# Chapter 2: Corporate Governance Codes and Regulatory Framework

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2.1 Meaning of Corporate Governance Codes:
The corporations have been transformed with their objectives from one that was to benefit entirely to their shareholders and investors to one that is intended to benefit their all stakeholders. The translucent and contemporary mechanism of governing corporate has been evolved very recently in a way that results in maximizing the shareholders values and benefiting to all other stakeholders and ultimately to the entire society. The self-regulatory and conformity of external regulations have been originated very recently through the modernization and complication along with many corporate scams and frauds during the last century throughout the corporations of global economies. These regulations and legislations fetched by the governments through various committees, business and investors associations persuade the Corporate to govern well and strengthen their business functioning. This has resultant in the set of codes and recommendations containing detail guidelines that fortify the Corporate to pursue ‘minimum standards’ or the ‘best practice’ of corporate governance. Thus, the Code of Corporate Governance restraints the guidelines and directives in regards to the best performance and effective control of the firms to satisfy the interest of all stakeholders.

The Corporate Governance Code conveys the set of criterions to be followed by the firms for the composition of the board, roles and responsibilities of the directors of the board, their relationship with the shareholders and management, rights and duties of the shareholders, disclosure policy of financial and non-financial information, etc. The Corporate Governance Code encourages detail set of guiding principles and ‘best practice’ to be executed by the firms. The Corporate Governance Code have been adopted to improve overall corporate governance practices and to make the investors and fund lenders more conversant and contented to take the appropriate investment decisions in the particular firms. The evolution of Corporate Governance Code has been encouraged by the burning need of investors’ confidence boost up through the adaptation of detail principles underlined in this code. The Corporate Governance Code bestows the solution to cope up with the confrontation and scarcity in the corporate governance structure of any economy. The Corporate Governance Code of a country should be resilient to implement and customize with effortless and comfortable procedure legislation and regulation.
The Corporate Governance Codes have been issued by divergent bodies ranging from Government Bodies or Regulators, their appointed committees to the stock market commissions or trade and business associations till investors associations. The Corporate governance Code has been fascinated since the development of Foreign and Corrupt Practice Act of 1977 in the U.S. that contained specific provisions regarding the establishment, maintenance and review of systems of internal control. This act has been laid on the Watergate Scandal in the U.S. leading to the US regulatory and legislative bodies to highlight control failures which allowed several major corporations to invent illegal practices in the governance of these corporations. In 1979, the Security and Exchange Commission proposed to have mandatory reporting system on internal financial controls to be practiced by all corporations. This was followed with the presentation of the ‘Code of Best Practice’, in 1992, by Cadbury Committee in the U.K. After the publication of this code, many other countries emulated the innovative approach of the Cadbury – Day Report in Canada in 19994; Swedish Academy Report in 1994; The King Committee Report in South Africa in 1994; Vienot Report in France in 1995; Netherlands’ Peters Committee Report in 1997; The CII Committee Report in India in 1998; and the Kumar Mangalam Birla Committee Report in India in 2000. At every alternate year, somewhere in the global economy, different codes of corporate governance has been released or revised since more than last two decades.

In most of the global economies, two diverse approaches of the Corporate Governance Code have been approved and implemented vise Principle Base Approach and Standard Rules Based Approach. The former one is laid down with the leading corporate governance practice guidelines and a framework for disclosures to be pursued by the firms. They have to report compliance through codes along with the reasons of deviations or dilutions, if any in the compliance of the codes. This approach offers the flexibilities to the firms to adopt the applicable and appropriate aspects of the code only. This approach is also known as ‘comply or explain’ approach and trailed in the countries like U.K., Canada, Netherlands, Spain, Australia, Malaysia and South Africa. This approach contains many voluntary guidelines which are not directly linked with the stock exchanges of the concern countries as far as the
Listing requirements are concern. In India, the Ministry of Corporate Affairs (MCA) has issued the Corporate Governance Voluntary Guidelines to make the corporate fraternity aware about the best practice of the corporate governance and not linked with the Indian Stock Exchanges’ listing requirements. The latter approach is laid down with very specific guidelines and detail corporate governance practices and compliance. The firms have to report the compliance mandatorily failing which may impose heavy penalties till delisting of the firm in the extreme situation. Thus, this approach doesn’t offer any flexibility to the firms in the adoption prescribed codes. This approach is also known as ‘comply or else’ approach and trailed in the countries like U.S., India, Japan, Korea, and many Commonwealth Asian Countries. In India, the Security and Exchange Board of India (SEBI –2003) has issued the Corporate Governance Compliance Code to be strictly followed by the listed firms in the form of mandatory and non-mandatory recommendations. Likewise, in U.S., the Sarbanes-Oxley Act (2002) was formulated to protect the investors through the provisions from establishment of public company accounting oversight board (ACAOB) to Audit Committee and till the penalties to be levied on the firms failing to comply with the act. This chapter aspires to symbolize an overview of the Legal System and Regulatory Framework of India as well as leading diverse countries of the world along with the historical factors and experiences that have contributed to the current corporate governance system of the world economies. This has made available in the next section followed with brief description of the historical evolution and the recent developments in corporate governance in India.

2.2 Development of Codes in India:

The Corporate Governance issues have received considerable attention throughout the diverse countries in the world because of their apparent importance for the economic health of business firms and society at large especially after accumulation of corporate scams and misfortunes in the recent times witnessing in U.S., U.K. Canada, Australia, and many East Asian Countries including India. This has recorded failures of several leading companies in the last two decades or so. A Country’s Legal Framework and Regulatory System persuade very vital position in crafting an effective corporate governance mechanism and making its external financing and investment position
very strong. The strong investment and financing pattern of the corporate in turn shapes the economic growth of a whole country.

The economic crisis has been registered due to poor governance system and lack of transparency before and during post liberalization of most of the East Asian Countries. Since then the Corporate Governance has been a crucial issue in these developing countries too. Among these all countries, majority of the features of the corporate handlings are similar and marked with concentrated ownership and predominance of family control or state control shaping an important component of the whole corporate sector. This has led the corporations of these countries to many adverse consequences as far as their governance is concerned. It has not left India behind as far as this undesirable consequence of corporate governance matter is concerned.

During the period of post-independence from 1947 till the economic reforms in the 1990s, the Indian Corporate Sectors have immerged as a mix of Government and Private Firms (Family Business Groups, Individual Companies and Multinationals) as well as PPPs, and had espoused an authority and control approach to the developments. It has been sustained itself beyond the dominated chronicle sufferers of many developing economies by poor governance system of their corporate sectors. During this era, various industrial and productive activities of the industrial sectors like oil and gas, fertilizers, etc., as well as the banking sectors had been nationalized by the government. This had made the banking system as the principal lenders of the debt and equity funds to the major corporate sectors both government and private. Further, the industrial and production activities was regulated with a highly multifaceted regime through licensing control, reservation of many productive activities to the public sector, and control of labor markets, prices, and wages, etc. Post Liberalization in 1990s has radically speculated the Indian Economy and opened up its doors for world economy to associate and contribute for each other. This has gradually relaxed the government’s complex norms and controls over licensing, market entries and pricing of the products waging to the labors, etc. This has generated modest motivations for the Private Firms’ Managers and Executives to willingly take up the good governance mechanism in their firms.
2.2.1 Regulatory Bodies of Governance of Indian Corporate:

With the origin of Companies Act 1956 to be in operation as the strongest foundation of Corporate Governance and Indian Accounting System, India Economy has emerged far better than many East Asian Countries in terms of Corporate Legislation and Regulations. In 1991, the Indian Government passed through a serious fiscal crisis that retorted by enacting a series of reforms including reduction in state assisting funds, bank privatization, and general liberalization of the economy. Post Liberalization from 1991, several significant market scandals appeared to the force. In 1992 the establishment of Securities and Exchange Board of India (SEBI) has been one of the significant transformations towards regulating and controlling the Indian Corporate and its Financial Markets. SEBI has slowly and gradually obligated all listed companies to comply the minimum standards and norms of Corporate Governance. SEBI, through the compliance norms of high disclosure and investors’ protection index, provides one of the strongest and highest levels of investor protection including the credit lenders rights. Sarkar and Sarkar, 2002, orates that although the Indian legal system is obviously built on the English common law system, the corporate governance system is by and large a hybrid of the outsider systems and the insider systems. Beyond the Companies Act 1956 and SEBI, the regulatory framework of Corporate Governance for Indian Firms, consists of the Securities Contracts (Regulation) Act, 1956, Sick Industrial Companies (Special Provisions) Act 1985, Listing Agreement, and Small and Medium Enterprises Development (SMED) Act, 2006. The enactment of the Micro, Small and Medium Enterprises Development (SMED) Act, 2006 provides the first-ever legal framework for recognition of the concept of ‘enterprise’ (comprising both manufacturing and services) and integrates the three tiers of these enterprises, vise, micro, small and medium. A brief note on each of these regulatory frameworks is elaborated in the following phrases.

2.2.1.1 Companies Act, 1956:

The foundation, formation, incorporation, financing, functioning and winding up of any company, private or public, is regulated primarily by The Companies Act, 1956. Since the inception of this Act in India, each and every company getting incorporated are programmed and regularized only by this Act whether it is organizational,
financial or any managerial aspect of a company is concerned. The main focus of the Act is the Regulation aspects of Financial and Management of the India Companies. Whereas, the winding up matter of any company is within the purview of Indian High Courts. Along with the regularization of the Indian Companies, the financial and investment protection of the shareholders and all other investors are the primary function of the Act. Therefore, the Act has to balance its role between these two competing factors, specifically, Company Management and Investors’ Protection. Beyond these all functioning of the Act, the main objects of the Act are listed as under.

1. To protect the interests and investments of a large number of shareholders;
2. To safeguard the interests and investments of creditors;
3. To help the development of companies in India on Economically Healthy Lines;
4. To protect the overall interest of all stakeholders by persuading the Government with adequate powers to intervene in the affairs of a company in public interest and as per procedure prescribed by law; and
5. To help the attainment of the ultimate ends of social and economic policy of the Government,
6. To empower the Management of the Company to regulate and comply with the Governance Mechanism of the Company,
7. To balance between the Investors and the Managers of the Company by establishing the equilibrium of roles and responsibilities among them,
8. To raise the Wealth of the Company by enabling the management to comply with the norms and regulations of the act, and
9. To establish the good governance system amongst all companies of the nation.

Since its foundation, the Companies Act, 1956 has been modified and improved many times incredibly. Some of the significant stipulations have been commenced through Companies (Amendment) Act, 1999 those are resembling to nomination facility for shareholders and deposit holders, buyback of securities, relaxation on norms relating to inter-corporate loans and investments, setting up of investor education and protection fund, allowing sweat equity and compliance of accounting standards in preparation of annual accounts. The Companies (Amendment) Act, 2000 initiated providing the postal ballot, audit committees, directors’ responsibility statement,
debenture trustees, secretarial compliance certificate, reduction of time for payment of dividend, tenfold increase in fines and option for election of a director. The Companies (Amendment) Act, 2006 had amended further the section 266B which used to provide that no individual can be appointed or reappointed as director of a company unless a director identification number was allotted to the same. With a view to improving the investor’s grievances redressed process, a new system for on-line lodging of complaints by investors and depositors has been developed in MCA 21 e-governance programme of the Ministry of Corporate Affairs (MCA). The new system facilitates investors and depositors to electronically lodge their complaints with the Investor Protection Cell (IPC) of the Ministry without the requirement of sending their grievances in writing through post.

2.2.1.2 Securities Contracts (Regulation) Act, 1956:
Along with the inception of Companies Act, 1956, the Central Government has also inducted the Securities Contracts (Regulation) Act, (SCRA), 1956 containing a mere 31 sections. All the Stock Exchanges of India have been under stringent vigilance and surveillance of the SCRA, 1956. The provisions of the Act were formally governed by the Central Government. Conversely, from the time of enactment of the SEBI Act, 1992 the Board established under it (SEBI) is concurrently having powers to oversee almost all the provisions of the Act. It covers all types of tradable government documents vise shares, stocks, bonds, debentures and any other form of marketable securities issued by companies, including the ‘rights and interest in securities’ thus effectively allowing for options. The SCRA defines the parameters of conducting the stock exchanges as well as its powers.

