Appendix –V

CORPORATE LAWS GOVERNING THE CORPORATES IN INDIA

The matters of capital structure decision, technical know how, sharing usage of foreign capital, public issue of shares and bonds expansion in plant capacity contracts with inside or outside parties, product diversification, sale in open market and levy sales storage and hoarding requirements of commodities utilizing undistributed profits by company, dividend declaration, workman’s compensation matters, appointment of auditors, company secretary, cost auditors, maintenance of records, investors protection, taxation matters, foreign exchange handling, import and export, safety measures, workers unrest, better working conditions in factories, licensing to new and existing industries, acquisition of property, dealing in securities, consumer protection, pollution and environment matters and other control matters have gripped the corporate sector with boss and subordinate environment between the regulators and the corporate respectively.

The functioning of corporate has been regulated under various laws in the matters of resources deployment, increase in capacity and changes in the equity holding especially by foreign investors. The Companies Act of 1956 is governing the corporate by imposing restrictions requiring compliances and protecting shareholders to some extent.

The Companies Act 1956 providing governance mechanism of a corporate through restrictive provisions on amendment of memorandum and articles of association, borrowing powers of the board, charge registration in favour of the lenders, filing of statutory forms, disclosure of interests in contracts and agreements of the members of the board, restrictions of the payment of managerial compensation, lifting of corporate veil in case of misuse of corporate entity for private gains of directors and managements, independence of auditors, powers and duties of auditors, restrictions on the
number of directorships of companies by persons powers reserved only to the members ordering for investigations restrictions in giving guarantees by the corporate and acceptance of public deposits etc These measures have contained few features of governance viz transparency accountability disclosure independence etc The relevant sections of the Companies Act are appended to highlight the nature of requirement of law and compliance expected from a corporate.

Two methods of enforcing governance namely statute based and voluntarily based on the corporations are in practice worldwide The merits and demerits of both the methods are different in different countries owing to divergent legal framework socio political and economic set-up and open market mechanism India is no exception to this global scenario of enforcing governance.

The corporate sector in India faced over regulation on various aspects affecting the smooth functioning of its business For every problem or issue the regulatory authorities including state and central governments enacted different statues which ultimately resulted too much compliance of law with high cost and more manpower The license permit raj also imposed strict penal measures in the event of non compliance of various laws by the corporate sector During the last four decades i.e up to 1990 the corporate sector in India practiced more of rule based or statutory based governance with box ticking culture just to comply with the applicable laws.


The operations of the Companies Act of 1956 in India have resulted in ensuring minimal governance by the enforcement of its various provisions and rules on the corporate The rigor of law is not translated into proper actions due to lack of efficient and effective monitoring machinery at the
various Registrar of Companies in the States as well the Department of Company Affairs Ministry of Finance Government of India. The company is bound to file different returns forms audited financial statements to the Registrar of Companies. The monitoring mechanism at the Registrar of Companies level suffered drawbacks viz lack of manpower, lack of proper and timely scrutiny by the experienced manpower, non-issue of show cause notices for various defaults. The business transactions with associates companies diverting company funds to subsidiary companies, interlocking of directors, same management in respect of various companies, lack of effective monitoring by the institutional directors, tax evasion cases involving corporate board of directors, lack of professionalism in management, influence of dominant shareholders, etc., have created a big gap between company's actual functioning and the requirement of law. Independence of board and auditors was not ensured in a required extent under the Companies Act 1956.

