ✓ Employees & local communities.

The rights of these groups must participate, in some sense, in decisions that substantially affect their welfare.

Stakeholder fiduciary principle

- ✓ Management bears a **fiduciary relationship** to stakeholders and to the corporation as an abstract entity.
- ✓ It must act in the interest of the stakeholders as their agent, and it must act in the interests of the corporation to ensure the survival of the firm, **safeguarding the long-term stakes of each group.**

TYPES OF STAKEHOLDERS

Primary stakeholders

Those whose continued association is absolutely necessary for a firm's survival; these include employees, customers, investors, and shareholders, as well as the governments and communities that provide necessary infrastructure.

Secondary stakeholders

They do not typically engage in transactions with a company and thus are not essential for its survival; these **include the media, trade associations and special interest groups.**

STAKEHOLDER ENGAGEMENT

Stakeholder engagement is an alliance-building tool. Corporations practice stakeholder engagement in an effort to understand the needs of their stakeholders, create partnerships and to promote dialogue. Stakeholder engagement identifies stakeholders, assesses stakeholder needs, develops stakeholder relations plans and forms alliances with stakeholders.

STAKEHOLDER ENGAGEMENT leads to increased transparency, responsiveness, compliance, organizational learning, quality management, accountability and sustainability.

STAKEHOLDER ENGAGEMENT is a central feature of sustainability performance. Stakeholder engagement is undertaken for numerous reasons which include:

- ✓ Improved corporate responsibility and financial performance across the globe.
- ✓ To avoid conflict through negotiation, mediation and collaborative learning.
- ✓ Development of a shared vision to direct future business decisions and operations.
- ✓ To innovate through collaboration.

STAKEHOLDER ANALYSIS

Stakeholder analysis is the identification of a project's/activity's key stakeholders, an assessment of their interests, and the ways in which these interests affect project riskiness and viability.

Doing a stakeholder analysis can:

- ✓ Draw out the interests of stakeholders in relation to the problems which the project is seeking to address (at the identification stage) or the purpose of the project (once it has started).
- ✓ Identify conflicts of interests between stakeholders,
- ✓ Help to identify relations between stakeholders which can be built upon, and may enable establish synergies
- ✓ Help to assess the appropriate type of participation by different stakeholders.

ACTIVITY ANALYSIS

The ethical dimension of an activity can be determined with the help of the following grid which is self-explanatory:

Activity Analysis **(Ethical)**

1) Parasite Helping self Injuring Others	**3) Win-win Situation** Helping self Helping Others
2) Martyr Helping Others Injuring self	**4) Total Loss** Injuring self Injuring Others

THE CAUX ROUND TABLE

The Caux Round Table (CRT) is based on the belief that the world business community should play an important role in improving economic and social conditions.

The Caux Round Table was founded in 1986 by Frederick Phillips, former President of Philips Electronics and Olivier Giscard d'Estaing, former Vice-Chairman of INSEAD, as a means of reducing escalating trade tensions. The CRT Principles for Business were formally launched in 1994, and presented at the United Nations World Summit on Social Development in 1995.

The Principles are comprehensive statement of responsible business practice formulated by business leaders for business leaders.

THESE PRINCIPLES ARE ROOTED IN TWO BASIC ETHICAL IDEALS

KYOSEI

The Japanese concept of "Kyosei" means living and working together for the common good enabling cooperation and mutual prosperity to coexist with healthy and fair competition.

HUMAN DIGNITY

"Human dignity" refers to the sacredness or value of each person as an end, not simply as a mean to the fulfilment of others' purposes or even majority prescription.

CRT PRINCIPLES FOR BUSINESS

SECTION 1 : PREAMBLE

The mobility of employment, capital, products and technology is making business increasingly global in its transactions and its effects.

Law and market forces are necessary but insufficient guides conduct. Responsibility for the policies and actions of business and respect for the dignity and interests of its stakeholders are fundamental.

SECTION 2: GENERAL PRINCIPLES

Principle 1: The Responsibilities of Businesses

Principle 2: The Economic and Social Impact of Business

Principle 3: Business Behaviour

Principle 4: Respect for Rules

Principle 5: Support for Multilateral Trade

SECTION 3: STAKEHOLDER PRINCIPLES

- ✓ Customers
- ✓ Employees
- ✓ Owners/Investors
- ✓ Suppliers
- ✓ Competitors
- ✓ Communities

THE CLARKSON PRINCIPLE OF STAKEHOLDER MANAGEMENT

Principle 1

Managers should acknowledge and actively monitor the concerns of all legitimate stakeholders, and should take their interests appropriately into account in decision-making and operations.

Principle 2

Managers should listen to and openly communicate with stakeholders about their respective concerns and contributions, and about the risks that they assume because of their involvement with the corporation

Principle 3

Managers should adopt processes and modes of behaviour that are sensitive to the concerns and capabilities of each stakeholder constituency

Principle 4

Managers should recognize the interdependence of efforts and rewards among stakeholders, and should attempt to achieve a fair distribution <5f the benefits and burdens of corporate activity among them, taking info account their respective risks and vulnerabilities.

Principle 5

Managers should work cooperatively with other entities, both public and private, to insure that risks and harms arising from corporate activities are minimized and, where they cannot be avoided, appropriately compensated.

Principle 6

Managers should avoid altogether activities that might jeopardize inalienable human rights (e.g., the right to life) or give rise to risks which, if clearly understood, would be patently unacceptable to relevant stakeholders

Principle 7

Managers should acknowledge the potential conflicts between (a) their own role as corporate stakeholders, and (b) their legal and moral responsibilities for the interests of all stakeholders, and should address such conflicts through open communication, appropriate reporting and incentive systems and, where necessary, third party review.

GOVERNMENT AS A STAKEHOLDER

Government is the largest stakeholder. Government policy and the legal environment set the tone for the desired corporate governance practices by the corporate sector. Government in any country plays a key role in setting the mandatory limit and recognition of voluntary efforts of corporate sector. Since, it is a well maintained proposition that you can't legislate good behavior, therefore, the Government role is to differentiate between the voluntary and mandatory measures becomes more important so that in regulatory role, it should not burden the corporate sector with the legal compliances.

In India, MCA prescribed the following voluntary measures in the context of Corporate Governance:

1. Corporate governance voluntary guidelines 2009
2. Corporate social responsibility (CSR) voluntary guidelines, 2009
3. National voluntary guidelines on social, environmental & economic responsibilities of business

SOCIETY AS A STAKEHOLDER

1. What society wants from good governance in the aggregate is maximum production of economic well-being.
2. This requires innovation and experimentation as well as it also requires control, probity, and risk management to seize the activities involving hazard to the local community.
3. Now a day's Companies are spending voluntarily for the social and community development which is well recognized by the society and government as well.
4. Business was perceived to maximize profit by exploiting environmental and social systems. These perceptions and attitude forced society to revalue their expectations from business.
5. It was realized that increased economic development at all costs would not be desirable.
6. Only industrial development which does not reduce the quality of life should be encouraged. Thus if businesses do not have in a socially responsible manner, their activities will have a negative impact on the society and the society will have a negative impact.
7. As a result of change in society's attitude towards business, relations between society and business firms first became strained, and this change triggered a sense of frustration for corporate management in the early stage of this awareness.

Corporate Governance forum

The world has become a borderless global village. The spirit to implement internationally accepted norms of corporate governance standards found expression in private sector, public sector and the government thinking. The need to find an institutional framework for corporate governance and to advocate its cause has resulted in the setting up and constitution of various corporate governance forums and institutions the world over.

INSTITUTE OF COMPANY SECRETARIES OF INDIA (ICSI)

Vision and Mission Statements

Recognising the fact that Corporate Governance is the key to development of corporate sector, the Institute has adopted a farsighted vision **"To be a global leader in promoting Good Corporate Governance"**

The Mission of the Institute is **"To develop the high calibre professionals facilitating good Corporate Governance".**

The ICSI, after extensive research, has taken a lead step in defining Corporate Governance as "the application of best management practices, compliance of law in letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders."

The ICSI National Awards for Excellence in Corporate Governance

In pursuit of excellence and to identify, foster and reward the culture of evolving globally acceptable standards of corporate governance among Indian companies, the "ICSI National Award for Excellence in Corporate Governance" was instituted by ICSI in the year 2001.

The Awards comprising citation and trophy are based on the outcome of concerted and comprehensive process of evaluation which enables the Jury to judge on the basis of parameters, the practices of corporate governance as followed by Indian corporates and acknowledge the best practices worthy of being exemplified.

The underlying guideline for the Corporate Governance Award is to identify the corporates, which follow the best corporate governance norms in letter and spirit.

ICSI INITIATIVES

ICSI has set up the **ICSI- centre for corporate governance research and training (CCGRT)** with the objective of fostering and nurturing research initiatives among members of the company secretaries profession and other researchers.

ICSI national award for excellence in corporate governance was instituted by the ICSI in 2001 to identify, foster and reward the culture of evolving global best practices of corporate governance among Indian companies. Each year, the award is conferred upon two best governed companies and **ICSI life time achievement award for translating excellence in corporate governance into reality** is bestowed on an eminent personality.

Focus on corporate governance in the course curriculum - considering corporate governance as core competency of company secretaries, education and training for company secretary significantly focuses on corporate governance. One full paper on corporate governance titled **"ethics, governance and sustainability"** forms part of the syllabus in the professional programme.

Secretarial Standards - as a pioneering initiative, ICSI issues secretarial standards to integrate, harmonise and standardise the diverse secretarial practices prevalent in the corporate sector. Two secretarial standards issued by ICSI - SS-1: meetings of the board of directors and SS-2: general meetings have been notified in the official gazette under section 118 (10) of the Companies act 2013 which provides that every company shall observe secretarial standards with respect to general and board meetings specified by the institute of company secretaries of India and approved as such by the central government. They have been effective from July 1,2015. Prior to the promulgation of the companies act, 2013, the secretarial standards were recommendatory in nature and ICSI had issued **10 secretarial standards**. With the introduction of SS in the statute book has marked a new era of healthy secretarial practices among professional.

Corporate governance publications - The institute regularly brings out publications of interest to members and corporate sector to inculcate the culture of good governance. One of the major Publications of ICSI is 'corporate governance - beyond letters'. The revised edition of this publication is brought out regularly by incorporating the best practices of the corporates participating in the award.

National policy on corporate governance - The MCA vide office memorandum dated march 7, 2012 had constituted a committee to formulate a policy document on corporate governance under the chairmanship of Mr. Adi Godrej. The president, ICSI was the member secretary/convener. The concept paper prepared by ICSI was the base paper for discussion for this committee. The committee submitted its report, which is articulated in the form of guiding principles of corporate governance, to the government of India on 18th September, 2012.

Founder member of national foundation for corporate governance - The ICSI is one of the four founder trustees of national foundation for corporate governance, along with MCA, CII and ICAI. The vision of NFCG is to - be a catalyst in making India the best in corporate governance practices.

NATIONAL FOUNDATION FOR CORPORATE GOVERNANCE (NFCG)

With the goal of promoting better corporate governance practices in India, the Ministry of Corporate Affairs, Government of India, has set up NFCG in partnership with CII, ICSI and ICAI.

Mission of NFCG

- ✓ To foster a culture for promoting good governance, voluntary compliance and facilitate effective participation of different stakeholders;
- ✓ To create a framework of best practices, structure, processes and ethics;
- ✓ To make significant difference to Indian Corporate Sector by raising the standard of corporate governance in India towards achieving stability and growth.

THE INTERNAL GOVERNANCE STRUCTURE OF NFCG CONSISTS

Governing Council

Governing Council of NFCG works at the apex level for policy making. It is chaired by Minister in-charge, Ministry of Corporate Affairs, Government of India.

Board of Trustees

Board of Trustees deal with the implementation of policies and programmes and lay down the procedure for the smooth functioning. It is chaired by Secretary, Ministry of Corporate Affairs, Government of India.

Executive Directorate

The Executive Directorate provides the internal support to NFCG activities and implements the decisions of the Board of Trustees. The Executive Director is the Chief Executive Officer of NFCG.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

The Organisation for Economic Co-operation and Development (OECD) was established in 1961. The OECD was one of the first non-government organizations to spell out the principles that should govern corporates.

In order to contribute to the development of the world economy, the OECD's focus includes a growing number of other countries, in addition to its 30 members. It now shares its expertise and accumulated experience with more than 70 developing and emerging markets.

The OECD Principles of Corporate Governance has provided governments, regulators and other standard setters with an international benchmark. The OECD works closely with a large number of developing and emerging market countries. In particular, the OECD organises Regional Corporate Governance Roundtables in Asia, Latin America, Eurasia, Southeast Europe and Russia. These Roundtables have used the OECD Principles to formulate regional reform priorities and are now actively engaged in implementing these recommendations.

Principles of Corporate Governance - OECD

a. They call on governments to have in place an effective institutional and legal framework to support good corporate governance practices.
b. They call for a corporate governance framework that protects and facilitates the exercise of shareholders 'rights.
c. They also strongly support the equal treatment of all shareholders, including minority and foreign shareholders.
d. They recognise the importance of the role of stakeholders in corporate governance.

e. They look at the importance of timely, accurate and transparent disclosure mechanisms
f. They deal with board structures, responsibilities and procedures.

GLOBAL CORPORATE GOVERNANCE FORUM (GCGF)

The Global Corporate Governance Forum (the Forum) was founded in 1999 by the World Bank and the Organisation for Economic Co-operation and Development (OECD) following the financial crises in Asia and Russia in the latter part of the 1990's. It was established to promote initiatives to raise corporate governance standards and practices in developing countries and emerging markets, using the OECD Principles of Corporate Governance as the basis for its work. The Forum's work program was launched in 2002 in Monterrey, Mexico at the Financing for Development meetings organized by the United Nations.

Forum's four Focus Areas - GCGF

a. raising awareness and building consensus for implementation of reform through meetings, briefings, policy papers, and conferences;
b. sponsoring research relevant to the needs of developing countries to underpin reform efforts by sound analysis through sponsoring papers and building sustainable networks for academics in developing countries;
c. disseminating best practice materials and publications and guidelines developed with leading global specialists and practitioners; and
d. supporting institution and capacity building and providing technical assistance to ensure implementation at the field level through training programs, toolkits and other direct assistance.

THE INSTITUTE OF DIRECTORS, UK

The IOD is a non party-political business organisation established in United Kingdom in 1903. The IOD seeks to provide an environment conducive to business success.

Objects of IOD

1. To promote for the public benefit high levels of skill, knowledge, professional competence and integrity on the part of directors, and equivalent office holders however described, of companies and other organisations;
2. To promote the study, research and development of the law and practice of corporate governance, and to publish, disseminate or otherwise make available the useful results of such study or research;
3. To represent the interests of members and of the business community to government and in all public forums, and to encourage and foster a climate favourable to entrepreneurial activity and wealth creation; and
4. To advance the interests of members of the Institute, and to provide facilities, services and benefits for them.

COMMONWEALTH ASSOCIATION OF CORPORATE GOVERNANCE (CACG)

The Commonwealth Association of Corporate Governance (CACG) was established in 1998 with the objective of promoting the best international standards germane to a country on corporate governance through education, consultation and information throughout the Commonwealth as a means to achieve global standards of business efficiency, commercial probity and effective economic and social development.

INTERNATIONAL CORPORATE GOVERNANCE NETWORK (ICGN)

The International Corporate Governance Network ("ICGN") is a not-for-profit company limited by guarantee and not having share capital under the laws of England and Wales founded in 1995. It has four primary purposes:

a. To provide an investor-led network for the exchange of views and information about corporate governance issues internationally;
b. To examine corporate governance principles and practices; and
c. To develop and encourage adherence to corporate governance standards and guidelines;
d. To generally promote good corporate governance.

THE EUROPEAN CORPORATE GOVERNANCE INSTITUTE (ECGI)

The European Corporate Governance Institute (ECGI) was founded in 2002. It has been established to improve corporate governance through fostering independent scientific research and related activities.

The Institute articulates its work by expanding on the activities of the European Corporate Governance Network, disseminating research results and other relevant material.

CONFERENCE BOARD

The Conference Board was established in 1916 in the United States of America. The Conference Board is a not- for-profit organization The Conference Board creates and disseminates knowledge about management and the marketplace to help businesses strengthen their performance and better serve society.

THE ASIAN CORPORATE GOVERNANCE ASSOCIATION (ACGA)

The Asian Corporate Governance Association (ACGA) is an independent, non-profit membership organisation dedicated to working with investors, companies and regulators in the implementation of effective corporate governance practices throughout Asia. ACGA was founded in 1999 from a belief that corporate governance is fundamental to the long-term development of Asian economies and capital markets.

ACGA'S SCOPE OF WORK COVERS THREE AREAS

Research:

Tracking corporate governance developments across 11 markets in Asia and producing independent analysis of new laws and regulations, investor activism and corporate practices.

Advocacy:

Engaging in a constructive dialogue with financial regulators, stock exchanges, institutional investors and companies on practical issues affecting the regulatory environment and the implementation of better corporate governance practices in Asia

Education:

Organising conferences and seminars that foster a deeper understanding of the competitive benefits of sound corporate governance and ways to implement it effectively.

CORPORATE SECRETARIES INTERNATIONAL ASSOCIATION (CSIA)

CSIA,

A Geneva- registered body, which was established on March 2010 is an international organization whose members comprise national bodies of professionals at the frontline of governance. It is dedicated to promoting the values and practices of governance professionals in order to create, foster or enhance the environment in which business can be conducted in a fair, profitable and sustainable manner.

CSIA issued Practical Steps to Better Corporate Governance.