2.2.1.3 Sick Industrial Companies (Special Provisions) Act, 1985:
The Sick Industrial Companies Act (SICA), 1985 has been established to govern the liquidation and rehabilitation of large industrial corporations. This was a special provision made to reform the bankruptcy of large industrial companies whose process is directed and supervised by the Board for Industrial and Financial Reconstruction (BIFR). Under the SICA, 1985 the BIFR was created along with the appellate authority for two major concerns as to protect employment; and to gainfully use country’s resources. Within 60 days from the date of finalization of the duly audited accounts of the company for the financial year as at the end of which the company has
become a sick industrial unit, the Board of Directors of the Company shall make a reference to the BIFR for determination of the measures which shall be adopted with respect to the company. Beyond this, the Central Government or the State Government or Reserve Bank of India (RBI) or any national or state level Schedule Bank or Financial Institution may, if having sufficient reasons to believe that any industrial company has become, for the purpose of this Act, a sick industrial company, make a reference in respect of such company to the BIFR for determination of the measures which may be adopted with respect to such company. Such companies are required to approach to the BIFR and register when their net worth has been totally battered. Section 23 of the Act also foresees that the company shall inform the BIFR when even 50 percent of its net worth is battered. At the end of year 1986, the member of sick units in the portfolio of scheduled Commercial Banks stood at 1.48 lacks involving an outstanding bank credit of ₹ 4874 crore. Where the total numbers of large Industries which are sick were 637 units at the end of year 1985 increased to 714 units in the end of next year 1986. Likewise on the other hand the numbers of sick small scale units were also increased 1.18 lacks at the end of 1985 to 1.46 lakhs at the end of 1986. As per Govt. of India, Ministry of Micro, small & medium enterprise Annual report 2011-12, out of 3.11 lacks, approx. 90,000 MSMEs have been reported as sick.

2.2.1.4 Securities and Exchange Board of India (SEBI) Act, 1992:
As part of the Liberalization, Privatization and Globalization (LPG) initiations, under the Securities and Exchange Board of India (SEBI) Act, 1992, an independent capital market regulatory authority has been formed and activated to protect the interests of the investors in securities and to promote the regulation of the securities markets in India. The regulatory authority has become very known as SEBI the most influential board to regulate and transform the security market of the country in a more assured and trustworthy investment guide. The SEBI has been authorized to undertake the investigation of the affairs of any active person or body or any intermediaries in this securities market, if found having alleged and violated any regulatory provisions in any securities transactions or regulatory provisions detrimental to the investors or the market. Such investigations are undertaken to explore into possible or suspected or alleged breaches of security market regulations such as price-manipulation, artificial
volume-creation, creative accounting, insider trading, violation of takeover code or any other regulations, public issues related irregularities or any fraudulent or unfair trade practices. The main sources of information to initiate the investigations are stock exchanges, internal surveillance of SEBI, media reports, credit rating agency reports, and formal complaints registered with SEBI by any intermediaries or stakeholders, etc. While commencing any formal investigation, the SEBI asks for information, induces furnishing of documents, beckons persons for examination, scrutinizes witnesses and, if requires, carry out even search and seizure operations with magistrates’ approval. During the investigation, if the person/s or body or intermediaries found guilty, the SEBI may release a show cause notice for further actions and corrective measures. The SEBI are authorized to take appropriate actions and penal actions, depending on the nature and the gravity of offences, through quasi-judicial process of enquiry, personal hearing etc. The actions comprise warning, suspension of activities, and cancellation of registration, prohibition of dealing in securities, denial of access to the capital market for a specified period and imposition of monetary penalties with the extension of prosecution proceedings to be launched. The primary investigation has to be completed within the time limit of four months while the formal investigation has to be completed within eight months’ time duration.

2.2.1.5 Listing Agreement:

The investments made by all investors in varied forms are traded through the capital markets of the economy. In this capital markets, all transactions are dealt and legalized through the stock exchanges. Those companies desirous to get their stocks and securities be traded openly amongst public are needed to get their stocks and securities listed with the registered stock exchange though an official agreement. This agreement is popularly known as ‘Listing Agreement’. The Listing agreement was first introduced by Bombay Stock Exchange and later followed by other stock exchanges. The Listing Agreement is entered by the concern company with certain disclosures and performing certain legal acts with the respective stock exchange. Such Agreement is executed under the common seal of the company. The primary compliance needs to be disclosed with the provisions of the Listing Agreement are listed as under.
1. Clause 16 read with section 154 of the Companies Act regarding the book closure and record date and its purpose;
2. Clause 20 about the timely disclosure of declaration of dividend to stock exchanges;
3. Clause 35 about furnishing of the quarterly report of the shareholding pattern in the prescribed format to stock exchanges within 15 days of the end of the quarter;
4. Clause 47(c) about the obtaining of half yearly certificate from a company secretary in practice and its submission to stock exchanges; and
5. Clause 49 about furnishing quarterly report on corporate governance.

2.2.1.6 The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006:

This Act of parliament received the accent of the president on 16th June, 2006 to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. This Act is called as the Micro, Small and Medium Enterprises Development (MSMED Act, 2006. The Act aims at facilitating the promotion and development of Micro, Small and Medium Enterprises (MSMEs) as well as ensuring their competitiveness. The Act authorizes the Central Government to notify programs, guidelines and notifications to promote and grow the MSMEs. The Act also aims at ensuring timely and smooth flow of credits and funds to minimize the sickness among them.

2.2.2 The Confederation of Indian Industries (CII) Initiatives:

From the above explained regulatory frameworks, it is inferred that the Governance reforms in Indian Corporate World have been embedded in and greatly influenced by the broader institutional, economic and social environments. Aligned with the liberalization and opening up the doors of the Indian Economy to the world, the Indian Corporate Regimes have been moved towards adoption of appropriate measures in the relevant legislations and regulations for making significant changes in the Corporate Governance Mechanism of their corporations. One of the first such endeavors as a process of restructuring the corporate governance framework was in the form of development of a Code of Corporate Governance by Confederation of
Indian Industry (CII). In December 1995, CII set up a task force, under the chairmanship of with Mr. Rahul Bajaj, to design a voluntary code of corporate governance. The final draft of this code was widely circulated in 1997. In April 1998, the code was released. It was called “Desirable Corporate Governance: A Code” – April 1998. Between 1998 and 2000, over 25 leading companies including Bajaj Auto, Hindalco, Infosys, Dr. Reddy’s Laboratories, Nicholas Piramal, Bharat Forge, BSES, HDFC, ICICI and many others voluntarily followed the code.

The purpose of the endeavor was to grow and encourage a code of corporate governance to be implemented and pursued by Indian Companies, whether they are in the private sector or in the public sector, banks or financial institutions, all of which are mostly corporate entities. The major concern were the protection of investors’ interest, especially of the small investors; the promotion of transparency within business and industry; the need to move towards international standards in terms of disclosure of information by the corporate sector and, through all of this, to develop a high level of public confidence in the business and industry sectors of the economy.

The CII has pioneered the concept of Corporate Governance in India and has been internationally recognized as one of the best in the world. Corporate governance deals with laws, procedures, practices and implicit rules that determine a Company’s ability to take managerial decisions vis-à-vis its claimants in particular, its shareholders, creditors, customers, the State and employees. There is a global consensus about the objective of ‘good’ corporate governance: maximizing long term shareholder value. Since shareholders are residual claimants, this objective follows from a premise that, in well performing capital and financial markets, whatever maximizes shareholder value must necessarily maximize corporate prosperity, and best satisfy the claims of creditors, employees, shareholders, and the State.

The Task force made a number of recommendations relating to board constitution, role of non-executive directors, role of audit committees and many others listed as under.

1. A single board maximizes the shareholders’ value and meets at least 6 times in a year.
2. A listed company with turnover of 100 crore or more should have professionally competent independent non-executive directors:
   - At least 30% of the board, if chairman is non-executive
   - At least 50% of the board, if C&MD is the same person

3. A person should not hold directorship in more than 10 listed companies.

4. For non-executive directors to play a significant role in decision making, they need to
   - Become active participant,
   - Have a clearly defined responsibilities in the board,
   - Have know how to read financial statements,

5. To secure better efforts from non-executive directors, company should, pay commission over and above the sitting fees also consider the stock offering.

6. While reappointing members of the board, attendance record of concern directors should be referred and less than 50% attended directors should be prohibited to have reappointment

7. A List of Key Information To Be Reported To Board:
   - Annual Operating Plans & Budgets together with long term plan,
   - Capital Budget, Manpower and Overhead budgets,
   - Internal Audit Reports including cases of Theft and Dishonesty,
   - Fatal or Serious Accidents, Dangerous Occurrence or Effluents,
   - Default in Payment of Interest or Principal (any kind),
   - Details of any JV or Collaboration Agreement,
   - Substantial Payment Transaction of Goodwill, BE or IP,
   - Recruitment & Remuneration of Senior Officers, just below the Board Level, like CS, CEO, etc.
   - Labor Problems & Their Proposed Solutions

8. Quarterly Details of Foreign Exchange Exposure and Steps to Limit Risk of Adverse Exchange Rate Movement

9. Under “Additional Shareholders’ Information:
   - High & Low Monthly Averages of Share Prices in Major Stock Exchange Where the Company’s Stocks are listed,
Greater Details on Business Segment up to 10 % of Turnover, giving Share in Sales Revenue, Review of Operations, Analysis of Markets and Future Prospectus & Trends

10. Companies that default on fixed deposits should not be permitted to accept further deposits and make inter-corporate loans or investments or declare dividends until the default status is removed.

11. Major Indian Stock Exchanges should insist upon a compliance certificate, signed by the CEO & CFO with:
   - The Company will Continue in Business in The Course of the Following Year,
   - The Accounting Policies & Practices Conform to be the Standard Practice,
   - The Management is Responsible to Prepare, integrity and Present fairly the Financial Statements and Other Information that Contained in Annual Report,
   - The Board has overseen the Company’s System of Internal Accounting and Administration Controls either directly or through its Audit Committee.

2.2.3 SEBI Initiatives:
Since 1999, following the CII initiation, the SEBI drew three different committees to look into the matter of Corporate Governance and to suggest measures to improve the standards of Corporate Governance especially in the areas of disclosures of financial and non-financial information and the responsibilities of the Independent Directors of the Indian listed companies. The first committee was chaired by Kumar Mangalam Birla (KMB) Committee who submitted their findings to the SEBI, tagged as ‘Draft Report of the Kumar Mangalam Committee on Corporate Governance September 1999’. This committee submitted their final report in February 2000. This was trailed by second committee with Shri Naresh Chandra as chairperson constituted in August 2002. And the third committee of SEBI was formed in 2003 under the chairmanship of Shri Narayana Murthy. The Indian Corporate Governance reforms have been accredited and far reached through the instrumental founding of these three committees. The significant outcome of these three committees is the Clause 49 of the Listing Agreements. The Securities Exchange Commission (SEC) and SEBI recently announced increased cooperation and collaboration of capacity building events in India especially in corporate governance and internal controls. Such initiatives will
certainly provide the SEBI with further opportunities to enhance securities regulation especially in the realm of governance.

### 2.2.4 Recommendations of Kumar Mangalam Birla (KMB) Committee:

The KMB Committee was appointed on 7th May, 1999 by the SEBI with 18 members under the chairmanship of Kumar Mangalam Birla with a view to promoting and raising the standards of Corporate Governance of Indian Firms. The Committee paid much attention to major three issues of the Corporate Governance vise;

1. To suggest suitable amendments to the Listing Agreement executed by the stock exchanges for listed companies emphasizing more on continuous disclosures and responsibilities of independent and outside directors;
2. To draft a code of corporate best practices; and
3. To suggest safeguards to be instituted within the companies to deal with insider information and insider trading.

The KMB Committee’s recommendations consist of both mandatory and non-mandatory recommendations listed as under. The SEBI Board in its meeting held on January 25, 2000 considered the recommendation of the Committee.