In spite of existence of strict provisions, the Law has prescribed only minimal governance to the corporate. The maximum governance is expected to be done by corporate by following voluntary code of governance with a view to ensure proper treatment of all the stakeholders of the company. Since the Companies Act 1956 has failed in dealing with the management and BOD who have misused the company's property to their ends, there is a debate on the implications of statutory governance by the force of law vis a vis voluntary governance by the force of ethical consideration. The various scams in the Indian corporate sector have to some extent undermined the faith of the investing community in the very corporate system. Moreover, the guilty persons have not been effectively booked under the laws of the land which to some extent has eroded the confidence of the investors even in the judiciary. The provision of referring sick industries to BIFR under the Sick Industrial Act has become a shelter of escaping from the recovery proceedings of the FIs and banks in India to some of the unscrupulous board and management of the company. It is reported that 90% of the cases referred to BIFR are from
private sector unlike the general view of referring more public sector undertaking to BIFR. Thus much more needs to be done in ensuring good corporate governance by the Legislature in India.

*The Companies Second Amendment Act 2000*[^36] — introduction of postal ballot in case of listed company; publishing the directors responsibility statement in the annual report; adherence to accounting standards and policies by the corporates; detecting fraud and other irregularities by including the provision of audit committee; protecting against divulge of insiders information by restricting the ownership of shares by the statutory auditors of the company etc.

*The Securities Exchange Board of India Act, 1992* - Providing various measures to protect the interest of the investors in security market; investor education; shareholders' rights and responsibilities; depository and dematerialization guidelines for trading in securities; guidelines for listing of securities; corporate governance compliance as per listing agreement; penalties and prosecution for the contravention of SEBI Act.

The Securities and Exchange Board of India (SEBI) Regulations SEBI had constituted a committee on corporate governance under the Chairmanship of Shri Kumar Mangalam Birla Member SEBI board to promote and raise the standard of corporate governance in respect of listed companies. The SEBI board in its meeting held on January 25, 2000 considered the recommendation of the committee and decided to make the amendments to the listing agreement in pursuance of the decision of the board. It is advised that a new clause namely clause 49 be incorporate in the listing agreement as under the standards of corporate governance in relation to board of directors; the audit committee; the remuneration of directors; board procedure; management; shareholders.

[^36]: The Companies Second Amendment Act 2000
It is made mandatory to include a report on the compliance of corporate governance in the annual report together with a certificate from the auditors of the company regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with directors report. The said certificate shall also be sent to stock exchanges along with the annual returns filed by the company. The SEBI has suggested schedule of implementation from the financial year 2000-2001 (but not later than 31st March 2001) by all entities included in either group A of BSE or in S&P CNX NIPTY index as on 1-1-2000. Within financial year 2001-2002 (but not later than 31st March 2002) by all entities listed which are presently listed with paid up share capital of 10 crore and above or net worth of Rs 25 cores or more any time in the history of the company. Within financial year 2002-2003 (but not later than 31st March 2003) by all the entities which are presently listed with paid up capital of Rs 3 crores and above. By all entities seeking listing for the first time at the time of listing.

The SEBI has also prescribed Annexure 1—Information to be placed before board of directors, Annexure 2—Suggested list of items to be included in the report on corporate governance in the annual report of the companies, Annexure 3—Non mandatory requirements.

OTHER LAWS HAVING A DIRECT BEARING ON THE GOVERNANCE OF CORPORATES

1. Ministry of Finance  
   The Reserve Bank of India Act 1934
   Government of India, New Delhi. The directive to the companies under this Act in the matters of acceptance of public deposits, capital structure, disclosure of information, defaults in repayments, regulation of deposits accepted by unincorporated bodies.

2. Ministry of Companies Affairs  
   Securities Contracts (Regulation) Act, 1956, Government of India, New Delhi. Preventing undesirable transactions in securities by regulating the business of dealing in...
3 Ministry of Company Affairs Securities Exchange Board of India Act 1992, Government of India New Delhi Providing various measures to protect the interest of the investors in security market investors education shareholders rights responsibilities depository and dematerialization guidelines for trading in securities gnevance redresal listing of securities corporate governance compliance as per listing agreement penalties and prosecution for the contravention of SEBI Act

4 Ministry of Labour Industrial Disputes Act 1947, Government of India New Delhi – To make provision for investigation and settlement of industrial disputes and to ensure cordial industrial relations to improve productivity with mutual gain to the workers and management

