

Project Report on
“Corporate Governance
in India”

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220558771/08/2007

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Introduction

Corporate governance is the set of processes, customs, policies, laws, and institutions affecting the way a corporation (or company) is directed, administered or controlled. Corporate governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed. In simpler terms it means the extent to which companies are run in an open & honest manner.

Corporate governance has three key constituents namely: the Shareholders, the Board of Directors & the Management. Other stakeholders include employees, customers, creditors, suppliers, regulators, and the community at large. The concept of corporate governance identifies their roles & responsibilities as well as their rights in the context of the company. It emphasises accountability, transparency & fairness in the management of a company by its Board, so as to achieve sustained prosperity for all the stakeholders.

Corporate governance is a synonym for sound management, transparency & disclosure. Transparency refers to creation of an environment whereby decisions & actions of the corporate are made visible, accessible & understandable. Disclosure refers to the process of providing information as well as its timely dissemination.

In **A Board Culture of Corporate Governance**, business author Gabrielle O'Donovan defines corporate governance as *“An internal system encompassing policies, processes and people, which serves the needs of shareholders and other stakeholders, by directing and controlling management activities with good business savvy, objectivity, accountability and integrity”*. Sound corporate governance is reliant on external marketplace commitment and

legislation, plus a healthy board culture which safeguards policies and processes.

History

As mentioned earlier, the term ‘corporate governance’ is related to the extent to which the companies are transparent & accountable about their business. Corporate governance today has become a major issue of interest in most of the corporate boardrooms, academic circles & even governments around the globe.

In the 19th century, state corporation laws enhanced the rights of corporate boards to govern without unanimous consent of shareholders in exchange for statutory benefits like appraisal rights, to make corporate governance more efficient. Since that time and because most large publicly traded corporations in the US are incorporated under corporate administration-friendly Delaware law and because the US's wealth has been increasingly securitized into various corporate entities and institutions, the rights of individual owners and shareholders have become increasingly derivative and dissipated. The concerns of shareholders over administration pay and stock losses periodically has led to more frequent calls for corporate governance reforms.

In the 20th century, in the immediate aftermath of the Wall Street Crash of 1929, legal scholars such as Adolf Augustus Berle, Edwin Dodd, and Gardiner C. Means pondered on the changing role of the modern corporation in society. From the Chicago school of economics, Ronald Coase's "The Nature of the Firm" (1937) introduced the notion of transaction costs into the understanding of why firms are founded and how they continue to behave. Fifty

y`ears later, Eugene Fama and Michael Jensen's "The Separation of Ownership and Control" (1983, Journal of Law and Economics) firmly established agency theory as a way of understanding corporate governance: the firm is seen as a series of contracts. Agency theory's dominance was highlighted in a 1989 article by Kathleen Eisenhardt ("Agency theory: an assesement and review", Academy of Management Review).

The expansion of US after World War II through the emergence of multinational corporations saw the establishment of the managerial class. Accordingly, the following Harvard Business School management professors published influential monographs studying their prominence: Myles Mace (entrepreneurship), Alfred D. Chandler, Jr. (business history), Jay Lorsch (organizational behavior) and Elizabeth MacIver (organizational behaviour). According to Lorsch and MacIver "Many large corporations have dominant control over business affairs without sufficient accountability or monitoring by their board of directors."

Since the late 1970's, corporate governance has been the subject of significant debate in the U.S. and around the globe. Bold, broad efforts to reform corporate governance have been driven, in part, by the needs and desires of shareowners to exercise their rights of corporate ownership and to increase the value of their shares and, therefore, wealth. Over the past three decades, corporate directors' duties have expanded greatly beyond their traditional legal responsibility of duty of loyalty to the corporation and its shareowners.