A. Check that non-executive directors have the necessary skills, experience, and courage

B. Consider the calibre of the non-executive directors. Review the role and contribution of non-executive directors

C. Ensure that all directors have a sound understanding of the company

D. Confirm that the board's relationship with executive management is sound

E. Check that directors can access all the information they need

F. Consider whether the board is responsible for formulating strategy

G. Recognize that the governance of risk is a board responsibility.

Risk Management

INTRODUCTION

What Do We Mean by Risk Management & Internal Control?

Organizations face a wide range of uncertain internal and external factors that may affect achievement of their objectives—whether they are strategic, operational, or financial. The effect of this uncertainty on their objectives can be a positive risk (opportunities) or a negative risk (threats).

RISK MANAGEMENT focuses on identifying threats and opportunities, while INTERNAL CONTROL helps counter threats and take advantage of opportunities.

Why are Risk Management and Internal Control Important?

Proper risk management and internal control assist organizations in making informed decisions about the level of risk that they want to take and implementing the necessary controls to effectively pursue their objectives.

Risk management and internal control are therefore important aspects of an organization's governance, management, and operations. Successful organizations integrate effective governance structures and processes with performance-focused risk management and internal control at every level of an organization and across all operations.

However, risk management and internal control are not objectives in themselves. They should always be considered when setting and achieving organizational objectives and creating, enhancing, and protecting stakeholder value.

RISK MANAGEMENT

Any organization, public or private, large or small, faces internal and external uncertainties that affect its ability to achieve its objectives. The effect of uncertainty on an organization's objectives is "risk." Risk management, commonly known in the business community as enterprise risk management (ERM), can provide for the structured and explicit consideration of all forms of uncertainty in making any decision.

Risk management can enhance the environment for identifying and capitalizing on opportunities to create value and protect established value.

MEANING OF RISK

Risk may also be defined as the possibility that an event will occur and adversely affect the achievement of the Company's objectives and goals.

A business risk is the threat that an event or action will adversely affect an organisation's ability to achieve its business objectives/targets.

Classification of risks

Risk may be classified according to controllability, i.e controllable risk and uncontrollable risk. In other words, the controllable risk is categorised as unsystematic risk and uncontrollable risk is categorised as systematic risk. The concept of controllable and uncontrollable risk may be further explained as under:

Systematic risk:

- ✓ It is uncontrollable by an organisation,
- ✓ It is not predictable, o It is of macro nature.
- ✓ It affects a large number of organisations operating under a similar stream,
- ✓ It cannot be assessed in advance.
- ✓ It depends on the influence of external factors on an organisation which are normally uncontrollable by an organisation.
- ✓ The example of such type of risk is interest rate risk, market risk, purchasing power risk.

Unsystematic risk:

- ✓ It is controllable by an organisation, o It is predictable, o It is micro in nature, o It affects the individual organisation.
- ✓ It can be assessed well in advance and risk mitigation can be made with proper planning and risk assessment techniques.
- ✓ The example of such risk is business risk, liquidity risk, financial risk, credit risk, operational risk.

Types of risks

The risk may broadly be segregate as financial risk and non-financial risk.

Financial risk:

The risk which has some financial impact on the business entity is treated as financial risk. These risks may be market risk, credit risk liquidity risk, operational risk, legal risk and country risk. The following chart depicts the various types of financial risks.

TYPES OF FINANCIAL RISK

Political Risks:

These risks relate to political uncertainties namely: Elections, War risks, Country/Area risks, Insurance risks like fire, strikes, riots and civil commotion, marine risks, cargo risks, etc. And Fiscal/Monetary Policy Risks including Taxation risks.

Interest rate risk:

The financial assets which are connected with interest factors such as bonds/ debentures, faces the interest rate risk. Interest rate risk adversely affects value of fixed income securities. Any increase in the interest reduces the price of bonds and debts instruments in debt market and vice versa. So it can be said that the changes in the interested rates have an inverse relationship with the price of bonds.

Liquidity Risks:

These are financial risk factors namely:

1. Financial solvency and liquidity risks
2. Borrowing limits, delays
3. Cash/Reserve management risks
4. Tax risks.

Currency risk:

The volatility in the currency rates is called the currency risk. These risks affect the firms which have international operations of business and the quantum of the risk depends on the nature and extent of transactions with the external market.

Credit Risks:

These risks relate to commercial operations namely:

- ✓ Creditworthiness risks
- ✓ Risks in settlement of dues by clients

Equity risk:

It means the depreciation in one's investment due to the change in market index. Beta (β) of a stock tells us the market risk of that stock and it is associated with the day-to-day fluctuations in the market.

Legal Risks:

These risks relate to the following Contract risks, Contractual Liability, Frauds, Judicial risks and Insurance risks.

Non-financial risk:

This type of risk does not have immediate financial impact on the business, but its consequence are very serious and later may have the financial impact. This type of risk may include, business/industry & service risk, strategic risk, compliance risk, fraud risk, reputation risk,

TYPES OF NON-FINANCIAL RISK:

Disaster risk: on account of natural calamities like floods, fire, earthquake, manmade risks due to extensive exploitation of land for mines activity, land escalation, risk of failure of disaster management plans formulated by the company etc

Industry & Services Risks:

These risks can be broadly categorised as follows, namely:

- ✓ Economic risks
- ✓ Services risks
- ✓ Market structure
- ✓ Business dynamics
- ✓ Competition risks
- ✓ Customer relations risks
- ✓ Reputational risk

Compliance risk:

This risk arises on account of non-compliance of breaches of laws/ regulations which the entity is supposed to adhere. It may result to deterioration to public reputation, penalty and penal provisions

Transaction risk:

Transaction risk arises due to the failure or inadequacy of internal system, information channels, employees integrity or operating processes.

Fraud risk:

Fraud is perpetrated through the abuse of systems, controls, procedures and working practices. It may be performed by the outsider or even from the insider. Often the most trusted employee attempt to do this. Fraud may not be detected immediately, but is still usually discovered by chance, but the detection should be proactive rather than reactive.

Reputation risk:

This type of risk arises from the negative public opinion. Such type of risk may arise from the failure to assess and control compliance risk and can result in harm to existing or potential business relationships.

STEPS IN RISK MANAGEMENT

STEP - 1 RISK IDENTIFICATION

Any business exists in an **atmosphere of perpetual change.** Hence, the process of risk identification must be an ongoing one and any failure in proper risk identification would result in passive retention of the risk by the company. One is required to be **alert** to note the changes in environment and react.

STEP - 2 RISK EVALUATION

The risk measurement process requires a mathematical approach and considerable data on the **j** past losses. The data available from the concern itself may not be adequate enough to lend itself amenable to analytical exercise. Hence, it becomes necessary to resort to data on industry basis, at national and sometimes even at international level. Risk evaluation includes the determination of:

1. The probability or chances that losses will occur.
2. The impact the losses would have upon the financial affairs of the firm should they occur.

STEP - 3 RISK HANDLING (4 WAYS OF HANDALING THE RISK)

Firms are not entirely free to decide on how they shall handle their risks. In every country there are governmental and official regulations governing health and safety at work like fire precautions, hygiene, environmental pollution, food, handling of dangerous substances and many other matters relating to properties, personal injuries and other risks.

STEP - 4 IMPLEMENTATION OF DECISION

The last step in the risk management process is the implementation of the decision. The Risk Manager should recommend to the Board or an organization various alternatives of tackling the risks. After getting it approved, initiate measures to implement it.

Systematic approach to risk management requires an integration of different disciplines and holistic assessment techniques. It is desirable to have a generic approach to risk assessment that avoids compartmentalization or castling of risks.

HOW TO HANDLE RISK?

RISKS CAN BE HANDLED BROADLY IN FOUR WAYS:

RISK AVOIDANCE

It is a rare possibility to avoid a risk completely. A riskless situation is rare. Generally risk avoidance is only feasible at the planning stage of an operation.

RISK REDUCTION

In many ways physical risk reduction (or loss prevention, as it is often called) is the best way of dealing with any risk situation and usually, it is possible to take steps to reduce the probability of loss. Again, the ideal time to think of risk reduction measures is at the planning stage of any new project when considerable improvement can be achieved at little or no extra cost.

RISK TRANSFER

This refers to legal assignment of cost of certain potential losses to another. The insurance of 'risks' is to occupy an important place, as it deals with those risks that could be transferred to an organization that specialises in accepting them, at a price. Usually, there are **3 major means of loss transfer:**

RISK RETENTION

It is also known as risk assumption or risk absorption. It is the most common risk management technique. This technique is used to take care of losses ranging from minor to major break-down of operation.

There are two types of retention methods for containing losses as under:

1. Risk retained as part of deliberate management strategy after conscious evaluation of possible losses and causes. This is known as active form of risk retention.
2. Risk retention occurred through negligence. This is known as passive form of risk retention.

ADVANTAGES OF RISK MANAGEMENT

a) Better informed decision making - for example in assessing new opportunities;
b) Less chances of major problems in new and ongoing activities; and
c) Increased likelihood of achieving corporate objectives.

FRAUD RISKS MANAGEMENT

The term 'fraud' is generally defined in the law as an intentional misrepresentation of material 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.

Section 25 of Indian Penal Code, 1860 defines the word "Fraudulently". It says "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

For the corporate it becomes more important to proactively incorporate Fraud Management policy or a plan aligned to its internal control and risk management plan.

The fraud risk management policy will help to strengthen the existing anti-fraud controls by raising the awareness across the company and:

1. Promote an open and transparent communication culture.
2. Promote zero tolerance to fraud/misconduct.
3. Encourage employees to report suspicious cases of fraud/misconduct.
4. Spread awareness amongst employees and educate them on risks faced by the company.

REPUTATION RISK MANAGEMENT

Reputation is the trust that an organization has **gained over the years by the products, services, brands** it has provided to the society. Corporates are at a risk of losing such reputation, reputation damage are irreparable. It is an intangible asset that is broad and far-reaching and includes image, goodwill and brand equity. If ruined can devastate the financial health and welfare of an organization.

REPUTATION LOST WILL DAMAGE:

a) Brand Value

b) Share Price

c) Strategic Relationship

d) Regulatory relationship

e) Recruitment/ Retention

ISO STANDARD ON RISK MANAGEMENT

ISO 31000:2009:

International organization for standardization (ISO) is a worldwide federation of national Standards bodies (ISO member bodies). The work of preparing international standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. The main task of technical committees is to prepare international standards.

Every activity of an organization involves risk. Organizations manage risk by identifying it, analysing it and then evaluating whether the risk should be modified by risk treatment in order to satisfy their risk criteria. Throughout this process, they communicate and consult with stakeholders and monitor and review the risk and the controls that are modifying the risk in order to ensure that no further risk treatment is required. This international standard describes this systematic and logical process in detail. Risk management can be applied to an entire organization, at its many areas and levels, at any time, as well as to specific functions, projects and activities.

ISO 31000 published on the 13th of November 2009, provides a standard on the implementation of risk management. ISO 31000 seeks to provide a universally recognised paradigm for practitioners and companies employing risk management processes. Accordingly, the general scope of ISO 31000 - is not developed for a particular industry group, management system or subject matter field in mind, rather it provides best practice structure and guidance to all operations concerned with risk management. The scope of this approach to risk management is to enable all strategic, management and operational tasks of an organization throughout projects, functions, and processes be aligned to a common set of risk management objectives.

Reporting of Fraud under companies Act 2013

The Companies Act, 2013 has introduced many new reporting requirements for the statutory auditors of companies. One of these requirements is given under the Section 143(12), which requires the statutory auditors or cost accountant or PCS to report to the Central Government about the fraud/suspected fraud committed against the company by the officers or employees of the company.

It states,

"Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed."

The reporting requirement under Section 143(12) is for the statutory auditors of the company and also equally applies to the cost accountant in practice, conducting cost audit under Section 148 of the Act; and to the company secretary in practice, conducting secretarial audit under Section 204 of the Act.

Section 143(12) includes only fraud by officers or employees of the company and does not include fraud by third parties such as vendors and customers.

Role of company secretaries in risk management

The company secretaries are governance professionals whose role is to enforce a compliance framework to safeguard the integrity of the organization and to promote high standards of ethical behavior. He/ she has a significant role in assisting the board of the organization to achieve its vision and strategy. The activities of the governance professional encompass legal and regulatory duties and obligations and additional responsibilities assigned by the employer.

However, in essence, the functions of a governance professional include:

- ✓ Advising on best practice in governance, risk management and compliance.
- ✓ Championing the compliance framework to safeguard organizational integrity.
- ✓ Promoting and acting as a 'sounding board' on standards of ethical and corporate behavior.
- ✓ Balancing the interests of the board or governing body, management and other stakeholders.

COMPLIANCE MANAGEMENT

CONCEPT

Compliance Management means management of all the compliances that are applicable to an organization and ensuring that all the applicable laws/rules/regulations and provisions are complied in time. The system/process/hierarchical structure, which ensures the timely compliance is known as Compliance Management System.

Thus, compliance management system is the method by which corporate manage the entire compliance process. It includes the compliance program, compliance audit, compliance report etc, together they are known as compliance solution.

Company secretaries with core competence in compliance and corporate Governance play a crucial role in the corporate compliance management as it involves a full process of research and analysis as well as investigation and evaluation.

Similarly, for ensuring effective implementation of the Compliance Management System, the participation of the senior management in the development and maintenance of a compliance program is necessary.

Companies that go extra mile with their compliance programs lay the foundation for the control environment and can easily avoid the penalties. Moreover, the companies that follow effective compliance management programme often enjoy healthy return and stronger market capitalization.

NEED FOR COMPLIANCE

Business executives and management faces tremendous pressure to comply with multiple regulations. Corporate Accountability is fixed which makes it obligatory for corporates to ensure timely compliance with all the applicable laws.

The organizations face mounting pressures that are driving them towards a structured approach to enterprise wide compliance management. Increased liability and regulatory oversight has amplified risk to a point where it demands continuous evaluation of compliance management systems.

Further, the various compliances that the organizations face increase the risk of non-compliance, which may have potential civil and criminal penalties.

The pressure and the urge to timely comply with all the laws, rules and regulations has resulted in putting onerous responsibility on the Company Secretaries to guide the companies and make them compliant. Thus, now, the Company Secretary must ensure that the Companies adhere to necessary industry and government regulations, change business processes according to legislative change and react quickly and cost effectively.

SIGNIFICANCE OF CORPORATE COMPLIANCE MANAGEMENT

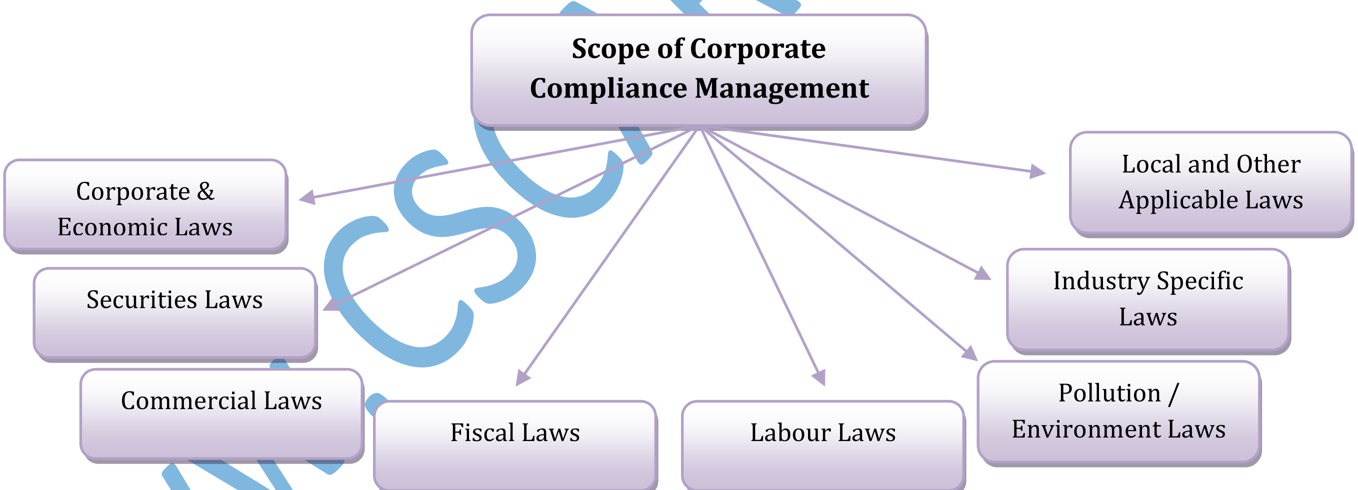
- Better compliance with law
- Real time status of legal/statutory compliances
- Real time status on the progress of pending litigation
- Cost savings by avoiding penalties
- Better brand image and positioning of the company in the market
- Enhanced credibility and credit worthiness
- Goodwill among the shareholders, investors and stakeholders
- Recognition as good corporate citizen.

RISK OF NON-COMPLIANCE

- Cessation of business activity
- Civil action by the authorities
- Punitive action resulting in fine against the company and officials
- Imprisonment of the defaulting officers
- Public embarrassment
- Damage to the reputation of the company and its employees
- Plummeting stock prices and threat of delisting of shares
- Attachment of Bank accounts

SCOPE OF CORPORATE COMPLIANCE MANAGEMENT

Corporate compliance management should broadly include the compliances of:



CORPORATE & ECONOMIC LAWS:

- Companies Act along with rules, regulations and procedures
- Secretarial Standards/Accounting standards

- FEMA
- FCRA
- Competition Act
- Prevention of Money Laundering Act
- Emblems and Names (Prevention of Improper Use) Act, 1947
- Essential Commodities Act
- Intellectual Property Rights Laws

SECURITIES LAWS:

- SEBI Act
- SCRA
- Provisions of listing agreement
- Depositories Act
- Various rules, regulations and guidelines issued by SEBI

COMMERCIAL LAWS INCLUDING IPLAWS:

- Indian contract act
- Transfer of property Act
- Arbitration and Conciliation ct
- Negotiable Instrument Act
- Sale of goods act

FISCAL LAWS:

- Income Tax Act
- Central Excise Act
- Customs Act
- CST/VAT GST

- Service Tax

LABOUR LAWS

- Minimum wages Act
- Payment of Bonus Act
- Payment of Gratuity Act
- Factories Act
- Industrial Dispute Acts
- Employees Provident Fund and Misc. Provisions Act
- Employees State Insurance Act
- Employees Compensation Act
- Maternity Benefit Act
- Contract Labour (Regulation & Abolition) Act

POLLUTION/ENVIRONMENT CONTROLLAWS

- Air (Prevention and Control of Pollution) Act, 1981
- Water (Prevention and Control of Pollution) Act, 1974
- Environment Protection Act
- Public Liability Insurance Act
- National Green Tribunal Act

INDUSTRY SPECIFIC LAWS

As may be applicable to specific categories of Industry.