**Mandatory Recommendations:**

1. **Board of Directors:** The Company agrees that 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. The number of independent directors would depend whether the Chairman is executive or non-executive. In case of a non-executive chairman, at least one-third of board should comprise of independent directors and in case of an executive chairman, at least half of board should comprise of independent directors.

For the purpose of this clause the expression ‘independent directors’ means 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 judgment of the board may affect independence of judgment of the director. The company agrees that all pecuniary
relationship or transactions of the non-executive directors viz-a-viz. the company should be disclosed in the Annual Report.

2. **Audit Committee:** The company agrees that a qualified and independent audit committee shall be set up and that shall have minimum three members, all being non-executive directors, with the majority of them being independent, and with at least one director having financial and accounting knowledge. The chairman of the committee shall be an independent director and s/he shall be present at Annual General Meeting (AGM) to answer shareholder queries. 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, button occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and when required, a representative of the external auditor shall be present as invitees for the meetings of the audit committee wherein the Company Secretary shall act as the secretary to the committee.

The audit committee shall meet at least thrice a year. One meeting shall be held before finalization of annual accounts and one every six months. The quorum shall be either two members or one third of the members of the audit committee, whichever is higher and minimum of two independent directors. The audit committee shall have powers which should include a) investigating any activity within its terms of reference; b) to seek information from any employee; c) to obtain outside legal or other professional advice; d) to secure attendance of outsiders with relevant expertise, if it considers necessary. If the company has set up an audit committee pursuant to provision of the Companies Act, the company agrees that the said audit committee shall have such additional functions / features as is contained in the Listing Agreement.

3. **Remuneration of Directors:** The Company agrees that the remuneration of non-executive directors shall be decided by the board of directors. The company further agrees that the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the annual report.

- All elements of remuneration package of all the directors i.e. salary, benefits, bonuses, stock options, pension etc.;
- Details of fixed component and performance linked incentives, along with the performance criteria;
- Service contracts, notice period, severance fees;
- Stock option details, if any – and whether issued at a discount as well as the period over which accrued and over which exercisable;

4. **Board Procedure:** The Company agrees that the board meeting shall be held at least four times a year, with a maximum time gap of four months between any two meetings. The company further agrees that a director shall not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a director. Furthermore it should be a 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. The minimum information to be made available to the board is listed as under.

- Annual operating plans and budgets and any updates;
- Capital budgets and any updates;
- Quarterly results for the company and its operating divisions or business segments;
- Minutes of meetings of audit committee and other committees of the board;
- The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary;
- Show cause, demand, prosecution notices and penalty notices which are materially important;
- Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems;
- Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company;
- Any issue, which involves possible public or product liability claims of substantial nature, including any judgment or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company;
• Details of any joint venture or collaboration agreement;
• Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property;
• Significant labor problems and their proposed solutions. Any significant development in Human Resources/Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.;
• Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business;
• Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material;
• Non-compliance of any regulatory, statutory nature or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

5. Management: The Company agrees that as part of the directors’ report or as an addition there to, a Management Discussion and Analysis report should form part of the annual report to the shareholders. This Management Discussion & Analysis should include 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 concerns; Internal control systems and their adequacy; Discussion on financial performance with respect to operational performance; Material developments in Human Resources / Industrial Relations front, including number of people employed. Disclosures must be made by the management to the board relating to all material financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

6. Shareholders: The Company agrees that in case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the information: (a) A brief resume of the director; (b) Nature of his expertise in specific functional areas; and (c) Names of companies in which the person also holds the directorship and the membership of Committees of the board. The company further agrees that information like quarterly results, presentation made
by companies to analysts shall be put on company’s web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site. The company further agrees that a board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressing of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This Committee shall be designated as ‘Shareholders / Investors Grievance Committee’. The company further agrees that to expedite the process of share transfers the 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. The delegated authority shall attend to share transfer formalities at least once in a fortnight.

7. Report on Corporate Governance: Company agrees that there shall be a separate section on Corporate Governance in the annual reports of company, with a detailed compliance report on Corporate Governance. Noncompliance of any mandatory requirement i.e. which is part of the listing agreement with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given as under.

- A brief statement on company’s philosophy on code of governance.
- Board of Directors: Composition and category of directors for example promoter, executive, non-executive, independent non-executive, nominee director, which institution represented as Lender or as equity investor; Attendance of each director at the Board of Directors (BoD) meetings and the last AGM; Number of other BoD or Board Committees s/he is a member or Chairperson of; Number of BoD meetings held, dates on which held.
- Audit Committee: Brief description of terms of reference; Composition, name of members and Chairperson; Meetings and attendance during the year.
- Remuneration Committee: Brief description of terms of reference; Composition, name of members and Chairperson; Attendance during the year; Remuneration policy; Details of remuneration to all the directors, as per format in main report.
- Shareholders Committee: Name of non-executive director heading the committee; Name and designation of compliance officer; Number of
shareholders complaints received so far; Number not solved to the satisfaction of shareholders; Number of pending share transfers.

- General Body meetings: Location and time, where last three AGMs held; Whether special resolutions; Were put through postal ballot last year, details of voting pattern; Person who conducted the postal ballot exercise; Are proposed to be conducted through postal ballot; Procedure for postal ballot.

- Disclosures: Disclosures on materially significant related party transactions i.e. transactions of the company of material nature, with its promoters, the directors or the management, their subsidiaries or relatives etc. that may have potential conflict with the interests of company at large; Details of non-compliance by the company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.

- Means of communication: Half-yearly report sent to each household of shareholders; Quarterly results which newspapers normally published in any website, where displayed; whether it also displays official news releases; and The presentations made to institutional investors or to the analysts; Whether MD&A is a part of annual report or not.

- General Shareholder information: AGM : Date, time and venue; Financial Calendar; Date of Book closure; Dividend Payment Date; Listing on Stock Exchanges; Stock Code; Market Price Data : High., Low during each month in last financial year; Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.; Registrar and Transfer Agents; Share Transfer System; Distribution of shareholding; Dematerialization of shares and liquidity; Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity; Plant Locations; Address for correspondence.

8. Compliance: The Company agrees that it shall obtain 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 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 returns filed by the company.
**Schedule of Implementation:**

The above amendments to the listing agreement have to be implemented as per schedule of implementation given below:

- By all entities seeking listing for the first time, at the time of listing.
- Within financial year 2000-2001, but not later than March 31, 2001 by all entities, which are included either in Group ‘A’ of the BSE or in S&P CNX Nifty index as on January 1, 2000. However, to comply with the recommendations, these companies may have to begin the process of implementation as early as possible.
- Within financial year 2001-2002, but not later than March 31, 2002 by all the entities which are presently listed, with paid up share capital of ₹ 10 crore and above, or net-worth of Rs 25 crore or more any time in the history of the company.
- Within financial year 2002-2003, but not later than March 31, 2003 by all the entities which are presently listed, with paid up share capital of ₹3 crore and above.
- As regards the non-mandatory requirement given in Annexure - 3, they shall be implemented as per the discretion of the company. However, the disclosures of the adoption/non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

**Non-Mandatory Recommendations:**

1. **Chairman of the Board:** A non-executive Chairman should be entitled to maintain a Chairman’s office at the company’s expense and also allowed reimbursement of expenses incurred in performance of his duties.

2. **Remuneration Committee:** The board should set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, the company’s policy on specific remuneration packages for executive directors including pension rights and any compensation payment. To avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive directors should comprise of at least three 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. The Chairman of the remuneration committee should be present at the Annual General Meeting, to answer the shareholder queries. However, it would be up to the Chairman to decide who should answer the queries.

3. Shareholders’ Rights: The half-yearly declaration of financial performance including summary of the significant events in last six-months, should be sent to each household of shareholders.

4. Postal Ballot: Currently, although the formality of holding the general meeting is gone through, in actual practice only a small fraction of the shareholders of that company do or can really participate therein. This virtually makes the concept of corporate democracy illusory. It is imperative that this situation which has lasted too long needs an early correction. In this context, for shareholders who are unable to attend the meetings, there should be a requirement which will enable them to vote by postal ballot for key decisions. Some of the critical matters which should be decided by postal ballot are given below:

- Matters relating to alteration in the memorandum of association of the company like changes in name, objects, address of registered office etc.;
- Sale of whole or substantially the whole of the undertaking;
- Sale of investments in the companies, where the shareholding or the voting rights of the company exceeds 25%;
- Making a further issue of shares through preferential allotment or private placement basis;
- Corporate restructuring;
- Entering a new business area not germane to the existing business of the company;
- Variation in rights attached to class of securities;
- Matters relating to change in management

2.2.5 Recommendations of Naresh Chandra Committee:
On 21st August, 2002, Naresh Chandra Committee was appointed as a high level committee by Department of Company Affairs (DCA) to examine various Corporate Governance (CG) issues. Naresh Chandra Committee Report on “CORPORATE
AUDIT & GOVERNANCE” has taken forward the recommendations of Kumar Mangalam Birla Committee on CG on the following to counts:

- Representation of Independent Directors on a company’s board
- The Composition of Audit Committee

As per the report of the Naresh Chandra Committee, the following mandatory recommendations relating to corporate governance have to be implemented by SEBI.

1. Disclosure of Contingent Liabilities: Management should provide a clear description in plain English of each material contingent liability and its risks, which should be accompanied by the auditor’s clearly worded comments on the management’s view. This section should be highlighted in the significant accounting policies and notes on accounts, as well as, in the auditor’s report, where necessary. This is important because investors and shareholders should obtain a clear view of a company’s contingent liabilities as these may be significant risk factors that could adversely affect the company’s future financial condition and results of operations.

2. CEO / CFO Certification: For all listed companies, there should be a certification by the CEO (either the Executive Chairman or the Managing Director) and the CFO (whole-time Finance Director or other person discharging this function) which should state that, to the best of their knowledge and belief:

- They have reviewed the balance sheet and profit and loss account and all its schedules and notes on accounts, as well as the cash flow statements and the Directors’ Report;
- These statements do not contain any material untrue statement or omit any material fact nor do they contain statements that might be misleading;
- These statements together present a true and fair view of the company, and are in compliance with the existing accounting standards and / or applicable laws / regulations;
- They are responsible for establishing and maintaining internal controls and have evaluated the effectiveness of internal control systems of the company; and they have also disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of internal controls, if any, and what they have done or propose to do to rectify these;
• They have also disclosed to the auditors as well as the Audit Committee, instances of significant fraud, if any, that involves management or employees having a significant role in the company’s internal control systems; and
• They have indicated to the auditors, the Audit Committee and in the notes on accounts, whether or not there were significant changes in internal control and / or of accounting policies during the year.

3. Independence of Audit Committee: All members of the audit Committee shall be non-executive directors.

4. Disqualification of Audit Assignments: 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 by the audit firm, its partners or members of the engagement team as well as their ‘direct relatives’;
   • Prohibition of receiving any loans and/or guarantees from or on behalf of the audit client by the audit firm, its partners or any member of the engagement team and their ‘direct relatives’;
   • Prohibition of any business relationship with the audit client by the auditing firm, its partners or any member of the engagement team and their ‘direct relatives’;
   • Prohibition of personal relationships, which would exclude any partner of the audit firm or member of the engagement team being a ‘relative’ of any of key officers of the client company, i.e. any whole-time director, CEO, CFO, Company Secretary, senior manager belonging to the top two managerial levels of the company, and the officer who is in default (as defined by section 5 of the Companies Act);
   • Prohibition of service or cooling off period, under which any partner or member of the engagement team of an audit firm who wants to join an audit client, or any key officer of the client company wanting to join the audit firm, would only be allowed to do so after two years from the time they were involved in the preparation of accounts and audit of that client;
   • Prohibition of undue dependence on an audit client. So that no audit firm is unduly dependent on an audit client, the fees received from any one client and
its subsidiaries and affiliates, all together, should not exceed 25 per cent of the total revenues of the audit firm. However, to help newer and smaller audit firms, this requirement will not be applicable to audit firms for the first five years from the date of commencement of their activities, and for those whose total revenues are less than ₹15 lakhs per year.

