CHAPTER 6

SUGGESTIONS
6.1 Suggestions:

4. Along with good corporate governance practices, social responsibility is also important. Social responsibility aspect of the bank is not studied by researcher.

5. The banking sector today has to concentrate on risk management, Basel requirements, Non-performing Assets Management, Consolidation and Acquisition as per RBI regulations along with good corporate governance practices. The entry of foreign banks makes the banking sector more competitive today.

6. Vide circular dated 29th Oct., 2004 SEBI has again revised clause 49. This circular is the master circular and supersedes all the earlier circular issued by SEBI on this subject. It is applicable from 31st DEC., 2005.

   All the changes can be bifurcated into two categories – key changes and other changes.

   Key changes

   ♦ Definition of independent directors.
   ♦ Requiring CEO/CFO certification of financial statements.
   ♦ Disclosure related to the risk Management.
   ♦ Requirement related to subsidiary companies.
   ♦ Requiring board to adopt formal code of conduct and also for senior management.
   ♦ Improving disclosure to share holders.
   ♦ Restriction of the term of independent directors.

For following the spirit of Corporate Governance the director should be independent in thought and action. Mere presence does not guarantee good governance.
Code of conduct is applicable only for Board and senior management and not for all employees.

Requirement of clause 49 relating to COE/CFO certification is imported from USA’s SOXA.

Other Changes

Meeting of board – The gap between 2 meetings has been reduced to 3 months.

For the purpose of Chairmanship in committee, now only 2 committees shall be considered. Remuneration has been excluded for this purpose.

Regarding composition of audit committee, the requirement of all directors being NED is done away with 2/3rd of the directors must be independent. Now expertise in accounting or related financial management is required. At least 4 meeting of AC in a year and gap between 2 meetings should not exceed 4 months.

Whistle blower policy is not a mandatory requirement.

Non mandatory requirements include a tenure not exceeding in the aggregate a period of 9 years on the board of company, seating remuneration committee, half yearly declaration of financial performances. Whistle blower policy, peer group evaluation to evaluate performance.

6.2 Suggestions to Improve Corporate Governors Practices

1) Chairman and CEO

It has been recognized that there should be separation of the role of Chairman and CEO. Cadbury Committee on corporate governance states that there should be a clearly accepted division of responsibilities at the head of the company level, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision-making. At present in India, in most of the banks, the CEO and the chairman’s positions are combined. Banks have preferred the composite position of chairman and managing director.
2) Responsibility of the Board

According to the Board of International Settlement (BIS) code, bank boards should establish strategic objectives and set corporate values that will direct the ongoing activities of the bank. The board should ensure that senior management implements policies that prohibit activities and relationships that diminish the quality of corporate governance, such as conflicts of interests, self-dealings and preferential dealings with related parties. Keeping in view their oversight role board of directors should feel empowered to recommend sound practices, provide dispassionate advice and avoid conflicts of interests.

3) Accountability to Shareholders/Stakeholders

The Securities and Exchange Board of India (SEBI) guidelines state that the Board should be accountable to shareholders for creating, protecting and enhancing wealth and resources for the company and reporting them on the performance in timely and transparent manner. However, the present scenario is that in majority of banks, Boards do not enforce clear lines of responsibility and accountability for themselves.

4) Election

The Organization for Economic Co-operation and Development (OECD) principles state that the Board should ensure a transparent Board nomination process. In terms of the provisions of section 9 of the Banking Companies (acquisition and Transfer of Undertakings) Act, the government constitutes the Boards of Directors of nationalized banks. The Boards comprise of two whole-time directors, a nominee each of the Government of India and the Reserve Bank of India, nominees of workmen and non-workmen unions, and a chartered accountant. Besides this, six non-official directors with specialized knowledge in agriculture and rural economy, banking, co-operation, economics, finance, law, etc. are appointed. So, the current scenario is that the bank board’s consist mainly of nominated members and not the elected members. Moreover, banks do not have nomination committees for nominating directors of Boards of banks.

5) Audit Committee
According to BIS the Audit Committee of banks should provide an oversight of the banks’ internal and external auditors, approving their appointment and dismissal, reviewing and approving audit scope and frequency, receiving their reports and ensuring that management is taking appropriate corrective actions in a timely manner. The independence of this committee can be enhanced when it is comprised of external Board members who have banking and financial expertise. In India, the banks are required to set-up an Audit Committee of Board of Directors to oversee and provide direction to the internal audit/inspection function in banks in order to enhance its effectiveness as a management tool.

Corporate Governance calls for a paradigm shift in the role of the Board and corporate directors. They need to be “evolutionary” and “revolutionary” constantly moving the banks toward higher level of creativity. While corporate governance is an important element of affecting the long term financial health of banks, it is only a part of larger economic context in which banks operate. The Corporate Governance depends upon legal and institutional framework. It will be rightly to conclude with the remarks that the road to efficacy lies in minimizing regulatory prescription and maximizing voluntary codes to ensure excellence in corporate governance among financial intermediaries. Corporate Governance is the only royal road to the portal of corporate success and there is no short cut to achieve the same.