LOCAL ANDOTHER APPLICABLE LAWS

Local administrative, civic, shops/establishment and related laws.

COMPLIANCE MANAGEMENT PROGRAMME

The Objective of Compliance Programme is to manage the compliance risk effectively, to promote ethical culture in the organization. Compliance management through systematic processes helps in achieving 100% compliance with letter and spirit.

OBJECTIVES OF COMPLIANCE PROGRAMME

i. To establish and maintain centralized mechanism to ensure compliance
ii. To establish and maintain effective co-ordination of functional units
iii. Effective communication of the changes in the regulatory mandates
iv. To provide training on compliance requirements at regular intervals.
v. To establish effective monitoring and control systems.
vi. To introduce effective whistle blowing mechanism
vii. To establish compliance dashboard.

Compliance is a permanent and integral part of business process that is ongoing and needs continuous tuning in line with the business environment and the applicable regulatory ambit.

The Corporate Compliance Officer (CCO) is the custodian of the Corporate Compliance Plan. The CCO should report on compliance activities from time to time. Similarly, the Board may constitute Corporate Compliance Committee to oversee the workings relating to compliances and also create a checklist specially designed for compliance systems.

COMPLIANCE PROGRAM SHOULD PROVIDE PROCESSES FOR:

i. Preventing non-compliances through various mechanisms

ii. Detecting non-compliances through mechanisms such as effective whistle blowing, audits etc.

iii. Responding to non-compliance through remedial action, implementation of control tolls for non-recurrence of such non-compliance etc.

ESTABLISHMENT OF COMPLIANCE MANAGEMENT FRAMEWORK

Compliance identification

↓

Compliance Ownership

↓

Compliance Awareness

↓

Compliance Reporting

↓

Compliance MIS (Periodical)

COMPLIANCE IDENTIFICATION

This process involves the identification of compliances under various legislations applicable to the company, in consultation with functional heads. The legal team has to identify the legislations applicable to the company and identify the compliances that are required under each legislation or rules and regulations made there under.

COMPLIANCE OWNERSHIP

The next important aspect of compliance management is ownership. The ownership of the various compliances has to be described function wise and individual wise. Clear description of primary and secondary ownership is important. The primary owner is mainly responsible whereas the secondary owner has to supervise the compliance.

COMPLIANCE AWARENESS

The next important step in establishing a legal compliance management is creation of awareness of the various legal compliances amongst those responsible. Many a times, compliances are handled by persons who are not fully aware of the requirements of the legislations and hence creating appropriate awareness amongst the owners is very important.

COMPLIANCE REPORTING

Compliances or Non-compliances should be reported to the concerned. Reporting of non-compliances ensures that appropriate corrective action is taken by the responsible person.

Corporate Compliance Reporting (CCR):

A brief process of Compliance MIS or CCR is as follows:

a. Functional heads for the reporting of various laws has to be identified
b. Each of the functional heads may collect and classify the relevant information from the various units/locations
c. The report shall carry an affirmation from the functional heads that the said report has been prepared based on the inputs received from the various units/officers and then list out the specific compliances/non-compliances
d. Each of the functional head will forward their respective compliance report to the CS/MD

e. The CS would brief the MD, give his opinion and then MD will consolidate all the reports and give under his signature a comprehensive CCR to the Board for its information, advice and noting.

The whole process of CCR is contingent on the creation and implementation of comprehensive legal Management Information System.

PERIODICAL COMPLIANCE MIS

For effective implementation of Corporate Compliance Management System, a Management Information System (MIS) must be developed which will ensure periodical compliances with all the applicable laws and regulations. An effective reporting framework, fixing responsibility and creating awareness are just few of the steps, which will ensure timely compliance and reporting under the Compliance Management System.

Information technology can be used to create a real time and more effective MIS for compliance management.

ROLE OF INFORMATION TECHNOLOGY IN COMPLIANCE MANAGEMENT SYSTEMS THROUGH WEB BASED COMPLIANCE SYSTEMS:

'Real Time Monitoring' of the audit compliance is a must and thus information technology plays an effective role in implementation of the Corporate Compliance Management Program across various departments of an organization.

Information Technology can play an effective role in implementation of a Corporate Compliance Management Program across various departments of an organization in terms of real time compliance reminders, generation of reports, sending warning signals, generation of compliance calendar etc.

Many companies are introducing Comprehensive, web based compliance system that links the entire organization and offers a full-fledged compliance management system. Web based compliance software are available industry wise and tailor made compliance software can also be made according to the company specifications which has to be updated on continuous basis.

ROLE OF ETHICS IN COMPLIANCE MANAGEMENT SYSTEM

Ethics is the intent to observe the spirit of law. An ethical compliance management programme ensures that the mechanisms are in place to provide early warning of deviations from guidelines and regulations. It is essential to create or expand a culture of trust, enthusiasm and integrity.

FUNCTIONS OF COMPLIANCE MANAGEMENT SYSTEM/SYSTEMS APPROACH TO COMPLIANCE MANAGEMENT

A well designed compliance management programme has abilities to perform the following key functions across the enterprise:

COMPLIANCE DASHBOARD (PLATFORM)

The compliance programs provide a single enterprise wide platform for all users to track and trend compliance events. External, Internal auditors and compliance officers can use the dashboards to make decisions on the compliance status of an organization.

POLICY AND PROCEDURE MANAGEMENT

A Compliance management system provides a well-designed document management system which forms the basis of managing the entire lifecycle of policies and procedures within an enterprise.

EVENT MANAGEMENT

The compliance management system gives a readily available way to track events, cases and incidents across the extended enterprise.

RULES AND REGULATIONS

A well designed compliance management system provides the capability for the organisation to continuously stay in sync with changing rules and regulations.

As soon as there are any regulatory changes or amendments, the various departments should be notified proactively through' 'email based' approach. Thus, a well-designed compliance management program offers upto date regulatory alerts across the enterprise.

AUDIT MANAGEMENT

Audits have now become part of the enterprise core infrastructure. In addition to financial audits, appropriate evidence gathered in internal Audits become critical in defending compliance to regulations.

QUALITY MANAGEMENT

A well-designed compliance management program incorporates and supports on-going quality initiatives. Organizations generally have quality initiatives as per the industry mandates such as ISO certifications. Compliance and Quality are two sides of the same coin.

TRAINING MANAGEMENT

Most of the compliance program often requires evidence of employee training. To ensure this, the compliance office has to work closely with HR department to facilitate employee training.

COMPLIANCE TASK MANAGEMENT

Organizations must plan, manage and report status of all compliance related activities from a centralized solution.

APPROACHES TO COMPLIANCE SOLUTIONS

There are various companies offering compliance solutions. Following approaches are adopted for creating or enhancing an ethics and compliance programs for companies:

RISK/CULTURAL ASSESSMENT

Through employee surveys, interviews and document reviews, a company's culture of ethics and compliance at all levels of the organization is validated and reports and recommendations are prepared accordingly.

PROGRAM DESIGN UPDATE

In this phase, compliance solution providers help company in creating guideline documents that outline the reporting structure, communications methods and other key components of code of ethics and compliance program.

POLICIES AND PROCEDURES

In this phase, compliance solution providers help company to develop or enhance the detailed policies of the program, including issues of financial reporting, antitrust, conflicts of Interest, gifts and entertainment, records accuracy etc.

COMMUNICATION, TRAINING AND IMPLEMENTATION

Even the best policies and procedures are useless if they are not institutionalized and thus the new policies must be very clearly communicated, proper training is to be provided and the compliance solutions should be implemented on time basis.

ONGOING SELF ASSESSMENT, MONITORING AND REPORTING

The cultural assessment, mechanisms and processes put in place including employee surveys, internal controls and monitoring and auditing programs, help organizations achieve sustained success.

APPARENT, ADEQUATE AND ABSOLUTE COMPLIANCE

Corporates are expected to comply with the regulatory prescriptions in their true letter and spirit. Good corporate governance demands compliances level that match the intentions of the legislature, expectations of stakeholders and requirements of regulators. The compliances generally fall in three categories as follows:

APPARENT COMPLIANCE

It is a disguise form of non-compliance, which is worse than non-compliance. The classic example is preparing notice, agenda and minutes of the meeting, which are not actually held.

ADEQUATE COMPLIANCE

It is compliance in letters. The aspects specified in law are complied in letters without getting into the spirit of the law. eg : box ticking practices.

ABSOLUTE COMPLIANCE

These compliances are those, which are in line with the spirit and intent of the law. When a company complies with law in spirit, it gains public confidence as well.

Example: Infosys is considered to be a trendsetter and its report is even recommended by SEC as ideal report. The company has achieved trust of stakeholders by having a strategic balance between wealth and welfare.

Experts view Annual Report as self-appraisal report of the Company. The shift from shareholder concept to stakeholder concept has necessitated the corporates to provide a transparent report, which is viewed by all stakeholders.

SECRETARIAT AUDIT AND THE COMPLIANCE MANAGEMENT SYSTEM

The compliance management system and processes in a company are dependent mainly on the following factors:

- Nature of business
- Geographical domain of its area of operations
- Size of the company both in terms of operations as well as investments, technology, multiplicity of business activities and manpower employed.
- Jurisdiction in which it operates
- Whether the company is a listed company
- Other important details

Based on the above, the Secretarial Auditor can constitute a broad idea about the desired system and process to be adopted by a Company. Auditing of compliance system is not a fault finding exercise, rather a device to scale up compliance mechanism of the company commensurate to its size and operations.

It is desired that Secretarial Auditor as an expert in corporate compliance would advice the companies to build up strong corporate compliance system in case if the system appears to be insufficient during the audit process.

ROLE OF COMPANY SECRETARY IN COMPLIANCE MANAGEMENT SYSTEM

A Company Secretary is the Compliance Manager of the Company. Corporate disclosures, which play a vital role in enhancing corporate valuation is the forte of a Company Secretary. A Company secretary has to ensure that these disclosures are made to shareholders and other stakeholders in true letter and spirit.

Thus, a company secretary is the professional who guides the Board and the company in all matters, renders advice in terms of compliance and ensures that the Board procedures are duly followed, best global practices are brought in and the organization is taken forward towards good corporate citizenship.

INTERNAL CONTROL SYSTEM

A system of internal control is a proactive approach that balances the risk and control in the Company which helps in exploiting business opportunities fully.
They help to ensure that a company is not unnecessarily exposed to avoidable financial risks and that the financial information used within the business and for publication is reliable. They also contribute to the safeguarding of assets, including the prevention and detection of fraud.

THE SYSTEM WILL INCLUDE:

- ✓ Control activities;
- ✓ Information and communications processes; and
- ✓ Processes for monitoring the continuing effectiveness of the system of internal control.

INTERNAL CONTROL DEFINED

Internal control is defined as a process, affected by an organization's people and information technology (IT) systems, designed to help the organization accomplish specific goals or objectives.
It is a means by which an organization's resources are directed, monitored, and measured. It plays an important role in preventing and detecting fraud and protecting the organization's resources, both physical **(e.g., machinery and property)** and intangible **(e.g., reputation or intellectual property such as trademarks).**
At the organizational level, internal control objectives relate to the reliability of financial reporting, timely feedback on the achievement of operational or strategic goals, and compliance with laws and regulations.

IMPORTANCE OF INTERNAL CONTROL

- ✓ A sound system of internal control contributes to safeguarding the shareholders' investment and the company's assets.
- ✓ Internal control facilitates the effectiveness and efficiency of operations, helps ensure the reliability of internal and external reporting and assists compliance with laws and regulations.
- ✓ It ensure that the company is not unnecessarily exposed to avoidable financial risks and that financial information used within the business and for publication is reliable.
- ✓ It also contribute to the safeguarding of assets, including the prevention and detection of fraud.

COSO's INTERNAL CONTROL Framework

Committee of Sponsoring Organizations of the Treadway Commission (COSO) is a U.S. private sector initiative. COSO has defined internal controls as "a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance"

COMPONENTS OF INTERNAL CONTROL

S.NO.	PARTICULARS	PROVISIONS
1	**Control environment:**	The control environment is the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization. The control environment comprises the integrity and ethical values of the organization; the parameters enabling the board of directors to carry out its governance oversight responsibilities; the organizational structure and assignment of authority and responsibility; the process for attracting, developing, and retaining competent individuals.
2	**Risk assessment:**	Every entity faces a variety of risks from external and internal sources. Risk assessment involves a dynamic and iterative process for identifying and assessing risks to the achievement of objectives. A precondition to risk assessment is the establishment of objectives, linked at different levels of the entity. Risk assessment also requires management to consider the impact of possible changes in the external environment and within its own business model that may render internal control ineffective.
3	**Control activities:**	Control activities are the actions established through policies and procedures that help ensure that management's directives to mitigate risks to the achievement of objectives are carried out. Control activities are performed at all levels of the entity, at various stages within business processes, and over the technology environment.
4	**Information and communication:**	Information is necessary for the entity to carry out internal control responsibilities to support the achievement of its objectives. Management obtains or generates and uses relevant and quality information from both internal and external sources to support the functioning of other components of internal control. Communication is the continual, iterative process of providing, sharing, and obtaining necessary information.

WHAT INTERNAL CONTROL CAN DO:

- ✓ Internal control can help an entity achieve its performance and profitability targets, and prevent loss of resources.

- ✓ It can help ensure reliable financial reporting.
- ✓ It can help ensure that the enterprise complies with laws and regulations, avoiding damage to its reputation and other consequences.
- ✓ In sum, it can help an entity get to where it wants to go, and avoid pitfalls and surprises along the way.

WHAT INTERNAL CONTROL CANNOT DO

- ✓ Internal control cannot change an inherently poor manager into a good one.
- ✓ Internal control cannot ensure success, or even survival in case of shifts in government policy or programs, competitors' actions or economic conditions, since these are beyond the management's control.
- ✓ An internal control system, no matter how well conceived and operated, can provide only reasonable—not absolute—assurance to management and the board regarding achievement of an entity's objectives.
- ✓ The likelihood of achievement is affected by limitations inherent in all internal control systems

ELEMENTS OF INTERNAL CONTROL

The essential requirements for the success of a business are the implementation of organisational objectives, plans and philosophy. With this end in view the following may be considered as the elements of internal control.

i. *Segregation of duties*
ii. *Organisational structure*
iii. *Objectives and Policy Statements*
iv. *Authorisation and approval*
v. *Personnel*
vi. *Management*
vii. *Records and Reports*
viii. *Accounting Controls*
ix. *Protection of assets*
x. *Supervision*

TECHNIQUES OF INTERNAL CONTROL SYSTEM

i. There should be clear division of the work.
ii. Segregation of the work should be in such a manner that the work done by one person is the beginning of the work for another person.
iii. There should be the clarity of the responsibility.
iv. The work flow process be documented or standardized so that the staff may perform the work as suggested in the work flow chart.
v. No single persons should be allowed to have access or control over any important business operation.
vi. There should be job rotation of the staff duties periodically.
vii. Staff should be asked to go on mandatory leave periodically so that other person may come to know if someone is playing foul with the system.

viii. Persons having the charge of the important assets should not be allowed to have access to the books of accounts.
ix. Periodical inspection of the physical assets be carried out to ensure its physical existence as well in good working conditions.
x. The valuable items like cash and others, by physically inspected and the periodicity should be at irregular intervals, so that the person under whose charge the assets are, cannot know in advance, when the inspection will took place and manage the affairs.

The following methods are adopted for Internal Control in modern organisation:

i. Internal Check
ii. Internal Audit
iii. Flow Charts
iv. Internal Control Questionnaire
v. Inter firm and Intra firm Comparisons.

Internal Check

As per ICAE&W, internal check as the allocation of authority and work in such a manner as to effort the checks on the day to day transactions which operate continuously as part of routine system whereby the work of one person is automatically proved independently or is complementary to the work of another, the object being prevention or early detection of error and frauds.

The following are the important objects of internal check system:

i. To assign to a specific person, the responsibility of particular acts, defaults or omissions by allocation of specific duties.
ii. To obtain physical and financial confirmation of facts and entries physical and financial by creation and preservation of necessary records.
iii. To facilitate the breakdown of accounting procedures where required so as to avoid bottlenecks and establish an even flow of work and operations.

iv. To reduce the possibilities of fraud and errors.

Essential Features of Internal Check

1. There should be proper division of work and responsibilities.
2. The duties of each person should be properly defined so as to fix definite responsibilities of each individual.
3. Possibilities of giving absolute control to anybody should not be left out unchecked.
4. Too much confidence on a person should be avoided.
5. The duties of staff should be rotated and one person should not be allowed to occupy a particular area of operation for long.

6. Necessary safeguards should be provided so as to avoid collusion of thoughts which quite often leads to commission of fraud.
7. The person handling cash, stock, securities should be given compulsory leave so as to prevent their having uninterrupted control.
8. Physical inventory of fixed assets and stocks should be taken periodically.
9. Assets should be protected from unauthorised use.
10. To prevent loss or misappropriation of cash, mechanical devices such as the automatic cash register, should be employed.