5. **List of Prohibited Non-Audit Services:** The Committee recommends that 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;
   - Financial information systems design and implementation, including services related to IT systems for preparing financial or management accounts and information flows of a company;
   - 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

6. **Independent Standards of Consulting and other entities that are affiliated to Audit Firm:**
   - Prohibition of undue dependence, where an audit firm has subsidiary, associate or affiliated entities, yardstick of no more than 25 per cent of revenues coming from a single audit client stated in above recommendation 8 should be widened to accommodate the consolidated entity. Thus, no more than 25 per cent of the revenues of the consolidated entity should come from a single corporate client with whom there is also an audit engagement;
   - The other prohibitions listed in above Recommendation 8 should also apply in full to all affiliated consulting and specialized service entities of any audit firm that are either subsidiaries of the audit firm, or have common ownership of
over 50 per cent with the audit firm. And all the tests of independence outlined in Recommendation 8 should be carried over to the consolidated entity.

7. *Compulsory Audit Partner Rotation:* There is no need to legislate in favor of compulsory rotation of audit firms; However, the partners and at least 50 per cent 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 exceed ₹10 crore, or companies whose turnover exceeds ₹50 crore, should be rotated every five years. Also, in line with the provisions of the European Union and the IFAC, persons who are compulsorily rotated could, if need be, allowed to return after a break of three years.

8. *Management’s Certification in the Event of Auditors Replacement:* Section 225 of the Companies Act needs to be amended to require a special resolution of shareholders, in case an auditor, while being eligible to re-appointment, is sought to be replaced. The explanatory statement accompanying such a special resolution must disclose the management’s reasons for such a replacement, on which the outgoing auditor shall have the right to comment. The Audit Committee will have to verify that this explanatory statement is ‘true and fair’

9. *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 specialized services affiliates, subsidiaries and associated companies are independent and have arm’s length relationship with the client company; have not engaged in any non-audit services listed and prohibited in Recommendation 9 above; and; are not disqualified from audit assignments by virtue of breaching any of the limits, restrictions and prohibitions listed in Recommendations 8 and 10.

10. *Appointment of Auditors:* The Audit Committee of the board of directors shall be the first point of reference regarding the appointment of auditors. To discharge this fiduciary responsibility, the Audit Committee shall:
    - Discuss the annual work programme with the auditor;
    - Review the independence of the audit firm in line with the above recommendations 8, 9 and 10.
- Recommend to the board, with reasons, either the appointment/re-appointment or removal of the external auditor, along with the annual audit remuneration.

11. 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. These must be listed in full in plain English — what they are (including quantification thereof), why these were arrived at, including qualification thereof, etc. In case of a qualified auditor’s report, the audit firm may read out the qualifications, with explanations, to shareholders in the company’s annual general meeting. It should also be mandatory for the audit firm to separately send a copy of the qualified report to the ROC, the SEBI and the principal stock exchange (for listed companies), about the qualifications, with a copy of this letter being sent to the management of the company. This may require suitable amendments to the Companies Act, and corresponding changes in The Chartered Accountants Act.

12. Setting up the Independent Quality Review Board: There should be established, with appropriate legislative support; three independent Quality Review Boards (QRB), one each for the ICAI, the ICSI and ICWAI, to periodically examine and review the quality of audit, secretarial and cost accounting firms, and pass judgment and comments on the quality and sufficiency of systems, infrastructure and practices. In the interest of realism, the QRBs should, for the initial five years, focus their audit quality reviews to the audit firms, which have conducted the audit for the top 150 listed companies, ranked according to market capitalization as on 31 March. Depending upon the record of success of such reviews, the DCA may subsequently consider altering the sample size or criterion.

13. Proposed Disciplinary Mechanism for Auditors:
- Classification of offences and merging of schedules: At present there are two schedules of offences and misconduct — with the second schedule requiring action by High Courts. These two schedules need to be merged, so that the Council is empowered to award all types of punishment for all types of offences. Further, offences need to be categorised according to the severity of misconduct, so that processes can be designed, and punishments awarded, according to the severity of the offence.
Prosecution Directorate: An independent permanent directorate within the structure of ICAI shall be created, which shall act as the Prosecution Directorate. This office will exclusively deal with all disciplinary cases and, hence, expedite the process of enquiry and decision-making by fully devoting its time and energy towards processing these cases. The office should be headed by a person of the level of Director, and should be one with a legal background and conversant with the provisions of The Chartered Accountants Act and its regulations. He and his office shall be independent of the electoral process of ICAI. Suitable regulations need to be framed to uphold the independence of this office. The Prosecution Directorate shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, regarding (i) the discovery and production of any document; and (ii) receiving evidence on affidavit.

14. Definition of Independent Directors: The term “independent director” is defined as a non-executive director of the company who:

- apart from receiving director 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;
- is not related to promoters or management at the board level or at one level below the board;
- has not been an executive of the company in the immediately preceding three financial years;
- is not a partner or an executive of the statutory audit firm or 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 three years. This will also apply to legal firm(s) and consulting firm(s) that have a material association with the entity;
- is not a supplier, service provider or customer of the company. This should include lesser-lessee type relationships also; and
- is not a substantial shareholder of the company, i.e. owning two percent or more of the block of voting shares.
- Has not been a director, independent or otherwise, of the company for more than three terms of three years each (not exceeding nine years in any case);
• 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.

• Moreover, if an executive in, say, Company X becomes an non-executive director in another Company Y, while another executive of Company Y becomes a non-executive director in Company X, then neither will be treated as an independent director.

The Committee recommends that the above criteria be made applicable for all listed companies, as well as unlisted public limited companies with a paid-up share capital and fee reserves of ₹ 10 crore and above or turnover of ₹ 50 crore and above with effect from the financial year beginning 2003.

15. Independent Director Exemptions: Legal provisions must specifically exempt non-executive and independent directors from criminal and civil liabilities under certain circumstances. SEBI should recommend that such exemptions need to be specifically spelt out for the relevant laws by the relevant departments of the Government and independent regulators, as the case may be. However, independent directors should periodically review legal compliance reports prepared by the company as well as steps taken by the company to cure any taint. In the event of any proceedings against an independent director in connection with the affairs of the company, defense should not be permitted on the ground that the independent director was unaware of this responsibility.

16. Percentage of Independent Directors: No 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 fee reserves of ₹ 10 crore and above, or turnover of ₹ 50 crore and above, should consist of Independent Directors. However, this will not apply to: (1) unlisted public companies, which have no more than 50 shareholders and which are without debt of any kind from the public, banks, or financial institutions, as long as they do not change their character, (2) unlisted subsidiaries of listed companies.
17. **Minimum Board Size of Listed Companies:** The minimum board size of all listed companies, as well as unlisted public limited companies paid-up share capital and fee reserves of ₹10 crore and above, or turnover of ₹50 crore and above should be seven – of which at least four should be independent directors. However, this will not apply to: (1) unlisted public companies, which have no more than 50 shareholders and which are without debt of any kind from the public, banks, or financial institutions, as long as they do not change their character, (2) unlisted subsidiaries of listed companies.

18. **Disclosure on Duration of Board Meetings / Committee Meetings:** The minutes of board meetings and Audit Committee meetings of all listed companies, as well as unlisted public limited companies with a paid-up share capital and free reserves of ₹10 crore and above or turnover of ₹50 crore must disclose the timing and duration of each such meeting, in addition to the date and members in attendance.

19. **Tele-Conferencing and Video Conferencing:** If a director cannot be physically present but wants to participate in the proceedings of the board and its committees, then a minute and signed proceedings of a Tele – Conference or Video Conference should constitute proof of his or her participation. Accordingly, this should be treated as presence in the meeting(s). However, minutes of all such meetings should be signed and confirmed by the director/s that has/have attended the meeting through video conferencing.

20. **Independent Directors on Audit Committees of Listed Companies:** Audit Committees of all listed companies, as well as unlisted public limited companies with a paid-up share capital and free reserves of ₹10 crore and above, or turnover of ₹50 crore and above, should consist exclusively of independent directors, as defined in above Recommendation 14. However, this will not apply to: (1) unlisted public companies, which have no more than 50 shareholders and which are without debt of any kind from the public, banks, or financial institutions, as long as they do not change their character, (2) unlisted subsidiaries of listed companies.

21. **Audit Committee Charter:** In addition to disclosing the names of members of the Audit Committee and the dates and frequency of meetings, the Chairman of the Audit Committee must annually certify whether and to what extent each of the functions listed in the Audit Committee Charter were discharged in the course of
the year. This will serve as the Committee’s ‘action taken report’ to the shareholders. This disclosure shall also give a succinct but accurate report of the tasks performed by the Audit Committee, which would include, among others, the Audit Committee’s views on the adequacy of internal control systems, perceptions of risks and, in the event of any qualifications, why the Audit Committee accepted and recommended the financial statements with qualifications. The statement should also certify whether the Audit Committee met with the statutory and internal auditors of the company without the presence of management, and whether such meetings revealed materially significant issues or risks.

22. Remuneration of Non-Executive Directors: The statutory limit on sitting fees should be reviewed, although ideally it should be a matter to be resolved between the management and the shareholders. In addition, loss-making companies should be permitted by the DCA to pay special fees to any independent director, subject to reasonable caps, in order to attract the best restructuring and strategic talent to the boards of such companies. The present provisions relating to stock options, and to the 1 per cent commission on net profits, is adequate and does not, at present, need any revision. However, the vesting schedule of stock options should be staggered over at least three year, so as to align the independent and executive directors, as well as managers’ two levels below the Board, with the long-term profitability and value of the company.

23. Exempting Non-Executive Directors from Certain Liabilities: Time has come to insert provisions in the definitions chapter of certain Acts to specifically exempt non-executive and independent directors from such criminal and civil liabilities. An illustrative list of these Acts is the Companies Act, Negotiable Instruments Act, Provident Fund Act, ESI Act, Factories Act, Industrial Disputes Act and the Electricity Supply Act.

24. Training of Independent Directors: DCA should encourage institutions of prominence including their proposed Centre for Corporate Excellence to have regular training programmes for independent directors. In framing the programmes, and for other preparatory work, funding could possibly come from the IEPF. All independent directors should be required to attend at least one such training course before assuming responsibilities as an independent director, or, considering that enough programmes might not be available in the initial years,
within one year of becoming an independent director. An untrained independent
director should be disqualified under section 274(1)(g) of the Companies Act,
1956 after being given reasonable notice. Considering that enough training
institutions and programmes might not be available in the initial years, this
requirement may be introduced in a phased manner, so that the larger listed
companies are covered first. The executing bodies must clearly state their plan for
the year and their funding should be directly proportionate to the extent to which
they execute such plans. There should be a ‘trainee appraisal’ system to judge the
quality of the programme and so help decide, in the second round, which agencies
should be given a greater role and which should be dropped.

25. Establishment of Corporate Serious Fraud Office: A Corporate Serious Fraud
Office (CSFO) should be set up in the Department of Company Affairs with
specialists inducted on the basis of transfer/deputation and on special term
contracts. This should be in the form of a multi-disciplinary team that not only
uncovers the fraud, but is able to direct and supervise prosecutions under various
economic legislations through appropriate agencies. There should be a Task Force
constituted for each case under a designated team leader.

26. SEBI and Subordinate Legislations, etc.: SEBI may refrain from exercising
powers of subordinate legislation in areas where specific legislation exists as in
the Companies Act, 1956. If any additional requirements are sought to be
prescribed for listed companies, then, in areas where specific provision exists in
the Companies Act, it would be appropriate for SEBI to have the requirement
prescribed in the Companies Act itself through a suitable amendment. In
recognition of the fact that SEBI regulates activities in dynamic market
conditions, the DCA should respond to SEBI’s requirements quickly. In case the
changes proposed by SEBI necessitate a change in the Companies Act, the DCA
should agree to the requirement being mandated in clause 49 of SEBI regulation
until the Act is amended. It would be appropriate for SEBI to use its powers of
subordinate legislation, in consultation with the DCA, and vice versa. All
committees set up either by SEBI or DCA to consider changes in law, rules or
regulations should have representatives of both SEBI and DCA. A formal structure
needs to be set up to ensure that the DCA, which regulates all companies, and
SEBI, which regulates only listed companies, act in coordination and harmony.
27. *Improving Facilities in the DCA Office:* The Government should increase the strength of DCA’s offices, and substantially increase the quality and quantity of its physical infrastructure, including computerization. This should be accompanied by increased outsourcing of work, contractual appointments of specialists and computerization – all of which will reduce, though not eliminate, the need to increase the officer-level strength of the Department. The inspection – capacity of the Department needs to be increased sharply; inspections should be a regular administrative function, carried out largely on random basis. Officers of the DCA need to go through refresher and training courses regularly. In view of the very dynamic world in which they function, continuous upgrading of their skills is essential.