5 Ministry of Law Indian Contract Act, 1872, Government of India New Delhi – prescribing the duties rights of the parties involved in various contracts and agreements relating to business transactions with penalties for breach of contractual obligations Checks on misrepresentation of facts and fraudulent activities are provided to ensure good governance

6 Ministry of Industry Industries (Development and Regulation) Act 1951, Government of India New Delhi – providing for the development and regulation of certain industries referred as scheduled industries provisions of licensing granting permission investigation on certain matters and assuming the management or control of an industrial undertaking were few steps taken to ensure good governance
7 Ministry of Labour The Workmen's Compensation Act 1923
Government of India – to provide for payment of compensation to the workers in case of retrenchment and layoffs and to safeguard the interest of the workers.

8 Ministry of Labour The Industrial Disputes Act 1947, Government of India New Delhi – To make provision for investigation and settlement of industrial disputes and to ensure cordial industrial relations to improve productivity with mutual gain to the workers and management.

9 Ministry of Labour The Employees State Insurance Act 1948
Government of India New Delhi – to provide certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. This legislation is compensating the workers by giving monetary benefits for the period during which they remain absent owing to accidents/medical grounds. The provision of medical treatment by the State Government is also provided.

10 Ministry of Labour The Factories Act, 1948 Government of India New Delhi – providing health safety protection against hazardous processes, workers welfare, standard working hours, employment of children, facility of annual leave with wages, and workman’s compensation human dignity and protecting human resources by providing congenial working environment.

11 Ministry of Labour The Minimum Wages Act 1948, Government of India New Delhi – To provide minimum wages to various categories of employment with a view to ensure minimum standard of living and to avoid discrimination in the payment of wages to the workers. Announcing periodical dearness allowances to the workers is compensating increased cost of living.
12 Ministry of Labour *The Payment of Bonus Act 1965* Government of India New Delhi – to regulate the payment of bonus to the workers as one of incentives for productivity enhancement

13 Ministry of Labour *The Employees Provident Funds and Miscellaneous Provisions Act 1952* Government of India New Delhi – to provide for the institution of provident fund pension fund and deposit linked insurance fund for employees in factories and other establishments control on deduction and timely contribution of provident funds to the designated fund settlement of funds at the time of retirement from the employment and imposing penalties for the violation of the Act This Legislation is important from the point of view of workers who are the significant stakeholders of the company Workers welfare measures are ensured through this legislature Moreover this legislature is providing checks and balances to the employers by enforcing strict measures for contravention

14 Ministry of Finance *The Income Tax Act 1961* Government of India New Delhi – regulating the taxation of income of every person including corporate containing restrictive provisions on tax evasion and tax avoidance discouraging contributions to political parties and personal expenditures dealing with tax and economic offenders by imposing penalty and launching prosecution implementing tax audit in case of certain persons and announcing tax payers charter etc

15 Ministry of Finance *The Customs Act 1962* Government of India New Delhi – regulations on imposing customs duty while import of goods of all kinds and dealing with the defaulters with strict penal measures
16 Ministry of Finance  The Central Excise Act 1944  Government of India New Delhi - regulations on imposing central excise duty on manufactured goods and measures to check duty evasion and under valuation of commodities

17 Ministry of Law  The Benami Transaction (Prohibition) Act 1988, Government of India New Delhi - prohibiting Benami transactions in the matters of property and business transactions extensive vigilance on Benami transactions and disclosure requirements of all the transactions in which the directors/management is interested to avoid laundering of black money through Benami transactions

18 Ministry of Information  The Information Technology Act 2000 Government of India New Delhi - facilitating electronic governance through electronic records digital signature concept e-commerce transactions Providing the control of private and public key and penal consequences for the offenders of law

19 Ministry of Law  The Chartered Accountants Act 1949 Government of India New Delhi - regulating the profession of chartered accountancy by seeking the members compliance to the code of ethics deals with professional miss conduct in relation to chartered accountants in practice and service The independence of an auditor has been the hallmark of code of ethics which ushered the need of good governance by the professionals