In the first half of the 1990s, the issue of corporate governance in the U.S. received considerable press attention due to the wave of CEO dismissals (e.g.: IBM, Kodak, Honeywell) by their boards. The California Public Employees' Retirement System (CalPERS) led a wave of institutional shareholder activism (something only very rarely seen before), as a way of ensuring that corporate

value would not be destroyed by the now traditionally cozy relationships between the CEO and the board of directors (e.g., by the unrestrained issuance of stock options, not infrequently back dated).

In 1997, the East Asian Financial Crisis saw the economies of Thailand, Indonesia, South Korea, Malaysia and The Philippines severely affected by the exit of foreign capital after property assets collapsed. The lack of corporate governance mechanisms in these countries highlighted the weaknesses of the institutions in their economies.

In the early 2000s, the massive bankruptcies (and criminal malfeasance) of Enron and Worldcom, as well as lesser corporate debacles, such as Adelphia Communications, AOL, Qwest, Arthur Andersen, Global Crossing, Tyco, etc. led to increased shareholder and governmental interest in corporate governance. Because these triggered some of the largest insolvencies, the public confidence in the corporate sector was sapped. The popular perception was that corporate leadership was fraught with greed & excess. Inadequacies & failure of the existing systems, brought to the fore, the need for norms & codes to remedy them. This resulted in the passage of the Sarbanes-Oxley Act of 2002, (popularly known as Sox) by the United States.

In India however, only when the Securities Exchange Board of India (SEBI), introduced Clause 49 in the Listing Agreement, for the first time in the financial year 2000-2001, that the listed companies started embracing the concept of corporate governance. This clause was based on the Kumara Mangalam Birla Committee constituted by SEBI. After these recommendations were in place for about four years, SEBI, in order to evaluate & improve the existing practices, set up a committee under the Chairmanship of Mr. N.R. Narayana Murthy during 2002-2003. At the same time, the Ministry of Corporate Affairs set up a committee under the Chairmanship of Shri. Naresh

Chandra to examine the various corporate governance issues. The recommendations of the committee however, faced widespread protests & representations from the industry, forcing SEBI to revise them.

Finally, on the 29th October, 2004, SEBI announced the revised Clause 49, which was implemented by the end of the financial year 2004-2005. Apart from Clause 49 of the Listing Agreement, corporate governance is also regulated through the provisions of the Companies Act, 1956. The respective provisions have been introduced in the Companies Act by Companies Amendment Act, 2000.

DEFINITIONS

- *"Corporate governance is a field in economics that investigates how to secure/motivate efficient management of corporations by the use of incentive mechanisms, such as contracts, organizational designs and legislation. This is often limited to the question of improving financial performance, for example, how the corporate owners can secure/motivate that the corporate managers will deliver a competitive rate of return" - www.encycogov.com, Mathiesen [2002].*
- *"Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment".*

-The Journal of Finance, Shleifer and Vishny [1997].
- *"Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the*

distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance".

- **OECD April 1999.** OECD's definition is consistent with the one presented by Cadbury [1992, page 15].
- *"Corporate governance - which can be defined narrowly as the relationship of a company to its shareholders or, more broadly, as its relationship to society".* - From an article in ***Financial Times*** [1997].
- *"Corporate governance is about promoting corporate fairness, transparency and accountability".* - **J. Wolfensohn, (President of the World Bank, as quoted by an article in *Financial Times*, June 21, 1999).**
- *"Some commentators take too narrow a view, and say it (corporate governance) is the fancy term for the way in which directors and auditors handle their responsibilities towards shareholders. Others use the expression as if it were synonymous with shareholder democracy. Corporate governance is a topic recently conceived, as yet ill-defined, and consequently blurred at the edges...corporate governance as a subject, as an objective, or as a regime to be followed for the good of shareholders, employees, customers, bankers and indeed for the reputation and standing of our nation and its economy"* **Maw et al.** [1994].

- **Sir Adrian Cadbury** in his preface to the **World Bank publication – ‘Corporate Governance: A framework for implementation’**, said, *“Corporate governance is holding the balance between economic & social goals and between individual & community goals. The aim is to align as nearly as possible, the interests of individuals, corporations & society”*.
- **The Cadbury Committee U.K**, defined corporate governance as follows:
“It is a system by which companies are directed & controlled”.