2.2.6 **Recommendations of Narayana Murthy Committee:**
Signifying the regulators’ anxiety to expeditiously promote corporate governance practices in Indian Companies, SEBI believed it necessary yet to form another committee on corporate governance, comprising representatives from the corporate, stock exchanges, chambers of commerce, investors associations and professional bodies. The SEBI Committee on Corporate Governance (the “Committee”) was constituted under the Chairmanship of Shri N. R. Narayana Murthy, Chairman and Chief Mentor of Infosys Technologies Limited. The Committee met thrice on December 7, 2002, January 7, 2003 and February 8, 2003, to deliberate the issues related to corporate governance and finalize its recommendations to SEBI. Based on the recommendations of the Committee SEBI revised some sections of the Clause in August 2003 and later once again after further deliberations in December 2003. The terms of reference of the Committee are set out below.

- To review the performance of corporate governance; and
- To determine the role of companies in responding to rumor and other price sensitive information circulating in the market, in order to enhance the transparency and integrity of the market.

The Narayana Murthy (NM) Committee report conveys its total consensus with the recommendations given by Naresh Chandra Committee particularly on Definition of Independent Directors, Independence of Audit Committee, Disclosure of Contingent
Liabilities and Certification by COE’s and CFO’s. The mandatory and non-mandatory recommendations of the Committee are presented in beneath part of this report.

**Mandatory Recommendations:**

1. **Audit Committee:** 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. **Financially Literate members of the audit committee:** All audit committee members should be “financially literate” and at least one member should have accounting or related financial management expertise. 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. A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.

3. **Disclosure of accounting treatment:** 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. Management should also clearly explain the alternative accounting treatment in the footnotes to the financial statements.

4. **Related Party Transactions:** A statement of all transactions with related parties including their bases should be placed before the independent audit committee for formal approval / ratification. If any transaction is not on an arm’s length basis,
management should provide an explanation to the audit committee justifying the same. The term “related party” shall have the same meaning as contained in Accounting Standard 18, *Related Party Transactions*, issued by the Institute of Chartered Accountants of India.

5. **Risk Management:** Procedures should be in place to inform Board members about the risk assessment and minimization procedures. These procedures should be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework. 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. This document should be formally approved by the Board.

6. **Proceeds from Initial Public Offerings (“IPO”):** 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. On an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus. This statement should be certified by the independent auditors of the company. The audit committee should make appropriate recommendations to the Board to take up steps in this matter.

7. **Code of Conduct:** 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. This code of conduct shall be posted on the website of the company. 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 a declaration to this effect signed off by the CEO and COO. Explanation – For this purpose, the term “senior management” shall mean personnel of the company who are members of its management / operating council (i.e. core management team excluding Board of Directors). Normally, this would comprise all members of management one level below the executive directors.

8. **Nominee directors:** There shall be no nominee directors. Where an institution wishes to appoint a director on the Board, such appointment should be made by
the shareholders. An institutional director, so appointed, shall have the same responsibilities and shall be subject to the same liabilities as any other director. Nominee of the Government on public sector companies shall be similarly elected and shall be subject to the same responsibilities and liabilities as other directors.

9. **Non-Executive Director Compensation:** All compensation paid to non-executive directors may be fixed by the Board of Directors and should be approved by shareholders in general meeting. Limits should be set for the maximum number of stock options that can be granted to non-executive directors in any financial year and in aggregate. The stock options granted to the nonexecutive directors shall vest after a period of at least one year from the date such nonexecutive directors have retired from the Board of the Company. Companies should publish their compensation philosophy and statement of entitled compensation in respect of non-executive directors in their annual report. Alternatively, this may be put up on the company’s website and reference drawn thereto in the annual report.

Companies should disclose on an annual basis, details of shares held by non-executive directors, including on an “if-converted” basis. Non-executive directors should be required to disclose their stock holding (both own or held by / for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed as directors, prior to their appointment. These details should accompany their notice of appointment.

10. **Whistle Blower Policy:** 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. Companies shall take measures to ensure that this right of access is communicated to all employees through means of internal circulars, etc. The employment and other personnel policies of the company shall contain provisions protecting “whistleblowers” from unfair termination and other unfair prejudicial employment practices. Companies shall annually affirm that they have not denied any personnel access to the audit committee of the company (in respect of matters involving alleged misconduct) and that they have provided protection to “whistle blowers” from unfair termination and other unfair or prejudicial employment practices. The appointment, removal and terms of remuneration of the chief internal auditor must be subject to review by the Audit Committee. Such affirmation shall form a part
of the Board report on Corporate Governance that is required to be prepared and submitted together with the annual report.

11. Subsidiary Companies: The provisions relating to the composition of the Board of Directors of the holding company should be made applicable to the composition of the Board of Directors of subsidiary companies. At least one independent director on the Board of Directors of the parent company shall be a director on the Board of Directors of the subsidiary company. The Audit Committee of the parent company shall also review the financial statements, in particular the investments made by the subsidiary company. The minutes of the Board meetings of the subsidiary company shall be placed for review at the Board meeting of the parent company. The Board report of the parent company should state that they have reviewed the affairs of the subsidiary company also.

12. Analyst Reports: SEBI should make rules for the following:

- Disclosure in the report issued by a security analyst whether the company that is being written about is a client of the analyst’s employer or an associate of the analyst’s employer, and the nature of services rendered to such company, if any; and
- Disclosure in the report issued by a security analyst whether the analyst or the analyst’s employer or an associate of the analyst’s employer hold or held (in the 12 months immediately preceding the date of the report) or intend to hold any debt or equity instrument in the issuer company that is the subject matter of the report of the analyst.

Non-Mandatory Recommendations:

1. Audit Qualification: Companies should be encouraged to move towards a regime of unqualified financial statements. This recommendation should be reviewed at an appropriate juncture to determine whether the financial reporting climate is conducive towards a system of filing only unqualified financial statements.

2. Training of Board members: Companies should be encouraged to train their Board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them.
3. **Evaluation of Board Performance:** The performance evaluation of non-executive directors should be by a peer group comprising the entire Board of Directors, excluding the director being evaluated; and Peer group evaluation should be the mechanism to determine whether to extend / continue the terms of appointment of non-executive directors.

2.2.7 **Recommendations of Other Advisory Committees: RBI Advisory Group headed by Dr. R H Patil, Ganguly Committee, J.J. Irani Committee, etc.:**

2.2.7.1 **Recommendations of RBI Advisory Group headed by Dr. R. H. Patil:**
The recommendations of this Group which were submitted to SEBI in 2001, covered some more codes and principles of private sector companies including consolidation of accounts incorporating performance of subsidiaries, criteria of independent directors and disclosures. The Committee was known as the Standing Committee on International Financial Standard Codes: Advisory Group of Corporate Governance. The Group studied the various models of corporate governance in the developed and the newly industrialized countries and also compared the legal and regulatory framework of corporate governance obtaining in India vis-à-vis international best practices. The recommendations of the Group cover, inter alia, responsibilities of the board of directors, accountability to shareholders/stake holders, criteria for selection of independent members of the board, size and composition of the board, appointment of committees of the board such as audit committee, nomination committee, remuneration committee and investment committee, disclosure and transparency of information and data, and the role of shareholders in a company. Considering the dominant role played by the public sector entities in India, the Committee studied the practices prevailing in the central and state public sector enterprises falling under Companies Act. The Group also studied the corporate governance practices in banks and financial institutions in the financial sector in the light of BIS standards as it has major monetary and financial implications.
The Committee concludes that the law prima facie protects the rights of the common shareholders at least in so far the private corporate sector companies are concerned. However, the shareholders’ rights to vote and bring about desirable changes in the management and quality of corporate governance of private sector banks and the PSBs and PSUs that have gone public, stand considerably abridged. The mechanism to enforce shareholders’ rights even in the case of private sector companies is rather weak. The company managements can use methods like holding general meetings of shareholders at inconvenient locations etc., to effectively deny shareholders’ rights. The enforcement of shareholders’ rights and improving the overall quality of corporate governance can be brought about through structural reforms in the constitution of the boards, board committees, appointment of independent directors, and transparency and full disclosures. Special attention needs to be given to improving quality of governance in the PSUs and the banking institutions where the government and the RBI have a major role to play.

2.2.7.2 Recommendations of Ganguly Committee:
To introduce corporate governance practices in the banking sector the recommendations of the working group of directors of Banks and Financial Institutions has been known as the Ganguly Committee. The recommendations of the Ganguly Committee have been listed as under.

1. **Board Composition:** Boards should be more contemporarily professional by inducting technical and specially qualified personnel. There should be a blend of “historical skill” set and “new skill” set, i.e. skills such as marketing, technology and systems, risk management, strategic planning, treasury operations, credit recovery, etc. The Board of Directors of a bank is essential to have representation from specific sectors like agriculture and rural economy, co-operation, SSI, law, etc. The Committee is of the observation that in the context of banking fetching more intricate and competitive, the composition of the Board should be left to the business needs of banks. Composition of the Board (by way of representation of various sectors) should be so as to reflect the business strategy and its vision for the future.
2. **Board Compensation:** The Committee has concluded that the existing remuneration level paid (by way of sitting fees, etc.) to directors of banks and financial institutions is disgustingly insufficient, by contemporary standards, to attract qualified professional people to their Boards, and expect them to discharge their duties as per the mutually agreed covenants. In order to get quality professional people, the level of remuneration to be offered to the directors should be adequate with the time required to be devoted to the bank's work and also to signal the appropriateness of remuneration to the quality of inputs expected from a member. The remuneration of the directors may also include the form of stock option.

3. **Board Committees:**

   3.1. **Supervisory Committee:** The public sector banks in India have constituted "Executive Committee" or "Management Committee” which meet more frequently than the full Board do. The Group is of the view that instead of creating another tier by way of a Supervisory Board, there could be a Supervisory Committee of the Board in all banks whether public or private sector, which will work on collective trust and at the same time, without diluting the overall responsibility of the Board.

   3.2. **Audit Committee:** The Committee observes that banks have set up as required in terms of the RBI guidelines, independent Audit Committees comprising a majority of the independent / non-executive directors with the Executive Director of the bank as one of the members. As regards the composition of the Audit Committee, the Ganguly Committee has suggested that in order to ensure its independence, the Audit Committee of the Board should be constituted with external Board members who have banking or financial expertise. The Group is of view that the Chairman of Audit Committee need not be confined to the Chartered accountant profession but can be a person with knowledge of ‘finance’ or 'banking'.

   3.3. **Nomination Committee:** The Committee says that it is advantageous to have a Nomination Committee for appointing independent / non-executive directors of banks that should scrutinize the nominations received for independent / non-executive directors with reference to their qualifications, experience and other criteria proposed above. The Group
recognizes that in the case of public sector banks, the nomination committees may be of no immediate relevance, since the independent / non-executive directors (except shareholder nominees in the case of banks which have issued capital to the public) are appointed by the Central Government.

3.4. *Shareholders Redressal Committee:* Since banks are increasingly accessing capital market, there is a need for effective machinery for redressal of investor grievances in banks. The Committee notes that as of now, the matters relating to investor complaints, etc. are looked after by the line staff. With a view to building up credibility among the investor class, the Committee recommends that a Committee of the Board may be set up to look into the grievances of investors and shareholders, with the Company Secretary as a nodal point.

3.5. *Risk Management Committee:* The Group notes that in pursuance of the Guidelines issued by the Reserve Bank of India, every banking organization is required to set up Risk Management Committees (for management of both credit risk and market risk) with Board level representation to manage effectively the risk profile of the bank.