Internal Audit

Internal auditing though part of an internal control is a function in itself as administration, production, personnel, marketing etc. Whereas internal check devises the form and flow of operations of an entity so that automatic checks are carried out as the transactions occur; internal audit is a critical appraisal of functioning of various operations of an enterprise including the system of internal check. This is evident in its definition itself as "an independent appraisal function".

'Internal auditing' in its traditional parlance, meant an audit on behalf of management to ensure only:

a) The adequacy and effectiveness of internal controls;
b) Accuracy and timeliness of financial and other records and reports;
c) Adherence to the laid down policies and procedures by each unit of the organisation.

The Internal Audit can be defined as –

1. An independent appraisal function;
2. Established within the organization;
3. To examine and evaluate the activities as a service to the management;
4. To assist the members for effective discharge of their responsibilities;
5. To furnish with analyses, appraisals, suggestions etc.

The following are the main aspects of internal auditing:

1. Review, appraisal and evaluation of the soundness, adequacy and application of financial, accounting and other operating controls.
2. Ascertaining the adequacy and reliability of management information and control systems.
3. Ascertaining the achievement of management objectives and compliance with established plans, policies and procedures.
4. Ensuring proper safeguards for assets - their utilization and accounting thereof.
5. Detection and prevention of fraud and error.

6. Ascertaining the integrity of management data in an organisation.
7. Identifying the areas of cost reduction, coupled with increased production, improved productivity and improved systems.
8. Ascertaining the quality of performance and undertaking 'value for money' exercises.
9. Compliance with statutory laws and rules including adherence to the Companies (Auditors' Report) Order, 2003 to avoid adverse comments from the statutory auditors.
10. Undertaking special reviews and assignments directed by management to ensure economical and efficient use of resources.

STEPS FOR INTERNAL CONTROL

In order to establish the internal control mechanism, the following points are to be kept in view:

1. Identify the key areas where the internal control mechanism is to be established.
2. Every work flow should be so documented that it is not complete if another person has not checked it out.
3. The other person's role should start when the first person's role comes to an end.
4. Establish the surprise check mechanism where the money matters are involved.
5. Reporting of the non-adherence of key compliance areas.
6. Review mechanism of the control units.

SEBI (LODR) Regulations, 2015

The CEO or the MD or manager or in their absence, a WTD appointed in terms of Companies Act, 2013 and the CFO shall certify to the Board that:

A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief :
   1. these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
   2. these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
B. There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company's code of conduct.
C. 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 company 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.

D. They have indicated to the auditors and the Audit committee:
   1. significant changes in internal control over financial reporting during the year;
   2. significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
   3. 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 company's internal control system over financial reporting.

ETHICS AND BUSINESS

INTRODUCTION – ETHICS AND GOVERNANCE

Introduction

The new and emerging concepts in management like

1) Corporate Governance
2) Business Ethics
3) Corporate Sustainability

Are some of the expressions through which this emerging ethical instinct in the corporate world is trying to express and embody itself in the corporate life.

Meaning of Governance

It means establishment of policies and continuous monitoring of their proper implementations by the member of organization.

Governance Through Inner Consciousness

According to Sri Aurobindo

To be able to do the right thing in the right way, in each case and at every moment, one must be in the right consciousness.

Inner consciousness

- Inner consciousness is the awareness, the capacity to listen to the inner voice that tells us that there is someone who is looking up at us and also warns that there is someone who is watching us.
- The soul and core of Corporate Governance is not the conduct or behavior that we see outwardly. It is internalized values that an organization and its top management follow.
- The quality our consciousness depends on which part of the consciousness we live. There are two parts in our consciousness.
- First is the lower physical-vital being driven predominantly by self-interest, material needs and sensuous desires, quite often degenerating into greed.

- The second is the higher mental, moral and spiritual being seeking for truth, beauty, goodness, harmony and unity.
- The corporate governance, to be truly effective and enduring, has to be based on this higher part of our human nature or consciousness.

Corporate Sustainability

Sustainability is based on simple principle. Everything that we need for our survival and well being depends, either directly or indirectly on our natural environment. Sustainability creates and maintains the conditions under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic and other requirements of present and future generations.

ETHICS

- The term "ethics" is derived from the Greek word "ethos"
- which refers to
  - ✓ character or
  - ✓ customs or
  - ✓ accepted behaviours.
- The Oxford Dictionary states ethics as
  - ✓ the moral principle that governs a person's behavior or
  - ✓ how an activity is conducted.
- In other words, it is the branch of knowledge concerned with moral principles.

Meaning

- Ethics means the rules or principles that define right or wrong conduct.
- Ethics refers to a code of conduct that guides an individual while dealing with others.
- It is a branch of study dealing with what is the proper course of action for man.
- Ethics is a set of principles or standards of human conduct that govern the behavior of individuals or organizations.
- Using these ethical standards, a person or a group of persons or an organization regulate their behavior to distinguish between what is right and what is wrong as perceived by others.
- It is not a natural science but a creation of the human mind.
- It is not absolute and is open to the influence of time, place and situation.

Conclusion

- Ethics can be defined as the discipline dealing with moral duties and obligation, and explaining what is good or not good for others and for us.
- Ethics is the study of moral decisions that are made by us in the course of performance of our duties.
- Ethics is the study of characteristics of morals and it also deals with the moral choices that are made in relationship with others.
- Ethics is concerned with truth and justice, concerning a variety of aspects like the expectations of society, fair competition, public relations, social responsibilities and corporate behavior.

BUSINESS ETHICS AND CORPORATE GOVERNANCE ETHICS

BUSINESS ETHICS

- Business ethics is a form of applied ethics.
- In broad sense ethics in business is simply the application moral or ethical norms to business.
- Business ethics refers to a 'code of conduct' which businessmen are expected to follow while dealing with others.
- Business ethics comprises the principles and standards that guide behavior in the conduct of business.
- Business ethics stands for the saneness or purity of purpose that is upheld through carefully designed actual practices of a business enterprise.

Code of conduct

- It is a set of principles and expectations that are considered binding on any person who is member of a particular group.
- The alternative names for code of conduct are 'code of ethics' or 'code of practice'.

Coverage of business ethics

- The coverage of business ethics is very wide as it deals with norms relating to
  - ✓ a company and
  - ✓ its employees,
  - ✓ suppliers,
  - ✓ customers and

- ✓ neighbors,
- Its fiduciary responsibility to its shareholders.

CORPORATE GOVERNANCE ETHICS

- Corporate governance is meant to run companies ethically in a manner such that all stakeholders-
  - ✓ creditors,
  - ✓ distributors,
  - ✓ customers,
  - ✓ employees and
  - ✓ even competitors,
  - ✓ the society at large and governments – are dealt with in a fair manner.
- Good corporate governance should look at all stakeholders and not just shareholders alone.

Corporate governance ethics

- Business ethics and corporate governance of an organization go hand in hand.
- An organization that follows ethical practices in all its activities will, in all probability, follow best corporate governance practices as well.

ETHICS PHILOSOPHIES/ Ethical Theories

Deontological ethics (Kantian Ethics)

- Deontology word derived from Greek word "deon" meaning "duty" or "obligatory" and "logos" meaning "science" is therefore science of duty.
- Deontological ethics focus on the relationship between duty and the morality of human actions.
- It follows the concept that moral duty is to do good actions and not bad ones.
- This ethical model simply suggests adherence to independent moral rules or duties regardless of the consequences of such actions.
- When we follow our duty, we are behaving morally and when we fail to follow our duty, we are behaving immorally.
- Example: If a manager decides that it is his duty to always be on time to meetings is running late for reasons not in his control, how is he supposed to drive to reach the meeting on time? Is he supposed to speed, breaking his duty to uphold the law or is he supposed to arrive at his meeting late, breaking his duty to be on time.

➢ Bhagavad Gita teaches the following: - "That, without being attached to the fruits of activities, one should acts as a matter of duty, for by working without attachment one attains the Supreme (Verse 19, Chapter 3).

Teleological Ethics [Dec, 2009]

➢ Teleological word derived from the Greek word 'telos' meaning end, purpose and 'logos' meaning logic or reason
➢ It is also known as consequential ethics. These theories that hold the ends or consequences of an act determine whether an act is good or evil.
➢ Rightness of actions is determined solely by the good consequences.
➢ Teleological analysis of business ethics leads to consideration of the full range of stakeholders in any business decision, including
  ✓ the management,
  ✓ the staff,
  ✓ the customers,
  ✓ the shareholders,
  ✓ the country,
  ✓ humanity and
  ✓ the environment.

Egoism

➢ The word Egoism derived from Latin word ego, in philosophy, an ethical theory holding that the good is based on the pursuit of self-interest.
➢ This model takes into account harms, benefits and rights for a person's own welfare.
➢ In this model an action is morally correct if it increases benefits for the individual in a way that does not intentionally hurt others, and if these benefits are believed to counterbalance any unintentional harms that ensue.

Utilitarianism

➢ Utilitarianism is an ethic of welfare.
➢ It is the idea that the moral worth of an action is solely determined by its contribution to overall utility, that is, its contribution to happiness or pleasure as summed among all persons.
➢ It can be described by the phrase "the greatest good for the greatest number". For example, one may be tempted to steal from a rich wastrel to give to a starving family.

- Example: One may be tempted to steal from a rich wastrel to give to a starving family.

Relativism

- Relativism is the idea that some elements or aspects of experience or culture are relative to, i.e., dependent on, other elements or aspects.
- It holds that there are no absolute truths in ethics and that what is morally right or wrong varies from person to person or from society to society.
- The term often refers to truth relativism, which is the doctrine that there are no absolute truths, i.e., that truth is always relative to some particular frame of reference, such as a language or a culture.

Virtue Ethics theory

- Virtue Ethics theory is a branch of moral philosophy that
- emphasizes character,
- rather than rules or
- consequences,
- as the key element of ethical thinking.
- Example – when a person of good standing is found possessing a valuable article belonging to someone else it will be presumed that the article was loaned to him or kept with him for safe-keeping, whereas if it were in the possession of a person of doubtful or dubious character it would be presumed that he has stolen article.

Justice Theory

- Justice approach is also known as fairness approach.
- It is a principle of Equality
- Greek philosophers have contributed to the idea that all equals should be treated equally.
- Justice does not depend on consequences; it depends on the principle of equality.

SCOPE OF BUSINESS ETHICS

Ethics in Compliance

- Compliance is about obeying and adhering to rules and authority.

- The motivation for being compliant could be to do the right thing out of the fear of being caught rather than a desire to be abiding by the law.
- An ethical climate in an organization ensures that compliance with law is fueled by a desire to abide by the laws.
- Organization that value high ethics comply with the laws not only in letter but go beyond what is stipulated or expected of them

Ethics in Finance

The ethical issues in finance that companies and employees are confronted with include:

- In accounting –
  - ✓ Window dressing,
  - ✓ Misleading financial analysis.
- Related party transactions not at arm's length
- Insider trading, securities fraud leading to manipulation of the financial markets.
- Executive compensation.
- Bribery, kickbacks, over billing of expense, facilitation payments.
- Fake reimbursements

ETHICS IN HUMAN RESOURCES (HRM)

Role of ethics in HRM

- Human resource management (HRM) plays a decisive role in introducing and implementing ethics.
- Ethics should be a pivotal issue for HR specialists.
- The ethics of human resource management (HRM) covers those ethical issues arising around the employer-employee relationship, such as the rights and duties owed between employer and employee.

The issues of ethics faced by HRM include

- Discrimination issues i.e. discrimination on the bases of age, gender, race, religion, disabilities, weight etc.
- Sexual harassment
- Affirmative Action

- Issues surrounding the representation of employees and the democratization of the workplace, trade unionization.
- Issues affecting the privacy of the employee: workplace surveillance, drug testing.
- Issues affecting the privacy of the employer: whistleblowing
- Issues relating to the fairness of the employment contract and the balance of power between employer and employee.
- Occupational safety and health.

ETHICS IN MARKETING

Role of ethics in marketing

Marketing ethics is the area of applied ethics which deals with

- the moral principles behind the operation and
- regulation of marketing

The ethical issues confronted in this area include

- Pricing: price fixing, price discrimination, price skimming.
- Anti-competitive practices like manipulation of supply, exclusive dealing arrangements, tying arrangements etc.
- Misleading advertisements
- Content of advertisements
- Children and marketing
- Black markets, grey markets.

Role of ethics in production

- This area of business ethics deals with the duties of a company to ensure that products and production processes do not cause harm.
- Some of the more acute dilemmas in this area arise out of the fact that
  - ✓ there is usually a degree of danger in any product or production process and
  - ✓ it is difficult to define a degree of permissibility, or
  - ✓ degree of permissibility may depend on the changing state of preventative technologies or
  - ✓ changing social perceptions of acceptable risk.

The ethical issues confronted in this area include

- Defective, addictive and inherently dangerous products and
- Ethical relations between the company and the environment include pollution, environmental ethics, Carbon emissions trading
- Ethical problems arising out of new technologies for eg. Genetically modified food
- Product testing ethics

ADVANTAGES OF ETHICS

Ethics helps to promote a strong public image

- An organization that pays attention to its ethics can portray a strong and positive image to the public.
- People see such organizations as valuing people more than profit and striving to operate with the integrity and honor.
- Managing ethical values in businesses besides optimizing profit generation in the long term, legitimizes managerial actions, strengthens the coherence and balance of the organization's culture, improves trust in relationships between individuals and groups, supports greater consistency in standards and qualities of products, and cultivates greater sensitivity to the impact of the enterprise's values and messages.

Ethics programs helps to avoid criminal acts

- Ethics programs help to detect ethical issues and violations early,
- so that they can be reported or addressed.

Enhanced employee growth

- Attention to ethics in the workplace helps employees face the reality, both good and bad in the organization and
- gain the confidence of dealing with complex work situations.

Strong teamwork and greater productivity

- Ongoing attention and dialogue regarding values in the workplace
  - ✓ builds openness,
  - ✓ integrity and
  - ✓ community,

- ✓ all critical ingredients of strong terms in the workplace.
- ➢ Employees feel a strong alignment between their values and those of the organization resulting in strong motivation and better performance.

Improved society

- ➢ Trusts controlled some markets to the extent that prices were fixed and small businesses stifled.
- ➢ Influence was applied through intimidation and harassment.
- ➢ The society reacted and demanded that
  - ✓ businesses place high value on ethics, fairness and
  - ✓ equal rights resulting in framing of antitrust laws,
  - ✓ establishment of Government agencies and recognition of labour unions

Attracting and retaining talent

- ➢ People aspire to join organizations that have high ethical values.
- ➢ Companies are able to attract the best talent and an ethical company that is dedicated to taking care of its employees will be rewarded with employees being equally dedicated in taking care of the organization.
- ➢ Retaining talented people is as big a challenge as getting them in the first place.
- ➢ Work is a means to an end for them, not an end in itself.
- ➢ The relationship they have with their employer must be a mutual, win-win one, in which their loyalty should not be taken for granted.
- ➢ Talented people will invest their energy and talent only in organizations with values and beliefs that match their own

Investor Loyalty

- ➢ Investors are concerned about ethics, social responsibility and reputation of the company in which they invest.
- ➢ Investors are becoming more and more aware that an ethical climate provides a foundation for efficiency, productivity and profits.
- ➢ Relationship with any stakeholder, including investors, based on dependability, trust and commitment results in sustained loyalty

Customer satisfaction

- Customer satisfaction is a vital factor in successful business strategy.
- Repeat purchases/ orders and enduring relationships of mutual respect is essential for the success of the company.
- This is achieved by a company that adopts ethical practices.
- Ethical conduct towards customers builds a strong competitive position. It promotes a strong public image.

Ethical Principle in Business

Introduction

Organization value, influences individual's decisions.

Here ethical issues depends on

- Organization culture
- Employees & colleges

Corporate organization culture comprises of: -

- Value
- Attitude
- Experience
- beliefs

Collection of values & norms shared by employee or group of organization & controls the way of interaction between them & outsiders.

Important element organization culture→ Ethical Climate:- Shared set of understanding about what is correct behavior & how ethical issues will be handled.

Ethical climate is set @ Top level

✓ Sets the character for decision making at all level

✓ Reflect whether firm has an ethical conscience

✓ Function of many factors

✓ Their behavior or action will set the way Lower –level employee will act & way of organization's act as a whole during ethical dilemma.

Note: → When Ethical Climate is not clear → Ethical dilemma will often result in unethical behavior.

Structure of organization & ethics (D09)

✶ **Centralized organization**

- Decision making authority delegated to top-level management only.
- Very little authority is delegated to lower level.
- Internal & external responsibility is always with top-level management.

➢ **Suitable for those organizations**

✓ Which makes high risk decisions &

✓ Whose lower level might not be highly skilled in decision-making.

✓ Where production processes are routine & efficiency is of primary importance.

Disadvantage: -

✶ It may lead to unethical act because of top to down approach & because of distance in between.

✶ If it is much bureaucratic, employee may behave according to letter of law rather than sprit of law.

Decentralized: -

✶ Authority is delegated at several levels.

✶ They have few formal rules & procedures

✶ Focuses on increasing flow of information

✶ Provides greater flexibility

✶ **Main strength→** Adaptability & early recognition of external change so that manager can react quickly to the change.

✶ **Weakness →** Difficulty in responding quickly to change in policy & procedures made by top-level management.

✶ Independent profit centers may divert from organizational objective.

Ethics Programme (J11)

➢ Company should have good ethical program.

➢ So that employees can understand company's values & he will comply with policy, procedure & rules, code of conduct

➢ Following 2 types of Ethics program can be created and both can be adopted simultaneously.