Scope

Corporate governance is all about ethics in business. It is about transparency, openness & fair play in all aspects of business operations. The key aspects to corporate governance include:

1. **Accountability** of Board of Directors & their constituent responsibilities to the ultimate owners- the shareholders.
2. **Transparency**, i.e. right to information, timeliness & integrity of the information produced.
3. **Clarity in responsibilities** to enhance accountability.
4. **Quality & competence of Directors** and their track record.
5. **Checks & balances** in the process of governance.
6. **Adherence to the rules**, laws & spirit of codes.

Importance

1. Corporate governance ensures that a properly structured Board, capable of taking independent & objective decisions is at the helm of affairs of

the company. This lays down the framework for creating long-term trust between the company & external providers of capital.

2. It improves strategic thinking at the top by inducting independent directors who bring a wealth of experience & a host of new ideas.
3. It rationalizes the management & monitoring of risk that a corporation faces globally.
4. Corporate governance emphasises the adoption of transparent procedures & practices by the Board, thereby ensuring integrity in financial reports.
5. It limits the liability of top management & directors, by carefully articulating the decision making process.
6. It inspires & strengthens investors' confidence by ensuring that there are adequate number of non-executive & independent directors on the Board, to look after the interests & well-being of all the stakeholders.
7. Corporate governance helps provide a degree of confidence that is necessary for the proper functioning of a market economy, as it contemplates adherence to ethical business standards.
8. Finally, globalisation of the market place has ushered in an era wherein the quality of corporate governance has become a crucial determinant of survival of corporates. Compatibility of corporate governance practices with global standards has also become an important constituent of corporate success. Thus, good corporate governance is a necessary pre-requisite for the success of Indian corporates.

THE SARBANES-OXLEY ACT

The Sarbanes-Oxley Act (often referred to as Sox) is a legislation enacted in response to the high-profile financial scandals like Enron, WorldCom, Tyco, AOL, etc. so as to protect the shareholders & general public from accounting

errors & fraudulent practices in the enterprise. The Act is administered by the Securities & Exchange Commission (SEC), which sets deadlines for compliance & publishes rules on requirements. The Act is not a set of business practices & does not specify how a business should store records; rather it defines which records are to be stored & for how long. The legislation not only affects the financial side of corporations but also the IT Departments of these, whose job is to store their electronic records. The Sarbanes-Oxley Act states that all business records, including electronic records & electronic messages must be saved for not less than five years. The consequences of non-compliance are fines, imprisonment or both.

The following sections of the Act contain three rules that affect the management of electronic records.

- 1) The first rule deals with destruction, alteration & falsification of records.

Sec 802 (a) states that, “Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies or makes a false entry in any record, document or tangible object with the intent to impede, obstruct or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under Title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

- 2) The second rule defines the retention period for storage of records. Best practices indicate that corporations securely store all business records using the same guidelines as set for public accountants.

Sec 802 (a) (1) states that, “Any accountant who conducts an audit of an issuer of securities to which section 10 A (a) of Securities Exchange Act of 1934 [15 U.S.C 78j- 1 (a)] applies, shall maintain all audit or review work papers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded”.

3) The third rule refers to the type of business records that need to be stored, including all business records & communication, which includes electronic communication also.

Sec 802 (a) (2) states that, “The Securities & Exchange Commission shall promulgate within 180 days , such as rules & regulations, as are reasonably necessary relating to the retention of relevant records such as work papers, documents that form the basis of an audit or review, memoranda, correspondence, other documents & records (including electronic records), which are created, sent or received in connection with an audit or review & contain conclusions, opinions, analyses or financial data relating to such an audit or review”.

Sarbanes–Oxley Act contains 11 titles that describe specific mandates and requirements for financial reporting. Each title consists of several sections, summarized below.