20 Ministry of Law  The Cost and Works Accountants Act, 1959, Government of India New Delhi - providing the members of the institute to act with professional integrity independence and with fair practice code of ethics in relation to members in practice and service
21 Ministry of Law  The Company Secretaries Act, 1980, Government of India New Delhi – prescribing the qualifications of company secretary enquiring into the misconduct of the members seeking compliance of code of ethics holding the company secretary as a responsible officer and ensuring independence in discharge of professional services etc

22 Ministry of Law  The Essential Commodities Act 1955 Government of India New Delhi – exercise of control of production supply and distribution of certain essential commodities in the interest of general public the powers of confiscation of essential commodities imposing penalties launching prosecution against the hoarders and black marketers ensuring fair price by curbing unfair practices

23 Ministry of Law  The Consumer Protection Act 1986 Government of India New Delhi – providing for better protection of consumers interests dealing with consumers grievances settlement of consumers disputes procedure while dealing with consumer grievances by the company/others protecting against mal practices in supply of goods and services

24 Ministry of Law  The Environment Protection Act, 1986 Government of India New Delhi – providing for the protection and improvement of the environment Governing against hazards to human beings living creatures plants and properties Preventing environmental pollution to protect human health and conserve natural resources
ICGN RECOMMENDATIONS ON VOTING RIGHTS (referred in Chapter IV)

The ICGN outlined certain recommendations to clear the barriers to voting rights so as to avoid any impediments to the accountability of the companies. The recommendations are:

1. Equal and fair voting rights regardless of how much equity a shareholder holds or how geographically distant a shareholder may be from the company. The owner or owner's agent should cast vote only according to instructions.

2. Meeting notices to be sent to the shareholders with fullest particulars including agenda.

3. Company should set the voting deadline for mailed ballots as close to the meeting as is practical, with a emphasis on ease of share voting.

4. Shareholders should be able to vote at company's they own without facing the cost of inconvenience of having their shares blocked from trading or deposited in a designated institution for a period of time.

5. Companies with internationally diversified ownership should ensure that agendas and notices are printed in at least one internationally accepted language.

6. The procedures of voting should be re-examined, simplified and updated with a view to enfranchising and facilitating share voting by the investors. Company should make available to the shareholders a variety of voting methods such as voting by mail, telephone, fax, Internet, swift or e-mail.

7. All votes should be counted regardless of whether they are received by proxy or other means or cast by hand or voice at the meeting and the result should be declared.

8. The share voting systems should be designed to minimize costs imposed on intermediaries and shareholders in exercising voting rights.
There should be appropriate regulation or an effective mechanism to ensure that shareholders meeting agendas is released according to established rules and procedures and that correct amount and appropriate amount of proxy information is distributed to shareholders.

Several financial ratios do indicate the social responsibility of the corporate business (appendix)

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<th>Measures of Financial Status and Performance</th>
<th>Indication of</th>
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<td>Debt– Equity Ratio (Loan Funds to Equity Funds)</td>
<td>Financial stability or leverage situation</td>
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<td>Capital Investment Ratio (Net Fixed Assets to Shareholders Funds)</td>
<td>Flexibility of investment in the corporate</td>
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<td>Profit Margin Ratio (Net Profit to Net Sales)</td>
<td>Profit Margin in sales activity</td>
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<td>Profitability Ratio (Net Profit to Tangible Net worth)</td>
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<td>Working Capital Ratio (Net Profit to Net Working Capital)</td>
<td>Internal source of financing capacity of the Company</td>
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<td>Capital Turnover Ratio (Net Sales to Total Funds)</td>
<td>Efficiency in use of funds in Company's operations</td>
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<tr>
<td>Debtors Turnover Ratio (Sales to Debtors)</td>
<td>Recovery from Credit Customers of finished goods / services</td>
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