1) Compliance orientation programme

- Creates order by requiring that employees comply with and commit to the required conduct.
- It uses Legal terms, statutes, rules & penalties for non compliance.

2) Value orientation programme

- Objective is to **develop shared value**
- Focus is basically on an abstract core of ideals (e.g. respect & responsibility)
- instead of relying on coercion, the company's values are seen as something to which people willingly aspire.

Most companies start from code of conduct

- Codes of Conduct are Formal statement which describes what the organization expects from its employees.

Features of Good Business Ethics Programme

Leadership means that executives and supervisors care about ethics and values as much as they do about the bottom line.

Consistency between words and actions refers that top management "Practices what it preaches". This is more important than formal mechanisms, such as hotlines for people to report wrong doing.

Fairness means that the organization operates fairly. To most employees, the most important ethical issue is how the organization treats them and their co workers.

Just rewards say that ethical behaviour is fairly rewarded. This has greater influence on the effectiveness of an ethics programme than the perception that unethical behaviour is punished.

Openness means that people can talk openly about ethics and values, and that ethics and values are integrated into business decision making.

Code of ethics in a company

✶ Shall be Comprehensive

✶ Consist of general statement

✶ Serves as principles & basis for rule of conduct

✶ Desire of management to comply with values, Rules & policy

Shall be developed by president/BOD/CEO with assistance of Legal Staff

✶ Outlines set of fundamental principles

✶ Can be used

1) Basis of operational requirements (things to do)
2) Basis of operational prohibitions (things not to do)

A code of ethics is based on a set of core principles or values and is not designed for convenience.

✶ Reflects upper management's desire- for compliance with rules norms & policies

✶ **Contains 6 core values→**

1) Trust worthiness
2) Respect
3) Responsibility
4) Fairness
5) Caring
6) Citizen

& other descriptions & examples of appropriate conduct

In US → Sec 406 of Sarbanes Oxlay Act, 2002 says

✶ **Public Company shall disclose**

- Whether they have code of ethics
- Any waiver of code for certain members
- Any change of code of ethics.

If they don't have → explain why?

✶ **A company may either**

- File with annual report
- Post on website
- Provide a copy on request without change.

Code of conduct

COC may be defined as a document containing the core values and moral principles which all those working in the company are expected to follow in the course of their duties as well as in their daily activities.

It reflects commitment of the company to ensure ethical behaviour on part of its members. It also indicates how an employee should act in general or in specific situation. A code of conduct lay down do's and don'ts. It describes socially acceptable and responsible behaviour.

The development of Corporate Code Contains standards of business conduct

Guides actions of board & senior management.

Elements of COC (J09)

1) Company's value
2) Avoidance of conflict of interest
3) Accurate & timely disclosure in reports & documents.
4) Compliance of laws, rules & regulations.
5) Maintaining confidentiality & fair dealings
6) Prohibition of corporate opportunities.

Most of companies have following principles in their Code of Ethics (COE)

➔ Use of company's assets

➔ Avoidance

- Actions of conflict of interest
- Unlawful agreements
- Compromising on commercial relationships

- Offering or receiving monetary & other inducements

➔ Confidentiality

➔ Safety

➔ Records

➔ Free & fair competition

➔ Disciplinary actions

Ethics Training & Communication: (J10/D11/D10)

A major step in developing an effective ethics program would be to implement a training program and communication systems to train, educate & communicate employees about the firm's ethical standards.

Training program

❖ Can educate firm's policy & expectations as well as relevant laws & regulations & general social standards

❖ Can make employees aware about available resources, support system, designated personnel who can assist them with ethical and legal advice.

❖ They empower employees to ask tough questions and make ethical decisions.

Note: Many companies are now incorporating ethics training into their employee and management development training efforts.

CREDO: - (D12/J13)

➢ It is a Latin word.

➢ **Meaning →** Set of fundamental belief or a guiding principles,

➢ Statement of common values which allow employees to understand the importance of stakeholders & services provided.

➢ A good credo gives the company a reason to exist.

➢ It develops the spirit of employees, motivating them at all times.

➢ It is force which make them work together to achieve a consistent high standard.

Sam Walton, founder of Walmart, established 3 basic beliefs as his company's credo

✶ Respect for the individual

✶ Service to overall customers

✶ Strive for excellence

SAIL Credo: -

- Credo of sail talks about **respect of stakeholders & ethical practice**
- We build lasting relationships with customers, we create a culture, which support flexibility, learning & its proactive to change.
- We value the opportunity & responsibility

Integrity Pact (J13)

- Developed by TI (Transparency International)
- Tool for preventing corruption in public contracting
- Also introduce a monitoring system which will provide independent oversight & accountability.
- Consist of process which includes an agreement between government departments & bidders.

- **Contains rights & obligations,** that they will not pay, demand, offer or accept bribes or collude with competitors to obtain the contract.

First → "**Agreement between government & bidders** to protect from bribery & collusion".

- Bidder are required to disclose any thing paid by then to anyone for contract- **if violated, they may: -**
  - Loose or denial of contract.
  - Forfeiture of bid.
  - exclusion from bidding on future contract.
  - Criminal action against them.

Second→ Monitoring System, that provides for independent oversight & increased government accountability of the public contracting parties process.

Monitors performance functions such as

- Overseeing corruption risk
- Offering guidance on preventive measures

- Informing public about contracting process, transparency and integrity

Social and ethical accounting

Normally links a company's values with development of policies & performance targets & to the assessment & communication of performance

It is a process that helps a company to address: -

- ✓ Issues of accountability to stake holders,
- ✓ To improve performance of all aspects i.e. social, environmental and economics.

Social and ethical accounting has: -

- ✓ No standardized model
- ✓ No standardized balance sheet or unit of currency
- ✓ Issues are defined by the company values and aims by the interest and expectations of its stake holders and by social norms regulations.

Principles of Social and ethical accounting: - (D10)

The dominant principle of social and ethical accounting is inclusivity. This principle requires that the aspirations and needs of all stakeholder groups are taken into account at all stages of the social and ethical accounting process.

- **Planning:** The Company commits to the process of social and ethical accounting, auditing and reporting, and defines and reviews its values and social & ethical objectives or targets.
- **Accounting:** The scope of the process is defined, information is collated and analyzed, and performance targets and improvement plans are developed.
- **Reporting:** A report on the company's systems and performance is prepared.
- **Auditing:** The process of preparing the report, with the report itself, is externally audited and the report is made accessible to stakeholders in order to obtain feedback from them.
- **Embedding:** To support each of the stages, structures and systems are developed to strengthen the process and to integrate them into the company's activities.

- **Stakeholder Engagement:** The concerns of stakeholders are addressed at each stage of the process through regular involvement.

The nature of social and ethical reporting is related to the size and nature of the organization. Even a comprehensive and clear report needs to be trusted to be valuable.

ETHICS AUDIT

They include external societal pressures, risk management, Stakeholder obligations and identifying a baseline to measure future improvements. In some cases, companies are driven to it by a gross failure in ethics, which may have resulted in costly legal action or stricter government regulation. An ethical profile brings together all the factors which affect a company's reputation, by examining the way in which it does business.

The following are the some of the suggested steps in ethics audit:

1. The **1st step** → Securing the commitment of the firm's top management.
2. The **2nd step** → Establishing a committee or team to oversee the audit process.
3. The **3rd step** → Establishing the scope of the audit.
4. The **4th step** → A review of the firm's mission values, goals, and policies.
5. The **5th step** →Identifying the tools or methods that can be employed to measure the firm's progress and then collecting and analyzing the relevant information.
6. The **6th step** → Having the results of the data analysis verified by an independent party.
7. The **final step** → Reporting the audit findings to the BOD and top executives and, if approved, to external stakeholders.

ETHICS COMMITTEE (D10)

Codes of conduct are an outgrowth of company missions, visions, strategies and values. Thoughtful and effective corporate codes provide guidance for making ethical business decisions that balance conflicting interests.

Senior management needs to hold it self to the highest standards of conduct before it can demand similar integrity from those at lower levels. Writing a code of conduct, supporting it at top level and communicating it to the employees are just a beginning. 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 compliance with the code of ethics.

Functions of Ethics Committee:

- **Review of the definitions of standards and procedures**
  The Committee should review the organization's areas of operation, the activities that require a formal set of ethical standards and procedures. The ethics committee can suggest behaviors to upper management that reinforce the organization's guidelines.

- **Facilitate Compliance**
  The ethics Committee has the responsibility for overall compliance. 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 organization's standards and procedures.

- **Due diligence of prospective employees**
  The ethics committee should define how the organization will balance the rights of individual applicants and employees against the organization's need to avoid risks that come from placing known violators in positions of discretionary responsibility.

- **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 to ensure that every employee understands and accepts the organization's ethical guidelines.

- **Monitor and audit compliance**

Compliance is an ongoing necessity and the ethics committee should design controls which monitor, audit and demonstrate employees' adherence to published standards and procedures.

- **Enforcement of disciplinary mechanism**

Disciplinary provisions should be in place to ensure consistent responses to similar violations of standards and procedures

- **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.

Concept of Whistleblower (vigil mechanism)

A whistleblower is a person who publicly complains concealed misconduct on the part of an organization or a body of persons, usually from within that same organization. This misconduct may be classified in many ways.

For example: a violation of a law, rule, regulation and a direct threat to the public interest, such as fraud, health/ safety violations and corruption.

LODR 2015 provides provisions for vigil mechanism as follows:

The company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy.

- This mechanism should also provide for adequate safeguards against victimization of directors/employees who avail the mechanism and also provide for direct access to the chairman of the audit committee in exceptional cases.
- The details of establishment of such mechanism shall be disclosed by the company on its website and in the Board's Report.

Types of Whistleblowers

1. **Internal:** When the whistleblower reports the wrong doings **to the officials at higher position** in the organization. The usual subjects of internal whistle blowing are disloyalty, improper conduct, indiscipline, insubordination, disobedience etc.
2. **External:** Where the wrong doings are reported **to the people outside** the organization like media, public interest groups or enforcement agencies it is called external whistle blowing
3. **Alumini:** When the whistle blowing is **done by the former employee** of the organization it is called alumini whistle blowing
4. **Open:** When identity of the whistleblower **is revealed**, it is called open whistle blowing.
5. **Personal:** Where the organizational wrongdoing is **to harm one person** only, disclosing such wrong doings it is called personal whistle blowing.
6. **Impersonal:** when the wrong doing **is to harm others**, it is called as impersonal whistle blowing.
7. **Corporate:** When a disclosure is made about the wrong doing in a business corporation, it is called corporate whistle blowing.

Whistleblowing under Sarbanes – Oxley Act, 2002 (SOX) (sec 302)

An act enacted by US congress to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws and for other purposes contains following provisions for whistleblowers:

a) Makes it illegal to "discharge, demote, suspend, threaten, harass or in any manner discriminate against" whistleblowers.
b) Establish criminal penalties of up to 10 years for executives who retaliate against whistleblowers.
c) Require board or audit committees to establish procedures for hearing whistleblower complaints.
d) Allow the secretary of labour to order a company to rehire a terminated employee with no court hearing.
e) Give a whistleblower the right to a jury trial, by passing months or year of administrative hearings.

Vigil Mechanism under Co. Act 2013

Every listed company and the following companies shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances –

1. The companies which accept deposits from the public
2. The companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 Cr.

Sec 177(9) read with Rule 7(1) of companies (meeting of board and its power) Rules 2014

The vigil mechanism shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

The details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the board's report.

Ethical Dilemma (J10/J09/J11/J13)

Dilemma is a situation that requires a choice between options that are or seem equally unfavorable or mutually exclusive. By definition, an ethical dilemma involves the need to choose from among 2 or more morally acceptable courses of action, when one choice prevents selecting the other or the need to choose between equally unacceptable alternatives.

A dilemma **could be right vs. wrong** situation in which the right would be more difficult to pursue and wrong would be more convenient. A right vs. wrong dilemma is not so easy to resolve. It often involves an apparent conflict between moral imperatives, in which to obey one would result in transgressing the other. This is also called an ethical paradox.

An ethical dilemma involves a situation that makes a person question what is right or wrong thing to do. They make individuals think about their obligations, duties or responsibilities. These dilemmas can be highly complex and difficult to resolve. Easier dilemmas involve a right vs. wrong answer, whereas, complex ethical dilemma involve a decision between right and another right choice. However, any dilemma needs to be resolved.

Steps to resolving an Ethical Dilemma: - (J10/J11)

(i) What are the options?

List the **alternative courses of action** available.

(ii) Consider the consequences

Think carefully about the range of positive and negative consequences associated with each of the different paths of action available.

- ✓ Who/what will be helped by what is done?
- ✓ Who/What will be hurt?
- ✓ What kinds of benefits and harms are involved and what are their relative values?
- ✓ What are the short-term and long term implications?

(iii) Analysis the actions

Actions should be analyzed in a different perspective, i.e. viewing the action perse disregard the consequences concentrating instead on the actions and looking for that option which seem problematic. How do the options measure up against moral principles like honesty, fairness, equality and recognition of social and environmental vulnerability?

In the case you are considering, is there a way to seem one principle as more important than the others?

(iv) Make decision and act with commitment

Now, both parts of analysis should be brought together and a conscious and informed decision should be made once the decision is made, act on the decision assuming responsibility for it.

(v) Evaluate the system.

Think about the circumstances which led to the dilemma with intention of identifying and removing the conditions that allowed it to arise.

PRINCIPLES OF ABSOLUTE LIABILITY.

It is the fundamental principle of law that

SIC UTERE TUO UT ALIENUM NON LAEDAS MEANS:

(ENJOY YOUR OWN PROPERTY IN SUCH A MANNER AS NOT TO INJURE ANOTHER PERSONS)

But there are certain occasions and activities, by which there are chances of causing harm or injury to the useful peoples.

TYPES OF LIABILITIES

STRICT LIABILITY	ABSOLUTE LIABILITY
RYLAND V. FLETCHER	OLEUM GAS LEAK CASE
IN ENGLAND	IN INDIA

STRICT LIABILITY RULE IN RYLAND V. FLETCHER

The person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape."

The liability under this rule is strict and it is no defence that the thing escape without that persons wilful act, default or negligence or that he had no knowledge of its existence.

CASE FACTS

The defendant was a mill owner, and he employed some independent contractors who were apparently competent, to construct a reservoir on his land to provide water for his mill. In the course of work the contractors came upon some old shafts and passages on the defendant's land. They communicated with the mines of the plaintiff, a neighbour of the defendant, although no one suspected this, for the shafts appeared to be filled with earth. The contractors did not block them up, and when the reservoir was filled the water from it burst through the old shafts and flooded the plaintiffs mines. It was found as a fact that the defendant had not been negligent, although the contractors had been. But the House of Lords held the defendant liable.

On the basis of liability in this case rule propounded by the house of lord.

For the application of the rule therefore the following three essentials should be there:

(1) Some dangerous thing must have been brought by a person on his land.

(2) The thing thus brought or kept by a person on his land must escape.

(3) It must be non-natural use of land.

EXCEPTIONS TO THE RULE

The following exceptions to the rule have been recognized by RYLANDS V FLETCHER

(1) Default of the claimant

(2) Act of God

(3) Statutory Authority

(4) Consent of the claimant

(5) Act of third party.

ABSOLUTE LIABILITY (NO EXCEPTION FROM ABSOLUTE LIABLITY)

THIS Rule laid down by Supreme Court of India in the **OLEUM GAS LEAK CASE**

Where an enterprise is engaged in a hazardous or inherently dangerous activity, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any exceptions.

The enterprise cannot escape liability by showing it had taken all reasonable care and there was no negligence on its part.

This principle, however, has been rarely applied since it was formulated.

CASE FACTS:

Shriram Food and Fertilizers Industry a subsidiary of Delhi Cloth Mills Limited was producing caustic and chlorine.

On December 4th and 6th 1985, a major leakage of Oleum gas took place from one of the units of Shriram Food and Fertilizers Limited in the heart of the capital city of Delhi which resulted in the death of several persons that one advocate practicing in the Tis Hazari Courts died.

The leakage was caused by a series of mechanical and human errors. This leakage resulted from the bursting of the tank containing oleum gas as a result of the collapse of the structure on which it was mounted and it created a scare amongst the people residing in that area.

Hardly had the people got out of the shock of this disaster when, within two days, another leakage, though this time a minor one took place as a result of escape of oleum gas from the joints of a pipe.

On 6th December, 1985 by the District Magistrate, Delhi under Section 133(1) of Cr.P.C, directed Shriram that within two days Shriram should cease carrying on the occupation of manufacturing and processing hazardous and lethal chemicals and gases including chlorine, oleum, super-chlorine, phosphate, etc at their establishment in Delhi and within 7 days to remove such chemicals and gases from Delhi.

At this juncture M.C.Mehta moved to the Supreme Court to claim compensation by filing a PIL for the losses caused and pleaded that the closed establishment should not be allowed to restart.

ABOUT M.C. MEHTA (MAHESH CHANDER MEHTA)

M.C Mehta (Mahesh Chander Mehta) Mahesh Chandra Mehta is a public interest attorney from India. He was awarded the Goldman Environmental Prize in 1996 for his continuous fights in Indian courts against pollution-causing industries.

He received the Ramon Magsaysay Award for Asia for Public Service in 1997. M.C Mehta established MC Mehta Environmental Foundation MCMEF is a non-profit, non-governmental committed organization working nationwide for the protection of the environment, the rights of the people to clean and fresh water and air, the promotion of sustainable development, and the protection of the cultural heritage of India.

Mission:

We pledge to create an interactive movement at the national level for environmental and social justice.

• To provide a forum for concerned citizens, NGOs and activists working for the survival of living beings, sustainable development and social change.