1. Public Company Accounting Oversight Board (PCAOB)

Title I consists of nine sections and establishes the Public Company Accounting Oversight Board, to provide independent oversight of public accounting firms providing audit services ("auditors"). It also creates a central oversight board tasked with registering auditors, defining the specific processes and procedures for compliance audits, inspecting and

policing conduct and quality control, and enforcing compliance with the specific mandates of SOX.

2. Auditor Independence

Title II consists of nine sections and establishes standards for external auditor independence, to limit conflicts of interest. It also addresses new auditor approval requirements, audit partner rotation, and auditor reporting requirements. It restricts auditing companies from providing non-audit services (e.g., consulting) for the same clients.

3. Corporate Responsibility

Title III consists of eight sections and mandates that senior executives take **individual responsibility** for the accuracy and completeness of corporate financial reports. It defines the interaction of external auditors and corporate audit committees, and specifies the responsibility of corporate officers for the accuracy and validity of corporate financial reports. It enumerates specific limits on the behaviors of corporate officers and describes specific forfeitures of benefits and civil penalties for non-compliance. For example, Section 302 requires that the company's "principal officers" (typically the Chief Executive Officer and Chief Financial Officer) certify and approve the integrity of their company financial reports quarterly.

4. Enhanced Financial Disclosures

Title IV consists of nine sections. It describes enhanced reporting requirements for financial transactions, including off-balance-sheet transactions, pro-forma figures and stock transactions of corporate officers. It requires internal controls for assuring the accuracy of financial

reports and disclosures, and mandates both audits and reports on those controls. It also requires timely reporting of material changes in financial condition and specific enhanced reviews by the SEC or its agents of corporate reports.

5. Analyst Conflicts of Interest

Title V consists of only one section, which includes measures designed to help restore investor confidence in the reporting of securities analysts. It defines the codes of conduct for securities analysts and requires disclosure of knowable conflicts of interest.

6. Commission Resources and Authority

Title VI consists of four sections and defines practices to restore investor confidence in securities analysts. It also defines the SEC's authority to censure or bar securities professionals from practice and defines conditions under which a person can be barred from practicing as a broker, advisor, or dealer.

7. Studies and Reports

Title VII consists of five sections and requires the Comptroller General and the SEC to perform various studies and report their findings. Studies and reports include the effects of consolidation of public accounting firms, the role of credit rating agencies in the operation of securities markets, securities violations and enforcement actions, and whether investment banks assisted Enron, Global Crossing and others to manipulate earnings and obfuscate true financial conditions.

8. Corporate and Criminal Fraud Accountability

Title VIII consists of seven sections and is also referred to as the “*Corporate and Criminal Fraud Act of 2002*”. It describes specific criminal penalties for manipulation, destruction or alteration of financial records or other interference with investigations, while providing certain protections for whistle-blowers.

9. White Collar Crime Penalty Enhancement

Title IX consists of six sections. This section is also called the “*White Collar Crime Penalty Enhancement Act of 2002*.” This section increases the criminal penalties associated with white-collar crimes and conspiracies. It recommends stronger sentencing guidelines and specifically adds failure to certify corporate financial reports as a criminal offense.

10. Corporate Tax Returns

Title X consists of one section. Section 1001 states that the Chief Executive Officer should sign the company tax return.

11. Corporate Fraud Accountability

Title XI consists of seven sections. Section 1101 recommends a name for this title as “*Corporate Fraud Accountability Act of 2002*”. It identifies corporate fraud and records tampering as criminal offenses and joins those offenses to specific penalties. It also revises sentencing guidelines and strengthens their penalties. This enables the SEC the resort to temporarily freeze transactions or payments that have been deemed "large" or "unusual".

Clause 49 of the listing agreement

SEBI revise Clause 49 of the Listing Agreement pertaining to corporate governance vide circular date October 29th, 2004, which superseded all other earlier circulars issued by SEBI on this subject. All existing listed companies were required to comply with the provisions of the new clause by 31st December 2005.