5. *Directors Qualification & Age:* Directors should fulfill certain “fit and proper” norms, vise, formal qualification, experience and track record. To ensure this, companies could call upon the candidates for directorship to furnish necessary information by way of self-declaration, verification reports from market, etc. Certain criteria adopted for public sector banks such as the age of director being between 35 and 65, that he/she should not be a member of parliament, State legislatures, etc. may be adopted for private sector banks also.

6. *Selection of Directors:* Selection of directors could be done by a nomination committee of the board. The Reserve Bank of India (RBI) also might compile a list of eligible candidates.
7. **Deed of Covenant**: The banks may enter into a “Deed of Covenant” with every non-executive director, delineating his/her responsibilities and making him/her abides by them.

8. **Training of Directors**: Need-based training should be imparted to the directors to equip them govern the banks properly.

### 2.2.7.3 **Recommendation of J.J. Irani Committee on Company Law, 2005:**

The Companies Act 1956 had been endorsed on the recommendations of the Bhaba Committee set up in 1950 with the object to consolidate than the existing corporate laws and to present a new basis for corporate operation in independent India. With endorsement of this legislation in 1956, the Companies Act 1913 was abolished. The Companies Act, 1956, has since provided the legal framework for corporate entities in India. The need for streamlining this Act was sensed from time to time as the corporate sector grew in pace with the Indian economy, with as many as 24 amendments taking place since 1956. Major amendments to the Act were made through Companies (Amendment) Act, 1988 after considering the recommendations of the Sachar Committee, and then again in 1998, 2000 and finally in 2002 through the Companies (Second Amendment) Act 2002, consequent to the report of the Eradi Committee.

On 2nd December 2004, Government of India constituted an expert committee under the chairmanship of Dr. J.J Irani the then Director of Tata Sons, to review and make recommendations on Company Law. The expert committee comprised experts drawn from trade and industry associations, chambers of commerce, professional bodies and institutions, government departments, regulatory bodies and other commercial organizations. The key areas to make recommendations on by the committee have been enlisted as under.

1. Responses received from various stakeholders on the concept paper;
2. Issues arising from the revision of the Companies Act, 1956;
3. Bringing about compactness by reducing the size of the Act and removing redundant provisions;
4. Enabling easy and unambiguous interpretation by recasting the provisions of the law;
5. Providing greater flexibility in rulemaking to enable timely response to ever-
evolving business models;
6. Protecting the interests of the stakeholders and investors, including small
investors; and
7. Any other issue related, or incidental, to the above.

The objectives of the Committee were to address the changes in the national and
international scenario facing listed companies, enable internationally accepted
best practices and provide adequate flexibility for timely evolution of legal
reforms in response to the changing business models. The report of the Committee
was submitted in May, 2005. Dr. J.J. Irani Committee has come out with the
suggestions that will develop the company law in India and go far in laying sound
base for Indian corporate growth in the coming years. This has created a
movement for years in many countries to form better frameworks of corporate
governance along with a trend towards global alignment of laws governing
companies. The recommendations of the committee highlight on the following
areas of the legislations to make necessary modifications into them.

1. **Independent Directors in Listed Companies:** SEBI, through the revised Clause
49 of the Listed Agreement, has made it to have at least 50 percent of the
board of the listed company as independent directors. This has been accepted
and validated by the capital market regulators. This proportion has been
variance in the report of Dr. J.J. Irani Committee stating to have one-
third of
the board of a listed company should comprise with independent directors.

2. **Pyramidal Structure:** The committee also recommended to adopt the
pyramidal corporate structure by every corporate having subsidiary company.
This makes the subsidiary company also to become the holding company of
other subsidiaries falling under it. This is more suggestive especially in the
case of a company acquiring other corporate abroad. “Although the committee
started its deliberations under the presumption that only one layer should be
allowed, we later decided against it,” Dr. J.J. Irani commented.

3. **Power to Shareholders:** The core driving force of the committee’s suggestions
were to confer complete autonomy to the shareholders and owners of the
company to drive in an apparent manner. The committee identifies for a
considerable shift from a government approval regime to a “shareholder approval and disclosures’ regime. To protect the rights of minority shareholders and also to ensure investor protection as a whole, the committee has aptly suggested that the new company law should recognize principles such as ‘class actions’ and ‘derivative action’. The committee report thus provides more power to shareholders, allowing them rather than the company law administration to decide on certain crucial matters. The capital market got plenty of attention from the committee. There are proposals to devise an exit option for shareholders who have stayed with a company and not participated in a buy back scheme implemented earlier.

4. Single Person Company: The committee has also unsettled the concept of single-person Company. Introducing the concept of One Person Company (OPC) as against the current stipulation of at least two persons to form a company, the committee has pitched for entrepreneurship in individuals. “The whole idea is that if there is an entrepreneur who wants to form his own company, he should not be bound down by company law to find other partners,” according to Dr. J.J. Irani.

5. Self-Regulation: One distinctive approach of the committee was to allow corporate to self-regulate their affairs. This is a much-needed orientation for corporate growth in an overall policy regime being provided by the government.

6. Stringent Penalties: In order to strengthening the deterrent provisions in the present framework, the report has mandated publication of information relating to convictions for criminal breaches of the Company Act on the part of the company or its officers in the annual report. The suggestions to provide stringent penalties will certainly help the regulator to curb fraudulent behaviors of companies.

7. Accounts and Audits: As per the committee’s view, “Proper and accurate compilation of financial information of a corporate and its disclosure in a manner that is standardized and understood by stakeholder is central to the credibility of the corporate and soundness of investment decisions by the investors. The committee noted the contributions and involvements devoted by the Institute of Chartered Accountants of India (ICAI) and the National
Advisory Committee on Accounting Standards (NACAS) and favored the continuance of the existing institutional mechanism for formulating and notifying Accounting Standards.

Dr. A.C. Fernando (2012) stated that, “it is too early to interpret the Irani Committee, but its thrust is reminiscent of attempts in the US and elsewhere to tone down the rigors of the emerging law. At the same time, it is hoped that the committee’s report would give a new thrust and fresh perspective to the government on company law.”

2.2.8 Clause 49 of the Listing Agreement of SEBI Code:
The Listing agreement was first introduced by Bombay Stock Exchange and later followed by other stock exchanges. The Listing agreement contains 51 clauses. SEBI, vide its circular dated February 21, 2000, specified principles of corporate governance and introduced a new clause 49 in the Listing agreement of the Stock Exchanges. All kinds of investments made by the investors are traded through the capital markets having stock exchanges of the economy. The meaning of Listing is to admit, the securities for dealings, on a recognized stock exchange through official agreement. The securities may be of any public limited company, Central or State Government, quasi-governmental and other financial institutions/corporations, municipalities, etc. Entering in the Listing Agreement helps in free transferability, leads to transparency in disclosure of information and ensures official quotation is available.

For other listed entities which are not companies, but body corporate (e.g. private and public sector banks, financial institutions, insurance companies etc.) incorporated under other statutes, the revised Clause 49 will apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities.

The revised Clause 49 made effective from January 1, 20016 are not applicable to Mutual Funds.

The following are the important dates for Adoption of Clause 49 of the Listing Agreements:
April 1998: CII releases Code of Corporate Governance
May 1999: Government announces support for governance reforms; SEBI announces formation of Kumar Mangalam Birla Committee (KMBC) to propose these reforms
February 2000: Clause 49 of Listing Agreement (LA) introduced
August 2002: Naresh Chandra Committee on corporate audit and governance
February 2003: Narayana Murthy Committee-I (SEBI)
August 2003: SEBI amended the LA and strengthened the criteria of independent directors.
November 2003: Narayana Murthy Committee-II (SEBI)
October 2004 SEBI: withdrew the amendment and introduced a revised LA with March 2005 as the deadline.
March 2005: The deadline was extended till December 2005
January 2006: Clause 49 of the LA after taking into account the recommendations of Narayana Murthy Committee, applied.
March 2007: Revised changes proposed to Clause 49 were placed for public comments.

**SEBI Code of Clause 49:**
The SEBI Code issued in February 2000 and comprised under Clause 49 of Listing Agreement (LA) of the Stock Exchange is listed as under.

1. **Board of Directors:** The Board of Directors of the company shall have an optimum contribution of executive and non-executive directors. The number of independent directors would depend on whether the Chairman of the company is executive or non-executive.
   - In case of a non-executive chairman, at least one-third of board should comprise of independent directors; and
   - In case of an executive chairman, at least half of board should comprise of independent director.

   All pecuniary relationship or transactions of the non-executive directors viz-a-viz, the company should be disclosed in the Annual Report.

2. **Audit Committee:** A qualified and independent audit committee shall be set up. The audit committee shall have minimum three members, all being non-executive
directors, with the majority of them being independent, and with at least one director having financial and accounting knowledge. The chairman of the committee shall be an independent director. The audit committee should invite such of the executives, as it considers appropriate (and particularly the heads 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.

The audit committee shall meet at least thrice a year; one meeting shall be held before finalization of annual accounts and one at the interval of every six months. The quorum shall be either two members or one third of the members of the audit committee, whichever is higher and minimum of two independent directors.

The audit committee shall have powers which should include:

- 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.

The role of audit committee shall include:

- Oversight of the company’s financial reporting process and disclosure of its financial information to ensure that the financial statements are correct, sufficient and credible,
- Recommending the appointment and removal of external auditor, fixation of audit fee and also approval for payment for any other service,
- Reviewing with management the annual financial statements before submission to the board, focusing primarily on: any changes in accounting policies and practices; major accounting entries based on exercise of judgment by management; qualifications in draft audit report; going concern assumption; compliance with accounting standards; and any related party transactions that may have potential conflict with the interests of company,
- Reviewing with the management, external and internal auditors, the adequacy of internal control systems,
• Discussion with external auditors before the audit commences; nature and scope of audit as well as post-audit discussion to ascertain any area of concern,
• Reviewing the company’s financial and risk management policies.

3. Remuneration of Directors: The remuneration of non-executive directors shall be decided by the board of directors.
   The following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the annual report:
   • All elements of remuneration package of all the directors, i.e. salary, benefits, bonuses, stock options, pension, etc.,
   • Details of fixed component and performance linked incentives, along with the performance criteria,
   • Service contracts, notice period, severance fees,
   • Stock option details, if any, and whether issued at a discount as well as the period over which accrued and over which exercisable.

4. Board Procedure: The board meeting shall be held at least four times a year, with a maximum time gap of four months between any two meetings.
   A director shall not be a member in more than 10 committees or act as chairman of more than five committees across all committees (only public limited companies) in which he is directors.

5. Management: As part of the directors’ report or as an addition there to, a Management Discussion and Analysis Report should form part of the annual report to the shareholders. Within the limits set by the company’s competitive position, this Management Discussion and Analysis should include discussion on:
   • Industry structure and developments,
   • Opportunities and threats,
   • Segment-wise or product-wise performance,
   • Outlook,
   • Risks and concerns,
   • Internal control systems and their adequacy,
   • Discussion on financial performance with respect to operational performance,
Material development in Human Resources / Industrial Relations front, including number of people employed.

Disclosure should be made by the management to the board relating to all material, financial and commercial transactions, where they have personal interests that may have a potential conflict with the interest of the company at large (e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

6. Shareholders: In case of appointment of a new director or re-appointment of a director the shareholders must be provided with the information on a brief resume of the directors; nature of his expertise in specific functional areas; and name of companies in which the person also hold the directorship and the membership of committees or the board.

The information like quarterly results, presentation made by companies to analysts shall be put on company’s website, or shall be sent in such a form so as to enable the stock exchanges on which the company is listed to put it on its own website.

A board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressing of shareholder and investors complains like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This committee shall be designated as “Shareholders / Investors Grievance Committee”.