• To provide training to and sharpen the skills of young lawyers, scientists and activists in order to strengthen environmental law and policy.

BHOPAL GAS DISASTER

On the night of Dec. 2nd-3rd, 1984, the most tragic industrial disaster in history occurred in the city of Bhopal, Madhya Pradesh.

Bhopal Gas Disaster being the worst industrial disaster of the country has raised complex legal questions about the liability corporations engaged in hazardous activity

Union Carbide Corporation, (UCC) an American Corporation, with subsidiaries operating throughout the World had a chemical plant in Bhopal under the name Union Carbide India Ltd., (UCIL).

The chemical plant manufactured pesticides called Seven and Temik. Methyl Isocyanate (MIC), a highly toxic gas is an ingredient in the production of both Seven and Temik.

On the night of tragedy, MIC leaked from the plant in substantial quantities and the prevailing winds blew the deadly gas into the overpopulated hutments adjacent to the plants and into the most densely occupied parts of the city.

It was estimated that 2660 persons-lost their lives and more than 2 lakh persons suffered injuries, some serious and permanent, some mild and temporary.

On Dec 7th, 1984, the first law suit was filed by a group of American lawyers in the United States on behalf of thousands of Indians affected by the gas leak.

All these actions were consolidated in the Federal Court of United States. On 29th Mar. 1985 the Government of India enacted legislation, called The Bhopal Gas Disaster (Processing of Claims) Act providing the Government of India to have the exclusive right to represent Indian plaintiffs as in India and also elsewhere in connection with the tragedy.

Judge John F. Keenan of the US District Court after hearing both the parties dismissed the Indian consolidated case and declared that Indian Courts are the appropriate and convenient forum for hearing the plea of those affected.

The case moved to the Indian Courts, starting in the Bhopal High Court, till it finally reached the Supreme Court, Finally in, 1989, the Supreme Court of India came out with a overall settlement of claims and awarded U.S. $470 million to the Government of India on behalf of all Bhopal victims in full and final settlement of all the past, present and future claims arising from the disaster.

WATER POLLUTION

Water Pollution refers to the contamination of water bodies and resources making water unsuitable for both humans and other living things.

Humans can be affected by water pollution as water pollution make water unsuitable for drinking, cooking, washing, bathing and also recreational activities (domestic use)Marine Animals living in these water bodies will also be affected as they will be poisoned when consuming the water, or when they consume the pollutants in the water which are normally very poisonous.

Pollution in the Ganges River The settlements built along the river, as well as the dumping of waste water have resulted in the serious pollution in the Ganges. Some people even cremate and dump the bodies of the deceased into the river during holy rituals.

Leather industry is one of the three major industries besides paper and textiles, consuming large quantities of water for processing of hides and skins into leather.

Naturally most of the water used is discharged as waste water containing organic and toxic inorganic materials which when discharged as such will deplete dissolved oxygen content of the receiving water courses resulting in the death of all aquatic life and emanating foul odour.

The MC. Mehta v. Union of India also known as the Kanpur Tanneries or Ganga Pollution case is among the most significant water pollution case. Detailed scientific investigations and the reports were produced before the Court as evidence.

The alarming details given by M.C. Mehta about the extent of pollution in the river Ganga due to the inflow of sewage from Kanpur only, the Court came down heavily on the Nagar Mahapalika (Municipality) and emphasised that it is the Nagar Mahapalika of Kanpur that has to bear the major responsibility for the pollution of the river near Kanpur city.

WATER POLLUTION & SOME IMPORTANT CASE LAWS:

IN VINEET KUMAR MATHURV. UNION OF INDIA

The Court took note of the continued violation of the State, as well as industries by continuing to pollute water by discharging effluents and also in not setting up of common effluent treatment plants. The Court initially directed the officers of the State Pollution Board to visit the polluting industrial establishments and make a fresh inspection of the Effluent Treatment Plants installed in the said establishments and of their working.

After inspection, if it was found that the treatment plants are deficient in any respect or the deficiency pointed out earlier still continues, the Board will give reasonable time for the industries to cure the deficiencies. However, the time so given should not extend beyond the deadline set up by the Court. The Board was directed to file its report within fifteen days. The Court further held that if the industries do not obtain the consent of the State Pollution Board for running their units, before the fixed time limit the industries will stop functioning there after.

AMBUJA PETROCHEMICALS V. A.P. POLLUTION CONTROL BOARD

One of the industries covered by the Patencheru belt of treatment plants was served with a notice for violating the Water (Prevention and Control of Pollution) Act.

The industry replied to the notice. The Board however, not satisfied with the reply of the industry, directed its closure. The same was challenged in the High Court.

The High Court dismissed the petition of the industry observing that under the Act, the Board had a mandate to take action against an erring industry. The High Court could not sit in appeal against the action of the Board considering the expertise of the Board in these aspects.

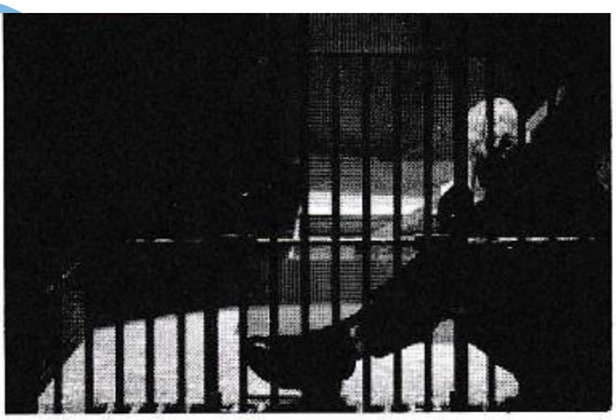
The High Court observed that it was open to the industry to comply with the direction of the Board and make a representation which the Board would consider and if satisfied allow the industry to operate. One of the aspects to be observed here is that the industry had raised all sorts of pleas including that it was a sick industry etc. which was not appreciated by the High Court.

BHAVANI RIVER - SHAKTI SUGAR MILLS LTD

The issue was pertaining to pollution of river Bhavani from the effluents discharged by the industry. The Board under Section 33-A of the Act had issued directions, which were aimed at ensuring proper storage of the effluent in lagoons and for proper treatment and disposal of the treated effluent. The Supreme Court held that the violations of pollution law by the industry were serious, and the same was posing a health hazard. The Court directed that the industry be closed and also directed the Board to submit a compliance report within ten days.

Corporate Manslaughter and Corporate Homicide Act 2007, United Kingdom

In the United Kingdom, the Corporate Manslaughter and Corporate Homicide Act introduced a new offence, across the UK, for prosecuting companies and other organisations where there has been a gross failing, throughout the organisation, in the management of health and safety with fatal consequences.



The Corporate Manslaughter and Corporate Homicide Act 2007 is a landmark in law. For the first time, companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care

The Act, which came into force on 6 April 2008, clarifies the criminal liabilities of companies including large organisations where serious failures in the management of health and safety result in a fatality.

Prosecutions will be of the corporate body and not individuals, but the liability of directors, board members or other individuals under health and safety law or general criminal law, will be unaffected. And the corporate body itself and individuals can still be prosecuted for separate health and safety offences.

Companies and organisations should keep their health and safety management systems under review, in particular, the way in which their activities are managed and organised by senior management.

SUSTAINABILITY AND CORPORATE SOCIAL RESPONSIBILITY

INTRODUCTION

CONCEPT OF CSR

CSR has many interpretations but can be understood to be a concept imposing a liability on the Company to contribute to the society **(whether towards environmental causes, educational promotion, social causes etc.)** along with the reinforced duty to conduct the business in an ethical manner.

It is also known as corporate conscience, corporate citizenship, social performance or sustainable business/responsible business.

BENEFITS OF CSR

1. Strengthened brand positioning
2. Enhanced corporate image and reputation
3. Satisfaction of economic and social contribution to society
4. Contribution to the surrounding society
5. Increased ability to attract, motivate and retain employees
6. Enhanced sales and market share
7. Increased appeals to investors and financial analysts

CORPORATE SOCIAL RESPONSIBILITY - DEFINED

Corporate Social Responsibility is also called Corporate Citizenship or Corporate Responsibility.

Generally, CSR is understood to be the way firms integrate social, environmental and economic concerns into their values, culture, decision making, strategy and operations in a transparent and accountable manner and thereby establish better practices within the firm, create wealth and improve society.

Corporate Social Responsibility can be explained as:

- ✓ **Corporate** - means organized business
- ✓ **Social** - means everything dealing with the people
- ✓ **Responsibility** - means accountability between the two

Corporate social responsibility is operating a business in a manner which meets or excels the ethical, legal, commercial and public expectations that a society has from the business.

CSR is generally understood to be the wav a company achieves a balance or integration of

- ✓ Economic,
- ✓ Environmental, and
- ✓ Social imperatives

While at the same time addressing shareholder and stakeholder expectations.

CORPORATE SOCIAL RESPONSIBILITY REQUIRES THE FOLLOWING

1) Social, economic, ethical and moral responsibility of companies and managers
2) Compliance with legal and voluntary requirements for business and professional practice
3) Challenges posed by needs of the economy and socially disadvantaged groups, and
4) Management of corporate responsibility activities

DIFFERENCE BETWEEN CSR AND PHILANTHROPY/CHARITY

Philanthropy means the act of donating money, goods, time or effort to support a charitable cause in regard to a defined objective. Philanthropy can be equated with benevolence and charity for the poor and needy.

Philanthropy can be any selfless giving towards any kind of social need that is not served, underserved, or perceived as unserved or underserved. Philanthropy can be by an individual or by a corporate.

Corporate Social Responsibility on the other hand is about how a company aligns their values to social causes by including and collaborating with their investors, suppliers, employees, regulators and the society as a whole. The investment in CSR may be on people centric issues and/or planet issues. A CSR initiative of a corporate is not a selfless act of giving; companies derive long-term benefits from the CSR initiatives and it is this enlightened self-interest which is driving the CSR initiatives in companies.

ADVANTAGES OF GOOD CORPORATE CITIZENSHIP

Business cannot exist in isolation; business cannot be oblivious to societal development. The social responsibility of business can be integrated into the business purpose so as to build a positive synergy between the two.

1) CSR creates a favourable public image, which attracts customers. Reputation or brand equity of the products of a company which understands and demonstrates its social responsibilities is very high. CSR can build reputation, while those that perform poorly can damage brand and company value when exposed. Brand equity, is founded on values such as trust, credibility, reliability, quality and consistency.

2) Corporate Social Responsibility (CSR) activities have its advantages. It builds up a positive image encouraging social involvement of employees, which in turn develops a sense of loyalty towards the organization, helping in creating a dedicated workforce proud of its company.
3) Society gains through better neighbourhoods and employment opportunities, while the organisation benefits from a better community, which is the main source of its workforce and the consumer of its products.
4) Public needs have changed leading to changed expectations from consumers. The industry/business owes its very existence society and has to respond to needs of the society.
5) The company's social involvement discourages excessive regulation or intervention from the Government or statutory bodies, and hence gives greater freedom and flexibility in decision-making.
6) The internal activities of the organisation have an impact on the external environment, since the society is an inter-dependent system.
7) A business organisation has a great deal of power and money, entrusted upon it by the society and should be accompanied by an equal amount of responsibility. In other words, there should be a balance between the authority and responsibility.

FACTORS AFFECTING CSR

1. Globalization - coupled with focus on cross-border trade, multinational enterprises and global supply chains - is increasingly raising CSR concerns related to human resource management practices, environmental protection, and health and safety, among other things.
2. Governments and intergovernmental bodies, such as the United Nations Organisation for Economic Cooperation and Development and the International Labour Organization have developed compacts, declarations, guidelines, principles and other instruments that outline social norms for acceptable conduct.

3. Consumers and investors are showing increasing interest in supporting responsible business practices and are demanding more information on how companies are addressing risks and opportunities related to social and environmental issues.

CORPORATE CITIZENSHIP - BEYOND THE MANDATE OF LAW

Corporate citizenship is a commitment to improve community well-being through voluntary business practices and contribution of corporate resources leading to sustainable growth Corporate responsibility is achieved when a business adapts CSR well aligned o its business goals and meets or exceeds, the ethical, legal, commercial and public expectations that society has of business.

The term corporate citizenship implies the behaviour, which would maximize a company's positive impact and minimize the negative impact on its social and physical environment. It means moving from supply driven to more demand led strategies; keeping in mind the welfare of all stakeholders; more participatory approaches to working with communities; balancing the economic cost and 'benefits with the social; and finally dealing with processes rather than structures. The ultimate goal is to establish dynamic relationship between the community, business and philanthropic activities so as to complement and supplement each other.

The UN Global Compact

The Global Compact is a voluntary corporate citizenship initiative with two objectives:

"Making the Global Compact and its principles part of business strategy and operations.

"Facilitating cooperation among key stakeholders and promoting partnerships in support cf U.N. goals. The Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption are:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: Make sure that they are not complicit in human rights abuses.

Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: The elimination of all forms of forced and compulsory labour;

Principle 5: The effective abolition of child labour; and

Principle 6: The elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: Undertake initiatives to promote greater environmental responsibility; and

Principle 9: Encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

NATIONAL VOLUNTARY GUIDELINES ON SOCIAL. ENVIRONMENTAL AND ECONOMIC RESPONSIBILITIES OF BUSINESS. 2011

The Corporate Social Responsibility Voluntary Guidelines issued by the MCA in December 2009. Government AFTER feedback from stakeholder's review of 2009 Guidelines was undertaken by the Guidelines Drafting Committee (GDC) constituted by the Indian Institute of Corporate Affairs, resulting into the formulation of 2011 Guidelines entitled "National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business" that will mainstream the subject of business responsibilities.

The Guidelines were released by MCA on July 8, 2011.

These guidelines have been formulated keeping in view the diverse sectors within which businesses operate, as well as the wide variety of business organizations that exist in India today - from the small and medium enterprises to large corporate organizations

THE PRINCIPLES RECOMMENDED BY THE NATIONAL VOLUNTARY GUIDELINES ARE:

S.NO.	PARTICULARS	PROVISIONS
1	**Principle 1:**	Businesses should conduct and govern themselves with Ethics, Transparency and Accountability
2	**Principle 2:**	Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle
3	**Principle 3:**	Businesses should promote the well being of all employees
4	**Principle 4:**	Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.
5	**Principle 5:**	Businesses should respect and promote human rights
6	**Principle 6:**	Business should respect, protect, and make efforts to restore the environment

7	**Principle 7:**	Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner
8	**Principle 8:**	Businesses should support inclusive growth and equitable development
9	**Principle 9:**	Businesses should engage with and provide value to their customers and consumers in a responsible manner

CORPORATE SOCIAL RESPONSIBILITY UNDER THE COMPANIES ACT. 2013

SECTION 135: CORPORATE SOCIAL RESPONSIBILITY (CSR)

Application of Provision

- ✓ Companies having new worth of Rs. 500 Cr or more
- ✓ Companies having Turn over of Rs. 1000 Cr. Or More
- ✓ Companies having Net Profit of Rs. 5 Cr. Or more

EXAMPLE:

In case of a company which meets the criteria in any of the preceding three financial years (i.e. 2011-12, 12-13, 13-14) but which does not meet the criteria in financial year 2014-15 will need to constitute CSR Committee and comply with provisions of 135 (2) to (5) in the year 2014-15.

However, if the company has made profits in **THE YEARS EARLIER** to 2011-12 but not in the years 2011-12,2012-13 or 201314, it need not comply with section 135.

CONTRIBUTION

The Companies on which section 135 applies are required to contribute 2% of average profits of preceding three years towards CSR activities.

Constitution of CSR Committee

The CSR Committee shall consist of 3 or more directors.

Out of the 3 directors, at least 1 director shall be an independent director.

A private company having only 2 directors on its Board, shall constitute its CSR Committee with 2 directors only.

In case of a foreign Company, the CSR Committee shall comprise of at 2 two persons of which one person shall be a person resident in India authorized to accept on behalf of the foreign company service of notices and other documents, and the other person shall be nominated by the foreign company.

Disclosures in Board's report

The Board's report shall contain

a) The composition of the CSR Committee;
b) The contents of CSR Policy; and
c) The reasons for not spending the amount of 2% in pursuance of its CSR Policy (in case the company fails to spend such amount).

Activities not amounting to CSR

As per Rule 4 and Rule 6 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, following shall not amount to CSR Activities for the purpose of Section 135

a) The CSR projects or programs or activities undertaken outside India.
b) The CSR projects or programs or activities that benefit only the employees of the company and their families.
c) Contribution of any amount, directly or indirectly, to any political party under section 182 of the Companies Act, 2013.
d) Any activity undertaken in pursuance of normal course of business of a company.

Display of CSR policy on the website

As per Rule 9 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 and Rule 6 of the Companies (Accounts) Rules, 2014, the CSR Policy and its contents shall be displayed on the company's website, if any, as per the particulars specified in the Annexure to the Companies (Corporate Social Responsibility Policy) Rules, 2014.

PENAL PROVISION FOR NOT COMPLYING WITH SECTION 135

1. The concept of CSR is based on the principle 'comply or explain'. Section 135 of the Act does not lay down any penal provisions in case a company fails to spend the desired amount.

2. Second proviso to sub-section (5) of section 135 provides that if the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount.
3. In case it does not disclose the reasons for not spending in the Board's report, the company shall be punishable with fine minimum fifty thousand rupees maximum twenty- 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 three years or with fine minimum fifty thousand rupees maximum five lakh rupees, or with both. [Section 134(8)].

CSR Audit

A Corporate Social Responsibility audit aims at identifying environmental, social or governance risks faced by the organization and evaluating managerial performance in respect of those. Corporate Social Responsibility ("CSR") is a broad term however, for the purpose of addressing the scope of a CSR Audit, CSR is about managing and taking into consideration organization's operational, processes and behavioral impact on society and stakeholders from a broad perspective. Contrary to common belief CSR is more than basic legal compliance and is highly connected with and affects organization's bottom line.