The major provisions included in the new Clause 49 are:

- The board will lay down a code of conduct for all board members and senior management of the company to compulsorily follow.
- The CEO and CFO will certify the financial statements and cash flow statements of the company.
- If while preparing financial statements, the company follows a treatment that is different from that prescribed in the accounting standards, it must disclose this in the financial statements, and the management should also provide an explanation for doing so in the corporate governance report of the annual report.
- The company will have to lay down procedures for informing the board members about the risk management and minimization procedures.
- Where money is raised through public issues etc., the company will have to disclose the uses/ applications of funds according to major categories (capital expenditure, working capital, marketing costs etc) as part of quarterly disclosure of financial statements.

Further, on an annual basis, the company will prepare a statement of funds utilized for purposes other than those specified in the offer document/ prospectus and place it before the audit committee.

The company will have to publish its criteria for making its payments to non-executive directors in its annual report. Clause 49 contains both mandatory and non mandatory requirements.

Mandatory requirements refer primarily to:

1. Board of Directors with respect to their composition, independence, procedures, code of conduct and disclosures;

2. Audit Committee and its composition, powers, role and responsibilities;
3. Subsidiary Companies to ensure their better control and supervision;
4. Disclosures in the context of related party transactions, risk management and minimization procedures, utilization of proceeds from Initial Public Offerings, investor education and protection;
5. CEO/CFO certification regarding the correction of the financial statement and compliance with prescribed Accounting Standards
6. Separate report on corporate Governance in the annual reports with respects to compliance of mandatory and non mandatory requirements; and
7. Compliance certificate obtained either from the auditors or practicing company Secretaries

Non mandatory requirements refer to those requirements which are not compulsory and can be adopted at the discretion of the company.

These include requirements:

1. Regarding the maximum tenure of the independent directors,
2. Formation of a remuneration committee for determining the remuneration packages for executives directors,
3. Moving towards a regime of unqualified financial statements,
4. Training of board members,
5. Evaluation of non – executive board members, and
6. Establishing a mechanism for employees to report unethical behavior to the management under a Whistle Blower Policy.

CLAUSE 49 – MANDATORY REQUIREMENTS

I. BOARD OF DIRECTORS

A. Composition of Board:

1. The Board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors .

2. Where the Chairman of the Board is non- executive directors, at least one third of the Board should comprise of independent directors and in case he is an executive directors, at least half of the Board should comprise of independent directors.
 3. For the purpose of sub – clause (ii) the expression ‘independent director’ shall mean a non executive director of the company who:
 - a. Apart from receiving director’s remuneration , does not have any material pecuniary relationships or transactions with the company, its promoters, its directors its senior management or its holding company, its subsidiaries and associated which many affects independence of the director.
 - b. Is not related to promoters or persons occupying managements positions at the board level or at one level below the board;
 - c. It not been executive or was not partner or an executive during the preceding three years, of any of the following:
 - d. Is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:
 - i. The statutory audit firm or the internal audit firm that is associated with the company, and ;
 - ii. The legal firm(s) and consulting firm(s) that have a material association with the company
 - e. Is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the directors; and
 - f. is not a substantial shareholder of the company i.e owning two percent or more of the block of voting shares.
 4. Nominee directors appointed by an institution which has invested in or lent to the company shall be deemed to be independent directors. However if the Dr. J.J. irani Committee recommendations on the proposed new company law are accepted, then directors, nominated by financial institutions and the government will not be considered independent.
- B. Non executive directors compensation and disclosures: all fees/ compensation and disclosures: all fees/ compensation , if any paid to non executive directors, including independent directors, shall be

fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non- executive directors, including independent directors, in any financial year and aggregate. However as per SEBI amendment made vide circular SEBI/ CFD/DIL/CG dated 12/1/06 sitting fees paid to non-executive directors as authorized by the Companies Act 1956, would not require the previous approval of shareholders.