7. Report on Corporate Governance: There shall be a separate section on corporate governance in the annual reports of company, with a detailed compliance report on corporate governance. Non-compliances of any mandatory requirements i.e. which is part of the listing agreement with reasons thereof and the extent to which the non-mandatory requirements have been adopted shall be specifically highlighted. The non-mandatory requirements are listed as under.

a. Chairman of the Board: A non-executive chairman should be entitled to maintain a Chairman’s office at the company’s expense and also allowed reimbursement of expenses incurred in performance of his duties.

b. Remuneration Committee: The board should set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed
terms of reference, the company’s policy on specific remuneration packages for executive directors including pension rights and any compensation payment. The remuneration committee should comprise of at least three directors, all of whom should be non-executive directors, the chairman of committee being an independent director.

c. **Shareholder Rights:** The half-yearly declaration of financial performance including summary of the significant events in the last six-months, should be sent to each household of shareholders.

d. **Postal Ballot:** Some of the critical matters which should be decided by postal ballot are:

- Matters relating to alteration in the memorandum of association of the company like changes in name, objects, address of registered office etc.,
- Sale of whole or substantially the whole of the undertaking,
- Sale of investment in the companies, where the shareholding or the voting rights of the company exceeds 25 percent,
- Making a further issue of shares through preferential allotment or private placement basis,
- Corporate restructuring,
- Entering a new business area not germane to the existing business of the company,
- Variation in rights attached to class of securities,
- Matters relating to change in management.

8. **Compliance:** The Company shall obtain 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 the directors’ report, which is sent annually to all the shareholders of the company. The same certificate should also be sent to the Stock Exchanges along with the annual returns filed by the company.

**Notes on other requirements:**

- With regards to listed entities such as banks, financial institutions etc. which are incorporated under other statutes, the requirements will apply to the extent
they do not violate the existing statutes or guidelines or directions issued by the relevant regulatory authority.

- The non-mandatory requirements shall be implemented as per the discretion of the company. However, the disclosures of the adoption / non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

9. **Applicability of Clause 49:** The schedule of implementation of clause 49 is as under.

- By all entities seeking listing for the first time: At the time of Listing;
- Within Financial Year 2000-01, but not later than March 31, 2001 by all entities, which are included either in Group ‘A’ of the BSE or in S&P CNX Nifty Index as on January 1, 2000. However, to comply with the requirements, these companies may have to begin the process of implementation as early as possible.
- Within Financial Year 2001-02, but not later than March 31, 2002 by all entities which are presently listed, with paid up share capital of ₹ 10 crore and above, or net worth of ₹ 25 crore or more any time in the history of the company.
- Within Financial Year 2002-03, but not later than March 31, 2003 by all entities those are presently listed, with paid up capital of ₹ 3 crore and above.

2.3 **Provisions under Revised Clause 49 of Listing Agreement:**
The Indian Stock Exchanges were asked to revise Clause 49 of the Listing Agreement featuring the recommendations of the Narayana Murthy Committee’s recommendations accepted by the SEBI in August 2003. While mingling the recommendations of the committee amongst the industries and corporate, it led to the widespread protests and made the committee to rethink on it. By December 15, 2003, the Committee revised and put forth the recommendations to SEBI through its website for public comments. This was followed by the announcement of revised Clause 49 on October 29, 2004, came into effect by April 15, 2005. Due to lack of outsized attentiveness amongst companies, SEBI extended the compliance date up to
December 31, 2005 and made the Revised Clause 49 effective and in-force from January 1, 2006.

The schedule of implementation of Revised Clause 49 has been as under.

- The Entities seeking listing for the first time, at the time of seeking in principle approval for such listing;
- The existing listed entities which were required to comply with Revised Clause 49 which is being revised i.e. those having a paid up share capital of ₹ 3 crore and above or net worth of ₹ 25 crore or more at any time in the history of the company, by April 1, 2005 (extended up to December 31, 2005).
- The companies which are required to comply with the requirements of the revised Clause 49 shall submit a quarterly compliance report to the stock exchanges as per sub Clause VI (ii), of the revised Clause 49, within 15 days from the end of every quarter. The first such report would be submitted for the quarter ending June 30, 2005. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.
- The revised Clause 49 shall apply to all the listed companies, in accordance with the schedule of implementation given above. However, for other listed entities which are not companies, but body corporate (e.g. private and public sector banks, financial institutions, insurance companies etc.) incorporated under other statutes, the revised Clause 49 will apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities. The revised Clause 49 is not applicable to Mutual Funds.

2.3.1 Mandatory Provisions:

1. **Board of Directors:**
   1.1 **Composition of Board:**
   - The Board of Directors of the company shall have an optimum contribution of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive director.
   - Where the Chairman of the Board is non-executive, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors. However, if the non-executive chairman is the promoter or related to
promoters or persons occupying management positions at the board level or one level below the board, then at least one-half of the board of the company should consist of independent director. The minimum age of independent director shall be 21 years.

- Independent Director is defined as 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 associates which may affect independence of the director;
  b) Is not related to promoters or persons occupying management positions at the board level or at one level below the board;
  c) Has not been an executive of the company in the immediately preceding three financial years;
  d) Is not a partner or an executive or was not partner or an executive during the preceding three years, of the statutory audit firm or the internal audit firm that is associated with the company, and 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 lesser or lessee of the company, which may affect independence of the director; and
  f) Is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares?

- Nominee directors appointed by an institution which has invested in or lent to the company shall be deemed to be independent directors.

1.2 Non–Executive Director’s 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 director, including independent directors, in any financial year and in aggregate.

1.3 Other Provisions as to Board and Committees:
• The Board shall meet at least four times in a year, with a maximum time gap of three months between any two meetings with the minimum information as prescribed to be made available to the Board.

• A director shall not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a director. Furthermore, it should be a 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.

1.4 Code of Conduct:

• 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.

• 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 a declaration to this effect signed by the CEO.

2. Audit Committee:

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

• The audit committee shall have minimum three directors as members. Two-third of the members of audit committee shall be independent directors.

• All members of Audit Committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

• The Chairman of the Audit Committee shall be an independent director.

• The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries.

• The Audit Committee 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, but on occasions it may also meet without the presence of any executive of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee.
• The Company Secretary shall act as the secretary to the committee.

2.2 Meeting of Audit Committee: The Audit Committee shall 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 members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

2.3 Power of Audit Committee: The Audit Committee shall have power, which should include the following:

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

2.4 Role of Audit Committee: The Role of Audit Committee shall include the following:

• Oversight of the company’s functional reporting process and the disclosure of its functional information to ensure that the financial statement is correct, sufficient and credible.
• Recommending to the Board, the appointment, re-appointment and, if required, replacement or removal of the statutory auditor and the fixation of audit fees.
• Approval of payment to statutory auditors for rendering any other services.
• Reviewing, with the management, the annual financial statements before submission to the board for approval, with particular reference to:
  a) Matters required to be included in the Director’ Responsibility Statement to be included in the Board’s Report in terms of clause (2AA) of Section 217 of the Companies Act, 1956.
  b) Change, 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) Qualifications in the draft audit report.

- Reviewing, with the management, the quarterly financial statements before submission to the Board for approval.
- Reviewing, with the management, performance of statutory and internal auditors, and adequacy of the internal control systems.
- Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
- Discussion with internal auditors any significant findings and follow up there on.
- Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
- Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.
- To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors.
- To review the functioning of the Whistle Blower Mechanism, in case the same is existing.
- Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

2.5 Review of Information by Audit Committee: The Audit Committee shall mandatorily review the following information:

- Management discussion and analysis of financial condition and results of operations;
• Statement of significant related party transactions (as defined by the audit committee), submitted by management;
• Management letters of internal control weaknesses issued by the statutory auditors;
• Internal audit reports relating to internal control weaknesses; and
• The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

3. Subsidiary Companies:
• At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material non-listed Indian Subsidiary Company.
• The Audit Committee of the listed holding company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company.
• The minutes of the Board meetings 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 transactions and arrangements entered into by the unlisted subsidiary company.

4. Disclosures:
4.1 Basis of Related Party Transaction:
• A statement in summary form of transactions with related parties in the ordinary course of business shall be placed periodically before the audit committee.
• Details of material individual transactions with related parties which are not in the normal course of business shall be placed before the audit committee.
• Details of material individual transactions with related parties or others, which are not on an arm’s length basis, should be placed before the audit committee, together with Management’s justification for the same.
4.2 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.

4.3 Board Disclosures – Risk management: The Company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. These procedures shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework.

4.4 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 basis as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and place it before the audit committee. Such disclosure shall be made only till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

4.5 Remuneration of Directors:

- All pecuniary relationship or transactions of the non-executive directors vis-à-vis the company shall be disclosed in the Annual Report.

- Further the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the Annual Report:
  a) All elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc.
  b) Details of fixed component and performance linked incentives, along with the performance criteria.
c) Service contracts, notice period, severance fees.

d) Stock option details, if any — and whether issued at a discount as well as the period over which accrued and over which exercisable.

- The company shall publish its criteria of making payments to non-executive directors in its annual report. Alternatively, this may be put up on the company’s website and reference drawn thereto in the annual report.
- The company shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report.
- 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 are 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 director.

4.6 Management:

- As part of the directors’ report or as an addition thereto, a Management Discussion and Analysis report should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company’s competitive position:
  a) Industry structure and developments.
  b) Opportunities and Threats.
  c) Segment-wise or product-wise performance.
  d) Outlook.
  e) Risks and concerns.
  f) Internal control systems and their adequacy.
  g) Discussion on financial performance with respect to operational performance.
  h) Material developments in Human Resources / Industrial Relations front, including number of people employed.

- Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large (for e.g.
dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

4.7 Shareholders:

- In case of the appointment of a new director or re-appointment 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 person also holds the directorship and the membership of Committees of the Board; and
  d) Shareholding of non-executive directors as stated in Clause 49 (IV) (E) (v) above

- Quarterly results and presentations made by the company to analysts shall be put on company’s web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.

- A board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressal of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This Committee shall be designated as ‘Shareholders/Investors Grievance Committee’.

- To expedite the process of share transfers, the 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. The delegated authority shall attend to share transfer formalities at least once in a fortnight.

5. CEO/CFO certification:

- 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:
  a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
     - These statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading:
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 and that they have evaluated the effectiveness of the internal control systems of the company 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.

d) They have indicated to the auditors and the Audit committee

- Significant changes in internal control during the year;
- Significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
- 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

6. Report on Corporate Governance:

- There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted.

- The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given in Annexure I B. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

7. VII. Compliance:
The company shall obtain a certificate from either the auditors 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.

The non-mandatory requirements given in Annexure – I D may be implemented as per the discretion of the company. However, the disclosures of the compliance with mandatory requirements and adoption (and compliance) / non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

2.3.2 Non – Mandatory Requirements:

1. The Board:

- A non-executive Chairman may be entitled to maintain a Chairman’s office at the company’s expense and also allowed reimbursement of expenses incurred in performance of his duties. Independent Directors may have a tenure not exceeding, in the aggregate, a period of nine years, on the Board of a company.

2. Remuneration Committee:

- The board may set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, the company’s policy on specific remuneration packages for executive directors including pension rights and any compensation payment.

- To avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive directors may comprise of at least three directors, all of whom should be non-executive directors, the Chairman of committee being an independent director.

- All the members of the remuneration committee could be present at the meeting.

- The Chairman of the remuneration committee could be present at the Annual General Meeting, to answer the shareholder queries. However, it would be up to the Chairman to decide who should answer the queries.
3. **Shareholder Rights:**
   - A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.

4. **Audit qualifications:**
   - Company may move towards a regime of unqualified financial statements.

5. **Training of Board Members:**
   - A company may train its Board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them.

6. **Mechanism for evaluating non-executive Board Members:**
   - The performance evaluation of non-executive directors could be done by a peer group comprising the entire Board of Directors, excluding the director being evaluated; and Peer Group evaluation could be the mechanism to determine whether to extend / continue the terms of appointment of non-executive directors.

7. **Whistle Blower Policy:**
   - The company may establish a mechanism for employees to report to the management concerns about unethical behavior, actual or suspected fraud or violation of the company’s code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

2.4 **Corporate Governance Voluntary Guidelines – 2009:**

Keeping in mind that the subject of corporate governance may go well beyond the Law and that there are inherent limitations in enforcing many aspects of corporate governance through legislative or regulatory means, it has been considered necessary that a set of voluntary guidelines called “Corporate Governance - Voluntary Guidelines 2009” which are relevant in the present context, are prepared and
The recommendations of this Task Force were placed on the Ministry’s website for wide stakeholders consultations. The feedback, thus received has formed the basis of these voluntary guidelines, which address a number of current concerns in the area of corporate governance. These guidelines do not substitute any extant Law or regulation but are essentially for voluntary adoption by the corporate.