In order to ascertain an organizations effective CSR policy, practices and culture, the notion of auditing CSR in organizations is becoming key. However, this requires a substantial shift in the audit profession to include beyond the traditional lines of finance and information technology to wider operational practices that respond to client and professional pressures brought about by a growth in the practice of risk management.

Audits and the process of auditing as we commonly know it is focused on the organizations achievement of its stated and communicated objective; its compliance with rules, regulations and legislation; the reliability of its records and information accessible to the public or communicated to the public; the safeguard of its assets. This does not address CSR or CSR related risks. The risks of not paying adequate attention to

CSR are clear – reputation damage, lawsuits, and government scrutiny. Internal audit should focus on these risks and assist management to identify appropriate actions. This called for a different approach to audit and in particular an audit that takes into consideration health, safety, environmental, reputational and business probity not to mention CSR governance.

CSR audit has yet to gain momentum but the concept aims to give an independent opinion by external auditor, on the extent of alignment of CSR objectives with the business goals and level of managerial commitment and performance with regard to attainment of social responsibility objectives defined by the company's Board.

An internal audit that is intended to cover CSR should start by creating an understanding of the social responsibility issues that affect the organization and its industry. Following that, the audit should review how management reconciles these sometimes-contrary needs. A CSR audit program can cover all or any of the following risks: - Effectiveness of the operating framework for CSR implementation - Effectiveness of implementation of specific, large CSR projects - Adequacy of internal control and review mechanisms - Reliability of measures of performance - Management of risks associated with external factors like regulatory compliance, management of potential adverse NGO attention, etc. An Indicative CSR Audit Programme is given below:

Segments	Assessment Tools	Scope
Objectives	Coverage	The exhaustiveness of CSR objectives
	Integration	The extent to which the CSR objectives of the company are aligned with its business goals.
	Commitment	The clarity of roles and powers assigned to management for fulfilment of CSR objectives. Integration of Social responsibility throughout the organisation.

Implementation	Processes	Identification of the implementation procedures, time frames, risk and performance management tools for fulfilment of CSR objectives. Manner of delivering CSR activities either by way of foundation/ Trust route or by imbibing them into day to day activities.
	Resources	Allocation of funds, manpower, infrastructure etc.
	Monitoring/Reporting	Internal control systems to monitor the adequacy of mechanisms (including periodic reviews) in relation to fulfilment of CSR objectives. Reporting: Communication of adequate data in relation to CSR objectives to various stakeholders.
Outcome	Impact Analysis	Analysing the impact of CSR activities carried out by the company in various areas and the quality maintained.
	Feedback	identification of control weaknesses and make recommendations for improvement to CSR programs of the company. Identification of areas requiring changes.

Corporate Sustainability

MEANING OF SUSTAINABILITY

Sustainability is based on a simple principle: Everything that we need for our survival and wellbeing depends, either directly or indirectly, on our natural environment.

Sustainability creates and maintains the conditions under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic and other requirements of present and future generations.

SUSTAINABILITY TERMINOLOGIES

Life Cycle Assessment (LCA)

It tracks the environmental impacts of a product from its raw materials through disposal at the end of its useful life. LCA is an important tool for developing an environmental self-portrait and for finding ways to minimize harm. A good LCA can shed light on ways to reduce the resources consumed and lower costs all along the value chain.

Ecological Footprint

The ecological footprint is a measure of human demand on the Earth's ecosystems. It compares human demand with planet Earth's ecological capacity to regenerate it. It represents the amount of biologically productive land and sea area needed to regenerate the resources a human population consumes and to absorb and render harmless the corresponding waste, given prevailing technology and resource management practice.

Environmental Performance Index

Environmental Performance Index (EPI) is a method of quantifying and numerically benchmarking the environmental performance of a country's policies. This index was developed from the Pilot Environmental Performance Index, first published in 2002, and designed to supplement the environmental targets set forth in the U.N. Millennium Development Goals.

Carbon footprint

A carbon footprint is an estimate of how much carbon is produced to support your lifestyle. Essentially, it measures your impact on the climate based on how much carbon you produce. Factors that contribute to your carbon footprint include travel methods and general home energy usage. Carbon footprints can also be applied on a larger scale, to companies, businesses, even countries.

The word 'carbon' in the phrase 'carbon footprint' is often used as a short-cut to describe the main greenhouse gases - carbon dioxide (C02), methane and nitrous oxide - in terms of carbon dioxide equivalents.

Carbon off setting

Carbon offsets are used to reduce the amount of carbon that an individual or institution emits into the atmosphere. Carbon offsets work a financial system where, instead of reducing its own carbon use, a company can comply with emissions caps by purchasing an offset from an independent organization. The organization will then use that money to fund a project that reduces carbon in the atmosphere. An individual can also engage with this system and similarly pay to offset his or her own personal carbon usage instead of, or in addition to, taking direct measures such as driving less or recycling.

Global Warming

Global warming is an average increase in the temperature of the atmosphere near the Earth's surface and in the troposphere, which can contribute to changes in global climate patterns. Global warming can occur from a variety of causes, both natural and human induced. In common usage, "global warming" often refers to the warming| that can occur as a result of increased emissions of greenhouse gases from human activities. See climate change, greenhouse effect, enhanced greenhouse effect, radiative forcing, troposphere.

Green washing

Green washing is a form of corporate misrepresentation where a company will present a green public image and publicize green initiatives that are false or misleading. A company might release misleading claims or even true green initiatives while privately engaging in environmentally damaging practices. Companies are trying to take advantage of the growing public concern and awareness for environmental issues by promoting an environmentally responsible image.

CONCEPT OF SUSTAINABLE DEVELOPMENT

It is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.

In 1987, a report of the World Commission on Environment and Development (WCED) of the United Nations (**popularly known as Brundtland Report**) 1st introduced the concept

SUSTAINABLE DEVELOPMENT

MEANING: it means balances the need for economic growth with environmental protection and social equity.

For example; natural energy resources like Coal, Petroleum etc., should be prudently used and wastage should be avoided so that future generation can have these energy resources for their survival also.

FUNDAMENTAL PRINCIPLE OF SUSTAINABLE DEVELOPMENT

1. Need to preserve natural resources for future generation.
2. Use of natural resources in a prudent manner without or with minimum tolerable impact on nature.
3. Use of natural resources by any state / country must take into account its impact on other states.
4. Environmental aspects and impacts of socio-economic activities should be integrated so that prudent use of natural resources is ensured.

ROLE OF BUSINESS IN SUSTAINABLE DEVELOPMENT

Trade and industry being an integral part human society has a pivotal role to play in this direction. United Nations has already initiated **UN global compact,** a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. With such commitment a business can ensure that markets, commerce, technology and finance can advance together in ways that would benefit economies and societies universally.

The UN global compact has two objectives:

1. Ten principles in business activities around the world.
2. Catalyse actions in support of broader UN goals, including the millennium development goals

The initiative is voluntary in nature. The benefits of engagement include the following:

✓ Adopting an established and globally recognized policy framework for the development, implementation, and disclosing environmental, social, and governance policies and practices.

- ✓ Sharing best and emerging practices to advance practical solutions and strategies to common challenges.
- ✓ Advancing sustainability solutions in partnership with a range of stakeholders, including un agencies, governments, civil society, labour, and other non-business interests.
- ✓ Linking business units and subsidiaries across the value chain with the global compact's local networks around the world - many of these are operating in developing and emerging markets.
- ✓ Accessing the united nations' extensive knowledge of and experience with sustainability and development issues.
- ✓ Utilizing un global compact management tools and resources, and the opportunity to engage in specialized work streams in the environmental, social and governance realms.

CORPORATE SUSTAINABILITY

Corporate sustainability indicates new philosophy as an alternative to the traditional growth and profit-maximization model under which sustainable development comprising environmental protection, social justice and equity, and economic development are given more significant focus while recognizing simultaneous corporate growth and profitability.

It is a business approach that creates long-term shareholder value by embracing opportunities and managing risks deriving from economic, environmental and social developments. Corporate sustainability describes business practices built around social and environmental considerations.

CORPORATE SUSTAINABILITY AND CORPORATE SOCIAL RESPONSIBILITY

Although scholars and practitioners often interpret Corporate Sustainability and Corporate Social Responsibility as being nearly synonymous, pointing to similarities and the common domain. The two concepts have different backgrounds and different theoretical paths.

Corporate Sustainability can be considered as the attempt to adapt the concept of Sustainable Development to the corporate setting, matching the goal of value creation with environmental and social considerations.

CSR has many interpretations but can be understood to be a concept imposing a liability on the Company to contribute to the society **(whether towards environmental causes, educational promotion, social causes etc.)** along with the reinforced duty to conduct the business in an ethical manner.

It is also known as corporate conscience, corporate citizenship, social performance or sustainable business/responsible business.

AS A GOOD CORPORATE CITIZEN, THE COMPANIES ARE REQUIRED TO FOCUS ON THE FOLLOWING KEY ASPECTS

Absolute Value Creation for the Society

Organizations should set its goal towards creation of absolute value to the society. Once it is ensured, a corporate never looks back and its sustainability in long run is built up.

Ethical Corporate Practices

- ✓ **In the short run, enterprise can gain through non-ethical practices.**
- ✓ However those gains cannot be sustained in long run.
- ✓ Society denies accepting such products or services.
- ✓ **For example,** in Drug and Pharmaceutical industry, many products are today obsolete due their side effects which such companies never disclosed to protect

their sales volume. When they were banned by the WHO or other authorities, they had to stop their production.

Worth of Earth through Environmental Protection

- ✓ Resources which are not present everywhere and have economic and social value should be preserved for long term use and be priced properly after considering environmental and social costs.
- ✓ **For example,** a power plant should build up its cost model efficiently after taking into account cost of its future raw material sourcing, R&D cost for alternate energy source, cost for proper pollution control measures and so on.

Equitable Business Practices

Corporates should not divulge themselves in unfair means and it should create candid business practices, ensure healthy competition and fair trade practices

Creating Market for All

Monopoly, unjustified subsidies, price not reflecting real economic, social environmental cost, etc. are hindrances to sustainability of a business. Simultaneously, a corporate is to build up its products and services in such a way so as to cater all segments of customers/consumers.

Customer confidence is essence to corporate success.

GOVERNMENT'S ROLE IN IMPROVING SUSTAINABILITY REPORTING

SEBI mandated Business Responsibility Reporting in India for top listed companies besides the voluntary reporting for others.

In 2011, MCA, Govt., of India issued the first voluntary reporting framework for reporting on Business Responsibility in the form of '**National Voluntary Guidelines (NVG)** on Social, Environmental and Economic Responsibilities of Business'.

The similar regulators initiatives are required in other jurisdiction also to encourage the companies to adopt the Reporting on Sustainability aspects.

KYOSEI

Kyosei is a Japanese technique meaning "a spirit of cooperation". Kyosei establishes harmonious relations between the company and - Customers - Suppliers – Competitors.

A concise definition of this word would be "living and working together for the common good," but for some, the definition is broader:

All people, regardless of race, religion or culture, harmoniously living and working together into the future." Governments - Natural Environment Kyosei philosophy reflects a confluence of social, environmental, technological and political solutions. It believes that peace, prosperity and social and environmental improvement come through positive action.

IT WORKS IN FIVE STAGES

- ✓ 1st is economic survival of the company
- ✓ 2nd is cooperating with labour
- ✓ 3rd is cooperating outside the company
- ✓ 4th is global activism, and
- ✓ 5th is making the government/s a Kyosei partner

CONCEPT OF 'TRIPLE BOTTOM LINE' (TBL)

In 1999 Elkington developed the concept of the Triple Bottom Line which proposed that business goals were inseparable from the societies and environments within which they operate.

Whilst short-term economic gain could be chased, a failure to account for social and environmental impacts would make those business practices unsustainable.

While each of the three pillars of sustainability i.e., economic, social and environment is independently crucial and urgent in the short-run, but in order to reach the goal of sustainability in the long-run, the **three pillars** must be satisfied simultaneously. These three dimensions are deeply inter-connected and they influence and support each other.

The Triple Bottom Line is made up of "Social, Economic and Environmental" aspect and indicated by the phrase "People, Planet, Profit" phrase.

PEOPLE

mean Human Capital. It implies fair and beneficial business practices toward Labour and the community and region in which a corporation conducts its business would create long term value.

PLANET

The Natural Capital. It refers to sustainable environmental practices. A company which decides to follow TBL always keeps in mind that it does no harm nature or creates negative environmental impact.

PROFIT

The concept of profit for TBL Company is somehow wider in all perspective. It is

the reflection of economic impact the organization has on its business activities and that too after meeting all social and environmental cost. It somehow indicates real value addition a corporate made through its various activities.

Corporate Sustainability Reporting Framework

CONCEPT OF SUSTAINABILITY REPORTING

Companies are the main contributors to economic, social and environmental well-being. Corporate activities are vital in the present and will have serious bearing on the future.

Therefore, corporate sustainability is imperative for the long-term sustainable development of the economy and society.

Sustainability Reporting is a broad term considered synonymous with others used to describe reporting on economic, environmental, and social impacts (e.g. triple bottom line, corporate responsibility reporting, etc.).

WHAT IS THE PURPOSE OF SUSTAINABILITY REPORTING?

Sustainability reporting is the practice of measuring, disclosing, and being accountable to internal and external stakeholders for organizational performance towards the goal of sustainable development.

A sustainability report should provide a balanced and reasonable representation of the sustainability performance of a reporting organization - including both positive and negative contributions.

BENEFITS OF SUSTAINABILITY REPORTING

- ✓ Legitimation of corporate activities, products and services which create environmental and social impacts.
- ✓ Increase in corporate reputation and brand value.
- ✓ Gaining a competitive advantage.
- ✓ Comparison and benchmarking against competitors.
- ✓ Increasing transparency and accountability within the company.

✓ Establishing and supporting employee motivation as well as internal information and control processes.

SUSTAINABILITY REPORTING IN EMERGING ECONOMIES

Investors increasingly recognize the value of robust sustainability reporting and expectations for such reporting have spread to companies in emerging markets.

Increasingly global companies understand that a commitment to sustainability reporting can contribute to financial success. Such transparency allows companies to reach a broader range of investors and customers, enhance operational efficiency, improve brand positioning, and develop leadership in the marketplace.

Recently, in India, corporate environment reporting as a useful adjunct to the concept sustainable development, has been recognized in various policy documents like the approach paper to the 11th plan and the national environment policy 2006.

Some of the key drivers of sustainability reporting are

S.NO.	PARTICULARS	PROVISIONS
1	**Regulations:**	Governments, at most levels have stepped up the pressure on corporations to measure the impact of their operations on the environment. Legislation is becoming more innovative and is covering an ever wider range of activities. The most notable shift has been from voluntary to mandatory sustainability, monitoring and reporting.
2	**Customers:**	Public opinion and consumer preferences are a more abstract but powerful factor that exerts considerable influence on companies, particularly those that are consumer oriented. Customers significantly influence a company's reputation through their purchasing choices and brand.

3	**Loyalty:**	This factor has led the firms to provide much more information about the products they produce, the suppliers who produce them, and the product's environmental impact starting from creation to disposal.
4	**Ngo's and the media:**	Public reaction comes not just from customers but from advocates and the media, who shape public opinion. Advocacy organisations, if ignored or slighted, can damage brand value.
5	**Employees:**	those who work for a company bring particular pressure to bear on how their employers behave; they, too, are concerned citizens beyond their corporate roles.
6	**Investors:**	Increasingly, investors want to know that companies they have targeted have responsible, sustainable, long-term business approaches. Institutional investors and stock exchange CEO, for example, have moved to request increased sustainability reporting from listed companies, and environmental, social and corporate governance indices have been established such as the dow jones sustainability index

GLOBAL REPORTING INITIATIVE (GRI)

The Sustainability Reporting Guidelines developed by the Global Reporting Initiative (GRI), the Netherlands, is a significant system that integrates sustainability issues in to a frame of reporting.

What is GRI Network?

The Global Reporting Initiative (GRI) is a large multi-stakeholder network of thousands of experts, in dozens of countries worldwide, who participate in GRI's working groups and governance bodies, use the GRI Guidelines to report, access information in GRI-based reports, or contribute to develop the Reporting Framework in other ways - both formally and informally.

WHAT IS GRI REPORTING?

The GRI Reporting Framework is intended to serve as a generally accepted framework for reporting on an organization's economic, environmental, and social performance. It is designed for use by organizations of any size, sector, or location.

It takes into account the practical considerations faced by a diverse range of organizations - 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 organizations, regardless of their size, sector or location.

GLOBAL REPORTING INITIATIVE - SUSTAINABILITY REPORTING GUIDELINES

In this context, the Global Reporting Initiative (GRI) launched the fourth generation of its sustainability reporting guidelines: the GRI G4 Sustainability Guidelines (the Guidelines) in 2013. The aim of G4, is to help reporters prepare sustainability reports that matter, contain valuable information about the organization's most critical sustainability-related issues, and make such sustainability reporting standard practice.

G4 is applicable to all organizations, large and small, across the world. The Guidelines are now presented in two parts to facilitate the identification of reporting requirements and related guidance. It consist of following two parts

Part 1 - Reporting Principles and Standard Disclosures: It contains the reporting principles and standard disclosures and also sets out the criteria to be applied by an organization to prepare its sustainability report in accordance with the Guidelines.

Part 2 - Implementation Manual: It contains reporting and interpretative guidance that an organization should consult when preparing its sustainability report.

The Guidelines are designed to align and harmonize as much as possible with other internationally recognized standards. The Guidelines provide links with the United Nations Global Compact's Ten Principles, 2000; the OECD's Guidelines for Multinational Enterprises, 2011; and the UN's Guiding Principles on Business and Human Rights, 2011.