C. Other provisions as to Board and Committees:

1. The board shall meet at least four times a year, with a maximum time gap of three months between any two meetings. However SEBI has amended the clause 40 of the listing agreement vide circular SEBI/CFD/DIL/CG dated 12-1-06 as per which the maximum gap between two board meetings has been increased again to 4 months.
2. A director shall not be a member in more than 10 Audit and / or Shareholders grievance Committee or act as chairman of more than five Audit Shareholders Grievance committee across all companies in which he is a director. Furthermore it should be mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

D. Code of conduct:

1. The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company,
2. All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual report of the company shall contain declaration to this effect signed by CEO.

II. AUDIT COMMITTEE.

A. Qualified and Independent Audit Committee: A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

1. The audit committee shall have minimum three directors as members. Two thirds of the members of audit committee shall be independent directors.
2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
3. The chairman of the Audit Committee shall be an independent director.
4. The chairman of the Audit Committee shall be present at annual General Meeting to answer shareholder queries;
5. The audit committee may 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. The finance director, head of internal audit and representative of the statutory auditor may be present as invitees for the meeting of the audit committee;
6. The Company Secretary shall act as the secretary to the committee.

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

C. Powers of Audit Committee: the audit committee shall have powers:

1. To investigate any activity within the terms of reference;
2. To seek information from any employee;
3. To obtain outside legal or other professional advice;
4. To secure attendance of outsiders with relevant expertise, if any.

D. Role of audit committee: the role for the audit committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment re- appointment and if required the replacement or removal of the statutory auditor and the fixation of audit fees.
3. Approval of payment too statutory auditors for any other services rendered by the statutory auditors.
4. Reviewing, with the management the quarterly and annual financial statements before submission to the board for approval with reference to Director's Responsibility statement under section 217 (2AA)k, significant adjustments made in financial statements, compliance with listing requirements, disclosure of any related pending transaction etc.
5. Reviewing with the management performance of statutory and internal auditor and adequacy of the internal control systems.
6. Discussion with internal auditors regarding any significant findings including suspected frauds or irregularities and follow up thereon.
7. Reviewing the findings of any internal investigation by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control system of a material nature and reporting the matter to the board.
8. Discussion with statutory auditors before the audit commence, about the nature and scope of audit as well as post- audit discussion to ascertain any area of concern.
9. To look into the reason fo substantial defaults in the payments to the depositors, debenture holders, shareholders (in case of nonpayment of declared dividends) and creditors.
- 10.To review the functioning of the Whistle Blower mechanism, in case the same is existing.
- 11.Carrying out any other function as it mentioned in the terms of reference of the Audit Committee.

III. SUBSIDIARY COMPANIES

1. At least one independent director on the Board of Director of the holding company shall be a director on the Board of Directors of a material non listed Indian subsidiary company.
2. The audit committee of the listed holding company shall also review the financial statements, in particular, the investment made by the unlisted subsidiary company.
3. The minutes of the Board meeting of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company, the management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transaction and arrangements entered into by the unlisted subsidiary company.

IV. DISCLOSURES

A. Basis of related party transactions:

1. A statement in summary form of transactions with related parties shall be placed periodically before the audit committee.
2. Details of material individual transactions with related parties which are not in the normal course of business shall be placed before the audit committee.

B. Disclosure of Accounting Treatment: where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.

C. Board Disclosure- Risk Management: the company shall lay down procedures to inform Board members about the risk assessment and minimization procedures.

D. Proceeds from public issues, rights issues , preferential issues etc. :

When money is raised through an issue (public issues rights issues, preferential issues etc.), it shall disclose to the Audit committee, the uses/ applications of funds by major category (capital expenditure,, sales and marketing, working capital, etc.), on a quarterly and annual basis.

E. Remuneration of Directors :

1. All pecuniary relationship or transactions of the non- executive directors vis-à-vis the company shall be disclosed in the Annual Report.
2. Further, certain prescribed disclosures on the remuneration of directors shall be made in the section on the corporation governance of the Annual Report;
3. The company shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report.
4. Non executive directors shall be required to disclose their shareholding (both own or held by/ for other persons on a (beneficial basis) in the listed company in which they proposed to be appointed as directors, prior to their appointment. These details should be disclosed in the notice to the general meeting called for appointment of such directors.

F. Management: As part of the directors' report or as an addition there to a Management Discussion and Analysis report, the following should form part of the Annual Report to the shareholders. This includes discussion on:

1. ;industry structure and developments.
2. Opportunities and threats.
3. Segment wise or product wise performance
4. Outlook
5. Risks and concerns.
6. Internal control systems and their adequacy
7. Discussion on financial performance with respect to operational performance.

8. Material developments in Human resources/ industrial Relations front including number of people employed.

G. Shareholders:

1. In case of the appointment of a new directors or reappointment of a director the shareholders must be provided with the following information:
 - a. A brief resume of the director
 - b. Nature of his expertise in specific functional areas;
 - c. Names of companies in which the persons also holds directorship and the membership Committees of the Board; and
 - d. Shareholding of non – executive directors.
2. A board committee under the chairmanship of a non- executive director shall be formed to specifically look into the redressal of shareholder and investor complaints like transfer of shares, non receipt of declared dividends etc. this committee shall be designated as ‘Shareholders/Investors Grievance Committee’.
3. To expedite the process of share transfer, Board of the company shall delegate the power of share transfer to an officer or a committee or to the registrar and share transfer agents. There delegated authority shall attend to share transfer formalities and least once in a fortnight.

V. CEO/CFO CERTIFICATION

Through the amendment made by SEBI vide circular SEBI /CFD/DIL CG DATED 12-1-06, in Clause 49 of the Listing Agreement, certification of internal controls and internal control system

CFO/CEO would be for the purpose of financial reporting. Thus the CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole – time Finance Director or any other Person heading the finance function discharging that function shall certify to the Board that:

1. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
 - i. These statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - ii. These statements together present a true and fair view of the company's affairs and are in compliance within existing accounting standards, applicable laws and regulations.
2. There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which fraudulent, illegal or violative of the company's code of conduct.
3. They accept responsibility for establishing and maintaining internal controls and they have evaluated the effectiveness of the internal control system 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 internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies
4. They have indicated to the auditors and the Audit Committee significant changes in internal control over financial reporting during the year, significant fraud of which they have become aware and the involvement there in if any, of the management or an employee having a significant role in the company's internal control system over financial reporting.

VI. REPORT ON CORPORATE GOVERNANCE

1. There shall be separate section on Corporate Governance in Annual Reports of Company with a detailed compliance report on Corporate Governance. Non compliance of any mandatory requirement of this clause with reason there of and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted.
2. The companies shall submit a quarterly compliance report to the stock exchange within 15 days from the close of quarter as per the format given in

3. Annexure IB. the report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

VII. COMPLIANCE

1. The company shall obtain a certificate from either the auditor or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.
2. The non- mandatory requirements may be implemented as per the discretion of the company. However, the disclosures of the compliance with mandatory requirements and adoption / non-adoption of the non mandatory requirements shall be made in the section on corporate governance of the Annual Report.

STEPS IMPLEMENTED BY COMPANIES ACT WITH REGARD TO CORPORATE GOVERNANCE

The Ministry of Company Affairs appointed various committees on the subject of corporate governance which lead to the amendment of the companies Act in 2000. These amendments aimed at increasing transparency and accountabilities of the Board of Directors in the management of the company, thereby ensuring good corporate governance. The dealt with the following:

1. COMPLIANCE WITH ACCOUNTING STANDARDS – SECTION 210A

As per this subsection inserted by the Companies Act, 1999 every profit and loss account and balance sheet of the company shall comply with the accounting standards. The compliance of Indian Accounting standards was made mandatory and the provisions for setting up of

National Committee on accounting standards were incorporated in the Act.