Reporting Principles

The Reporting Principles are fundamental to achieving transparency in sustainability reporting and therefore should be applied by all organizations when preparing a sustainability report. The Implementation Manual outlines the required process to be followed by an organization in making decisions consistent with the Reporting Principles.

The Principles are divided into two groups:

1. **Principles for defining report content:** The Principles for Defining Report Content describe the process to be applied to identify what content the report should cover by considering the organization's activities, impacts, and the substantive expectations and interests of its stakeholders. These Principles are designed to be used in combination to define the report content.

S.NO.	Heading	Principle	Description

1	**Stakeholder Inclusiveness**	The organization should identify its stakeholders, and explain how it has responded to their reasonable expectations and interests.	Stakeholders can include those who are invested in the organization as well as those who have other relationships to the organization. The reasonable expectations and interests of stakeholders are a key reference point for many decisions in the preparation of the report.
2	**Sustainability Context**	The report should present the organization's performance in the wider context of sustainability.	Information on performance should be placed in context. The underlying question of sustainability reporting is how an organization contributes, or aims to contribute in the future, to the improvement or deterioration of economic, environmental and social conditions, developments, and trends at the local, regional or global level. Reporting only on trends in individual performance (or the efficiency of the organization) fails to respond to this underlying question. Reports should therefore seek to present performance in relation to broader concepts of sustainability. This involves discussing the performance of the organization in the context of the limits and demands placed on environmental or social resources at the sector, local, regional, or global level.

3	**Materiality Principle**	The report should cover Aspects that: Y Reflect the organization's significant economic, environmental and social impacts; or Y Substantively influence the assessments and decisions of stakeholders	Organizations are faced with a wide range of topics on which they could report. Relevant topics are those that may reasonably be considered important for reflecting the organization's economic, environmental and social impacts, or influencing the decisions of stakeholders, and, therefore, potentially merit inclusion in the report. Materiality is the threshold at which Aspects become sufficiently important that they should be reported.
4	**Completeness**	The report should include coverage of material Aspects and their Boundaries, sufficient to reflect significant economic, environmental and social impacts, and to enable stakeholders to assess the organization's performance in the reporting period.	Completeness primarily encompasses the dimensions of scope, boundary, and time. The concept of completeness may also be used to refer to practices in information collection and whether the presentation of information is reasonable and appropriate.

2. **Principles for Defining Report Quality:** The Principles for Defining Report Quality guide on ensuring the quality of information in the sustainability report, including its proper presentation. The quality of the information is important to enable stakeholders to make sound and reasonable assessments of performance, and take appropriate actions. Decisions related to the process of preparing information in a report should be consistent with these Principles. All of these Principles are fundamental to achieving transparency.

Standard Disclosures

There are 2 different types of Standard Disclosures:

General Standard Disclosures:

The General Standard Disclosures are applicable to all organizations preparing sustainability reports. The General Standard Disclosures are divided into seven parts:

- Strategy and Analysis
- Organizational Profile
- Identified Material Aspects and Boundaries
- Stakeholder Engagement
- Report Profile
- Governance
- Ethics and Integrity

Specific Standard Disclosures:

The Guidelines organize Specific Standard Disclosures into three Categories - Economic, Environmental and Social. The economic dimension of sustainability concerns the organization's impacts on the economic conditions of its stakeholders and on economic systems at local, national, and global levels. The Social Category is further divided into four sub-Categories, which are Labor Practices and Decent Work, Human Rights, Society and Product Responsibility.

UN GLOBAL COMPACT' & OBJECTIVES OF THIS INITIATIVE

The UN Global Compact presents a unique and powerful platform for participants to advance their commitments to sustainability and corporate citizenship.

The Global Compact is a voluntary corporate citizenship initiative with two objectives:

- ✓ Making the global compact and is principles part of business strategy and operations.
- ✓ Facilitating cooperation among key stakeholders and promoting partnership in support of U.N. goals.

ROLE OF BUSINESS IN SUSTAINABLE DEVELOPMENT IN THE LIGHT OF UN GLOBAL COMPACT INITIATIVE

United Nations has initiated UN Global Compact, a strategy policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour environment and anti-corruption. Through the process a business can ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere.

A company that signs on the Global Compact specifically commit itself to:

- ✓ Set in motion changes to business operations so that the global compact and its principles become part of management, strategy, culture and day- to -day operations;
- ✓ Publish in its annual report or similar public corporate report (i.e. sustainability report) a description of the ways in which it is supporting the Global Compact and its principles (Communication on progress);

✓ Publicly advocate the Global Compact and its principles via communications vehicles such as press releases, speeches, etc.

UNITED NATIONS GLOBAL COMPACT'S TEN PRINCIPLES, 2000

The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. By incorporating the Global Compact principles into strategies, policies and procedures, and establishing a culture of integrity, companies are not only upholding their basic responsibilities to people and planet, but also setting the stage for long-term success. The UN Global Compact's Ten Principles are derived from: the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption.

TEN PRINCIPLES

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery

CHALLENGES IN MAINSTREAMING SUSTAINABILITY REPORTING

1. **GOVERNMENT ENCOURAGEMENT**
2. **AWARENESS**
3. **EXPERTISE KNOWLEDGE**
4. **INVESTOR BEHAVIOUR**

SUSTAINABILITY INDICES

WHAT IS DOW- JONES SUSTAINABILITY INDEX

The Dow Jones Sustainability Indices are the first global indices tracking the financial performance of the leading sustainability- driven companies worldwide, it was launched in 1999.

The Dow Jones Sustainability World Index comprises more than 300 companies that represent the top 10% of the leading sustainability companies out of the biggest 2,500 companies in the Dow Jones world Index.

In addition to the composite DJSI World, there are six specialized subset indexes excluding alcohol, gambling, tobacco, armaments & firearms and adult entertainment.

ENVIRONMENT. SOCIAL, GOVERNANCE (ESG)

INDEX ESG describes the environmental, social and corporate governance issues that investors are considering in the context of corporate behaviour.

Integration of ESG refers to the active investment management processes that include an analysis of environmental, social, and corporate governance risks and opportunities and sustainability aspects of company performance evaluation.

The ESG index employs a unique and innovative methodology that quantifies a company's ESG practices and translates them into a scoring system which is then used to rank each company against its peers in the market.

Its quantitative scoring system offers investors complete transparency on Environmental, Social & governance issues of a company.

KEY PERFORMANCE INDICATORS:

1. Environment
2. Energy use and efficiency
3. Greenhouse gas emissions
4. Water use, Use of ecosystem services
5. Employees, Poverty and community impact
6. Supply chain management

STANDARD & POOR'S ESG INDIA

Index Standard & Poor's ESG India index provides investors with exposure to a liquid and tradable index of 50 of the best performing stocks in the Indian market as measured by environmental, social, and governance parameters.

The index employs a unique and innovative methodology that quantifies a company's ESG practices and translates them into a scoring system which is then used to rank each company against their peers in the Indian market.

Its quantitative scoring system offers investors complete transparency.

THE CREATION OF THE INDEX INVOLVES A TWO STEP PROCESS

- ✓ The first of which uses a multi-layered approach to determine an 'ESG' score for each company.
- ✓ The second step determines the weighting of the index by score.

SPECIAL NOTE:

Index constituents are derived from the top 500 Indian companies by total market capitalizations that are listed on National Stock Exchange of India Ltd. (NSE). These stocks are then subjected to a screening process which yields a score based on a company's ESG disclosure practices in the public domain.

SUSTAINABILITY REPORTING FRAMEWORK IN INDIA

The Ministry of Corporate Affairs (MCA) recommends sustainability reporting in India. Considering the importance of sustainability in businesses, MCA launched Corporate Social Responsibility Voluntary Guidelines in 2009.

This voluntary CSR Policy addresses six core elements -

1. Care for all Stakeholders
2. Ethical functioning
3. Respect for Workers
4. Rights and Welfare
5. Respect for Human Rights
6. Respect for Environment and Activities for Social and Inclusive Development.

To take this further, in 2011 MCA issued National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business' which encourages reporting on environment, social and governance issues.

In line with the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business and considering the larger interest of public disclosure regarding steps taken by listed entities from a Environmental, Social and Governance ("ESG") perspective, SEBI decided to mandate inclusion of Business Responsibility Reports ("BR reports") as part of the Annual Reports for listed entities.

SEBI in its (Listing Obligations and Disclosure Requirements) Regulations, 2015 has required that the annual report of a listed entity shall contain BRR describing initiative taken by them from an environmental, social and governance perspective in the prescribed format [Regulation 34(2)(f)]. Business Responsibility Report is a disclosure of adoption of responsible business practices by a listed company to all its stakeholders. This is important considering the fact that these companies have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive disclosures on a regular basis. SEBI has prescribed a format for 'Business Responsibility Report'. It contains a standardized format for companies to report the actions undertaken by them towards adoption of responsible business practices.

THE BRR FRAMEWORK IS DIVIDED INTO FIVE SECTIONS:

Section A: General Information about the Organisation - Industry Sector, Products & Services, Markets, other general information

Section B: Financial Details of the Organisation - Paid up capital, Turnover, Profits, CSR (Corporate Social Responsibility) spend.

Section C: Other Details - BR initiatives at Subsidiaries and Supply-chain Partners

Section D: BR Information - Structure, Governance & Policies for Business Responsibility

Section E: Principle-wise Performance - Indicators to assess performance on the 9 Business Responsibility principles as envisaged by the National Voluntary Guidelines (NVGs

RELATION BETWEEN INTEGRATED REPORTING AND SUSTAINABILITY REPORTING

Sustainability reporting is a process that assists organizations in setting goals, measuring performance and managing change towards a sustainable global economy - one that combines long term profitability with social responsibility and environmental care.

Sustainability reporting - mainly through but not limited to a sustainability report - is the key platform for communicating the organization's economic, environmental, social and governance performance, reflecting positive and negative impacts.

The Aspects that the organization deems to be material, in response to its stakeholders' expectations and interests, drive sustainability reporting. Stakeholders can include those who are invested in the organization as well as those who have other relationships with the organization.

Integrated reporting is an emerging and evolving trend in corporate reporting, which in general aims primarily to offer an organization's providers of financial capital with an integrated representation of the key factors that are material to its present and future value creation.

Integrated reporters build on sustainability reporting foundations and disclosures in preparing their integrated report. Through the integrated report, an organization provides a concise communication about how its strategy, governance, performance and prospects lead to the creation of value over time.

Therefore, the integrated report is not intended to be an extract of the traditional annual report nor a combination of the annual financial statements and the sustainability report. However, the integrated report interacts with other reports and communications by making reference to additional detailed information that is provided separately.

Anti-Corruption and Anti-Bribery Laws in India

"Corruption is the enemy of development, and of good governance. It must be got rid of. Both the government and the people at large must come together to achieve this national objective."

- Pratibha Patel

Introduction

While Indian anti-corruption laws are fairly stringent, corruption is not uncommon in India, and until recently the enforcement of anti-corruption laws left much to be desired. This has led to unfortunate notion

(Particularly outside India) that corruption is an accepted practice in India – however, this notion is misplaced, and recent years have been marked with growing public dissatisfaction over corruption and its cost to the Indian economy. Over the past five to six years, there has been a strong public sentiment against corruption, and high-profile instances of corruption have become key political and election issues – for example, the incumbent Indian government has also taken a hard line stance on corruption issues.

PREVENTION OF CORRUPTION ACT, 1988 (THE PCA)

1. criminalises the acceptance of gratification
2. Aiding and abetting the commission of bribery is also an offence under PCA
3. Any person, who bribes or attempts to bribe a public servant or acts as a middleman for such bribing may also be held liable.
4. Creates an adverse presumption if a public servant's assets are disproportionate in value to his or her income and cannot be satisfactorily accounted for.
5. provisions of the PCA apply regardless of the location or jurisdiction of the commission of an offence
6. Is an Act of the Parliament of India enacted to combat corruption in government agencies and public sector businesses in India.
7. This law defines public servant and punishes public servants involved in corruption or bribery
8. It extends to the whole of India except the State of
9. Jammu and Kashmir and it applies also to all citizens of India outside India

Public servants include any person who is

a) in the service or pay of the Government, local authority, Government corporation;
b) related to the administration of justice,
c) empowered to conduct elections,
d) appointed to perform public duty,
e) an office bearer of Government aided cooperative society,
f) an employee of any service commission, or

g) a member of any university.

PCA only deals with bribery of public servants and does not extend to bribery or corruption in the private sector. A private person/entity will be liable for inducing a public servant to commit an act that is prohibited by the PCA, by corrupt or illegal means or by exercising personal influence.

Public servant taking gratification other than legal remuneration in respect of an official act [Sec 7]

A person

- ✓ Who is or expecting to be a public servant
- ✓ accepts or obtains or agrees to accept or attempts to obtain
- ✓ from any person
- ✓ for himself or for any other person
- ✓ any gratification beyond legal remuneration.
- ✓ as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show
- ✓ in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person
- ✓ shall be punishable with imprisonment of **at least 3 years but up to 7 years AND shall also be liable to fine.**

Here

1. **Expecting to be a public servant →** If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, be may be guilty of cheating, but he is not guilty of the offence defined in this section.
2. **Gratification →** is not restricted to pecuniary gratifications or to gratifications estimable in money.
3. **Legal remuneration →** not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

Note: Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence.

Taking gratification, in order, by corrupt or illegal means, to influence public servant [Sec 8]

Whoever

- ✓ accepts or obtains, or agrees to accept, or attempts to obtain
- ✓ from any person

- ✓ for himself or for any other person
- ✓ any gratification whatever as a motive or reward for inducing, by corrupt or illegal means,
- ✓ any public servant
- ✓ to do or to forbear to do any official act, or in the exercise of the official functions of such public servant
- ✓ to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person
- ✓ shall be punishable with imprisonment of **at least 3 years but up to 7 years AND shall also be liable to fine.**

Taking gratification, for exercise of personal influence with public servant [Sec 9]

Whoever

- ✓ accepts or obtains or agrees to accept or attempts to obtain
- ✓ from any person
- ✓ for himself or for any other person
- ✓ any gratification
- ✓ as a motive or reward for inducing
- ✓ by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant
- ✓ to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person
- ✓ shall be punishable with imprisonment of **at least 3 years but up to 7 years AND shall also be liable to fine.**

Punishment for abetment by public servant of offences [sec 10]

Whoever,

- ✓ being a public servant,
- ✓ in respect of whom either of the offences defined in sec 8 or sec 9 is committed,
- ✓ abets the offence, whether or not that offence is committed in consequence of that abetment,
- ✓ shall be punishable with imprisonment of **at least 6 months but up to 5 years AND shall also be liable to fine.**

Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant [Section 11]

Whoever,

- ✓ being a public servant,
- ✓ accepts or obtains or agrees to accept or attempts to obtain
- ✓ for himself, or for any other person,

- ✓ any valuable thing without consideration, or for a consideration which he knows to be inadequate,
- ✓ from any person whom he knows to have been, or to be, or to be likely to be concerned in any
- ✓ proceeding or business transacted or about to be transacted by such public servant, or having any
- ✓ connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned,
- ✓ shall be punishable with imprisonment of **at least 6 months but up to 5 years AND shall also be liable to fine.**

Punishment for abetment of offences under section 7 or 11 [Sec 12]

Whoever

- ✓ abets any offence punishable under section 7 or section 11
- ✓ whether or not that offence is committed in consequence of that abetment
- ✓ shall be punishable with imprisonment of **at least 3 years but up to 7 years AND shall also be liable to fine.**

Criminal misconduct by a public servant [Sec 13]

1. A public servant is said to commit the offence of criminal misconduct,—
   a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; OR
   b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or
   c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or
   d) if he,—
      i. by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
      ii. by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
      iii. while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation— For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

2. Any public servant who commits criminal misconduct shall be punishable with imprisonment for at least 4 year but up to 10 years **AND** shall also be liable to fine.

Habitual committing of offence under sections 8, 9 and 12 [Sec]

Whoever habitually commits

(a) an offence punishable u/s 8 or 9

(b) an offence punishable u/s 12,

shall be punishable with imprisonment for at least 5 year but up to 10 years **AND** shall also be liable to fine.

Punishment for attempt [Sec 15]

Whoever

attempts to commit an offence referred in sec 13(1)(c) shall be punishable with imprisonment for at least 2 year but up to 5 years **AND** shall also be liable to fine.

Matters to be taken into consideration for fixing fine [Sec 16]

Where a sentence of fine is imposed u/s 13 (2) or sec 14,

- ✓ the court in fixing the amount of the fine shall take into consideration the amount or the value of the property,
- ✓ which the accused person has obtained by committing the offence **OR**
- ✓ where the conviction is for an offence 13(1)(e),
- ✓ the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily

Persons authorised to investigate [sec 17]

Notwithstanding anything provided by CR PC 1973,

In delhi → Inspector of police

Other Metro cities → Assistant commissioner of Police (ACP)

Elsewhere → Dy. Superintendent of Police (DSP)

Without order of Magistrate

And without warrant they can arrest as well

Note: Offence u/s 13(1)(e) shall not be investigated without of SP or equivalent

Power to inspect banker's books

Generally by SP and by other PO, if specially authorised can inspect all the books and documents covered under banker's book evidence act 1891

Compliance defence and mitigation

PCA doesn't provide for mitigation i.e. as per PCA Bribe means bribe not matter how much the amount of it was. But court may decide category of bribe and may mitigate accordingly.

Liability of Individual directors and officers

PCA doesn't provide anything specifically to punish any officer individually but generally we know that if any director acted malafidely then he will also be liable for punishment. For example sec 447 under companies act 2013.