2. INVESTORS EDUCATION AND PROTECTION FUND – SECTION 205C

This section was inserted by the Companies Act 1999 which provides that the central government shall establish a fund called the Investor Education and protection Fund and amount credited to the fund relate to unpaid dividend, unpaid matured deposits, unpaid matured Debenture, unpaid application money received by the companies for allotment of securities and due for refund and interest accrued on above amounts.

3. DIRECTOR'S RESPONSIBILITY STATEMENT- SECTION 217(2AA)

Subsection (2AA) added by the Companies Act, 2000 provides that the Boards report shall also include a Director's Responsibility statement with respect to the following matters:

- a. Whether accounting standards had been followed in the preparation of annual accounts and reasons for material departures, if any;
- b. Whether appropriate accounting policies have been applied and on consistent basis;
- c. Whether directors had made judgments and estimate that are reasonable prudent so as to give a true and fair view of the state of affair and profit and loss of the company;
- d. Whether the directors had prepared the annual accounts on a going concern basis.
- e. Whether directors had taken proper and sufficient care for the maintenance of adequate accounting records for safeguarding the assets of the company.

4. NUMBER OF DIRECTORSHIP- SECTION 275

As per this section of Companies Act, 2000 a person cannot hold office at same time as director in more than fifteen companies.

5. AUDIT COMMITTEES – SECTION 292A

This section of the companies Act, 2000 provides for the constitution of audit committees by every public company having a paid-up capital of Rs. 5 crores or more. Audit Committee is to consist of at least 3 directors. Two of the members of the Audit Committee shall be directors other than managing or whole time director. Recommendation of the Audit Committee on any matter related to financial management including audit report shall be binding on the Board.

6. PROHIBITION ON INVITING OR ACCEPTING PUBLIC DEPOSIT

The Companies Act, 2000 has prohibited companies to invite/accept deposit from public.

7. SMALL DEPOSITOR- SECTIONS 58AA AND 58AAA

The Companies Act, 2000 had added two new sections, viz, section 58AA and 58AAA, for the protection of small depositors. These provisions are designed to protect depositors who have invested upto Rs. 20, 000 in a financial year in a company.

8. CORPORATE IDENTITY NUMBER

Registrar of Companies is to allot a Corporate Identity Number to each company registered on or after November 1, 2000 (Valid circular No.)12/2000 dated 25-10-2000)

9. POWERS TO SEBI – SECTION 22A

This section added Companies Act, 2000 empowers SEBI to administer the provisions contained in section 44 to 48, 59 to 84, 10, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207 so far as they relate to issue and transfer of securities and non payment of dividend. However, SEBI'S power in this regard is limited to listed companies.

10. DISQUALIFICATION OF A DIRECTOR- SECTION 274 CLAUSE (G)

Clause (g) of Section 274, added by the companies Act, 2000 disqualifies a person who is already director of a public company

which (a) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of

April 1999; or (b) has failed or repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure to continues for one year or more, however, the aforesaid disqualification will last for five years only.

11.SECRETARIAL AUDIT – SECTION383A

12.Secretarial Audit Section 383A was amended to provide for secretarial audit with respect to companies having a paid up share capital of Rs. 10 lakhs or more but less than, present Rs. 2 crores. As per the Companies Act, 2000 a whole time company secretary has to file with ROC a certificate as to whether the company has complied with all the provisions of the Act. A copy of this certificate shall also be attached with the report of Board of Directors.

Thus, the importance of codification of good Corporate governance practices having mandatory force cannot be mitigates. But in order to ensure implementation and compliance in true spirit, Corporate Governance practices need to be legislated by one regular or body so as to avert duplicity, confusion and uncertainty.

CONCLUSION

We can say that corporate governance is a way of life and not a set of rules, a way of life that necessitates talking into account the stakeholder's interest in every business decision.