While it is expected that more and more corporate should make sincere efforts to consider adoption of these guidelines, there may be genuine reasons for some companies in not being able to adopt them completely. In such a case it is expected that such companies should inform their shareholders about the guidelines which the companies have not been able to apply either fully or partially.

**CII Voluntary Guidelines:**
The major recommendations submitted from the Task Force set up by CII under chairmanship of Shri Naresh Chandra in February, 2009 is listed as under

1. **BOARD OF DIRECTORS:**
   1.1 *Appointment of Directors:*
      1.1.1 *Appointments to the Board:*
      a) Companies should issue formal letters of appointment to Non-Executive Directors (NEDs) and Independent Directors - as is done by them while appointing employees and Executive Directors. The letter should specify:
         i. The term of the appointment;
         ii. The expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
         iii. The fiduciary duties that come with such an appointment along with accompanying liabilities;
iv. Provision for Directors and Officers (D&O) insurance, if any;

v. The Code of Business Ethics that the company expects its directors and employees to follow;

vi. The list of actions that a director should not do while functioning as such in the company; and

vii. The remuneration, including sitting fees and stock options etc., if any.

b) Such formal letter should form a part of the disclosure to shareholders at the time of the ratification of his / her appointment or re-appointment to the Board. This letter should also be placed by the company on its website, if any, and in case the company is a listed company, also on the website of the stock exchange where the securities of the company are listed.

1.1.2 Separation of Offices of Chairman & Chief Executive Officer:

a) To prevent unfettered decision making power with a single individual, there should be a clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/Chief Executive Officer (CEO). The roles and offices of Chairman and CEO should be separated, as far as possible, to promote balance of power.

1.1.3 Nomination Committee:

a) The companies may have a Nomination Committee comprising of majority of Independent Directors, including its Chairman. This Committee should consider:

i. Proposals for searching, evaluating, and recommending appropriate Independent Directors and Non-Executive Directors [NEDs], based on an objective and transparent set of guidelines which should be disclosed and should, inter-alia, include the criteria for determining qualifications, positive attributes, independence of a director and availability of time with him or her to devote to the job;

ii. Determining processes for evaluating the skill, knowledge, experience and effectiveness of individual directors as well as the Board as a whole.

b) With a view to enable Board to take proper and reasoned decisions, Nomination Committee should ensure that the Board comprises of a
balanced combination of Executive Directors and Non-Executive Directors.

c) The Nomination Committee should also evaluate and recommend the appointment of Executive Directors.

d) A separate section in the Annual Report should outline the guidelines being followed by the Nomination Committee and the role and work done by it during the year under consideration.

1.1.4 Number of Companies in which an Individual may become a Director:

a) For reckoning the maximum limit of directorships, the following categories of companies should be included:
   i. Public limited companies,
   ii. Private companies that are either holding or subsidiary companies of public companies.

e) In case an individual is a Managing Director or Whole-time Director in a public company the maximum number of companies in which such an individual can serve as a Non-Executive Director or Independent Director should be restricted to seven.

1.2 Independent Directors:

1.2.1 Attributes for Independent Directors:

a) The Board should put in place a policy for specifying positive attributes of Independent Directors such as integrity, experience and expertise, foresight, managerial qualities and ability to read and understand financial statements. Disclosure about such policy should be made by the Board in its report to the shareholders. Such a policy may be subject to approval by shareholders.

b) All Independent Directors should provide a detailed Certificate of Independence at the time of their appointment, and thereafter annually. This certificate should be placed by the company on its website, if any, and in case the company is a listed company, also on the website of the stock exchange where the securities of the company are listed.

1.2.2 Tenure for Independent Director:
c) An Individual may not remain as an Independent Director in a company for more than six years.

d) A period of three years should elapse before such an individual is inducted in the same company in any capacity.

e) No individual may be allowed to have more than three tenures as Independent Director in the manner suggested in 'i' and 'ii' above.

f) The maximum number of public companies in which an individual may serve as an Independent Director should be restricted to seven.

1.2.3 Independent Directors to have the Option and Freedom to meet Company Management periodically:

a) In order to enable Independent Directors to perform their functions effectively, they should have the option and freedom to interact with the company management periodically.

b) Independent Directors should be provided with adequate independent office space and other resources and support by the companies including the power to have access to additional information to enable them to study and analyze various information and data provided by the company management.

1.3 Remuneration Of Directors:

1.3.1 Remuneration:

a) Guiding Principles-Linking Corporate and Individual Performance:

i. The companies should ensure that 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. It should also be ensured that relationship of remuneration to performance is clear. Incentive schemes should be designed around appropriate performance benchmarks and provide rewards for materially improved company performance. Benchmarks for performance laid down by the company should be disclosed to the members annually.

ii. Remuneration Policy for the members of the Board and Key Executives should be clearly laid down and disclosed. Remuneration
packages should involve a balance between fixed and incentive pay, reflecting short and long term performance objectives appropriate to the company's circumstances and goal.

iii. The performance-related elements of remuneration should form a significant proportion of the total remuneration package of Executive Directors and should be designed to align their interests with those of shareholders and to give these Directors keen incentives to perform at the highest levels.

b) Remuneration of Non-Executive Directors (NEDs):

i. The companies should have the option of giving a fixed contractual remuneration, not linked to profits, to NEDs. The companies should have the option to:

⇒ Pay a fixed contractual remuneration to its NEDs, subject to an appropriate ceiling depending on the size of the company; or

⇒ Pay up-to an appropriate percent of the net profits of the company.

ii. The choice should be uniform for all NEDs, i.e. some should not be paid a commission on profits while others are paid a fixed amount.

iii. If the option chosen is 'i(a)' above, then the NEDs should not be eligible for any commission on profits.

iv. If stock options are granted as a form of payment to NEDs, then these should be held by the concerned director until three years of his exit from the Board.

c) Structure of Compensation to NEDs:

i. The companies may use the following manner in structuring remuneration to NEDs:

⇒ Fixed component: This should be relatively low, so as to align NEDs to a greater share of variable pay. These should not be more than one-third of the total remuneration package.

⇒ Variable component: Based on attendance of Board and Committee meetings (at least 75% of all meetings should be an eligibility precondition)

⇒ Additional variable payment(s) for being:
• The Chairman of the Board, especially if he/she is a nonexecutive chairman,
• The Chairman of the Audit Committee and/or other committees,
• Members of Board committees.

ii. If such a structure (or any similar structure) of remuneration is adopted by the Board, it should be disclosed to the shareholders in the Annual Report of the company.

d) Remuneration of Independent Directors (IDs):

i. In order to attract, retain and motivate Independent Directors of quality to contribute to the company, they should be paid adequate sitting fees which may depend upon the twin criteria of Net Worth, and Turnover of companies.

ii. The IDs may not be allowed to be paid stock options or profit based commissions, so that their independence is not compromised.

1.3.2 Remuneration Committee:

a) Companies should have Remuneration Committee of the Board. This Committee should comprise of at least three members, majority of whom should be non-executive directors with at least one being an Independent Director.

b) This Committee should have responsibility for determining the remuneration for all executive directors and the executive chairman, including any compensation payments, such as retirement benefits or stock options. It should be ensured that no director is involved in deciding his or her own remuneration.

c) This Committee should also determine principles, criteria and the basis of remuneration policy of the company which should be disclosed to shareholders and their comments, if any, considered suitably. Whenever, there is any deviation from such policy, the justification/reasons should also be indicated/disclosed adequately.

d) This Committee should also recommend and monitor the level and structure of pay for senior management, i.e. one level below the Board.
e) This Committee should make available its terms of reference, its role, the authority delegated to it by the Board, and what it has done for the year under review to the shareholders in the Annual Report.

2. RESPONSIBILITIES OF THE BOARD:

2.1 Training of Directors:

2.1.1 The companies should ensure that directors are inducted through a suitable familiarization process covering, inter-alia, their roles, responsibilities and liabilities. Efforts should be made to ensure that every director has the ability to understand basic financial statements and information and related documents/papers. There should be a statement to this effect by the Board in the Annual Report.

2.1.2 Besides this, the Board should also adopt suitable methods to enrich the skills of directors from time to time.

2.2 Enabling Quality Decision making: The Board should ensure that there are systems, procedures and resources available to ensure that every Director is supplied, in a timely manner, with precise and concise information in a form and of a quality appropriate to effectively enable / discharge his duties. The Directors should be given substantial time to study the data and contribute effectively to Board discussions.

2.3 Risk Management:

2.3.1 The Board, its Audit Committee and its executive management should collectively identify the risks impacting the company's business and document their process of risk identification, risk minimization, risk optimization as a part of a risk management policy or strategy.

2.3.2 The Board should also affirm and disclose in its report to members that it has put in place critical risk management framework across the company, which is overseen once every six months by the Board. The disclosure should also include a statement of those elements of risk, that the Board feels, may threaten the existence of the company.

2.4 Evaluation of Performance of Board of Directors, Committees thereof and of Individual Directors: The Board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and
individual directors. The Board should state in the Annual Report how performance evaluation of the Board, its committees and its individual directors has been conducted.

2.5 Board to place Systems to ensure Compliance with Laws:

2.5.1 In order to safeguard shareholders' investment and the company's assets, the Board should, at least annually, conduct a review of the effectiveness of the company's system of internal controls and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls and risk management systems.

2.5.2 The Directors' Responsibility Statement should also include a statement that proper systems are in place to ensure compliance of all laws applicable to the company. It should follow the “comply or explain” principle.

2.5.3 For every agenda item at the Board meeting, there should be attached an “Impact Analysis on Minority Shareholders” proactively stating if the agenda item has any impact on the rights of minority shareholders. The Independent Directors should discuss such Impact Analysis and offer their comments which should be suitably recorded.

3. AUDIT COMMITTEE OF BOARD:

3.1 Audit Committee – Constitution: The companies should have at least a three-member Audit Committee, with Independent Directors constituting the majority. The Chairman of such Committee should be an Independent Director. All the members of audit committee should have knowledge of financial management, audit or accounts.

3.2 Audit Committee – Enabling Powers:

3.2.1 The Audit Committee should have the power to –

a) Have independent back office support and other resources from the company;

b) Have access to information contained in the records of the company; and

c) Obtain professional advice from external sources.
3.2.2 The Audit Committee should also have the facility of separate discussions with both internal and external auditors as well as the management.

3.3 Audit Committee - Role and Responsibilities:

3.3.1 The Audit Committee should have the responsibility to -

a) Monitor the integrity of the financial statements of the company;

b) Review the company's internal financial controls, internal audit function and risk management systems;

c) Make recommendations in relation to the appointment, reappointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor;

d) Review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process.

3.3.2 The Audit Committee should also monitor and approve all Related Party Transactions including any modification/amendment in any such transaction.

3.3.3 A statement in a prescribed/structured format giving details about all related party transactions taken place in a particular year should be included in the Board's report for that year for disclosure to various stakeholders.

4. AUDITORS:

4.1 Appointment of Auditors:

4.1.1 The Audit Committee of the Board should be the first point of reference regarding the appointment of auditors.

4.1.2 The Audit Committee should have regard to the profile of the audit firm, qualifications and experience of audit partners, strengths and weaknesses, if any, of the audit firm and other related aspects.

4.1.3 To discharge its duty, the Audit Committee should:

a) Discuss the annual work programme and the depth and detailing of the audit plan to be undertaken by the auditor, with the auditor;

b) Examine and review the documentation and the certificate for proof of independence of the audit firm, and
c) Recommend to the Board, with reasons, either the appointment / re-appointment or removal of the statutory auditor, along with the annual audit remuneration.

4.2 Certificate of Independence:

4.2.1 Every company should obtain a certificate from the auditor certifying his/its independence and arm's length relationship with the client company.

4.2.2 The Certificate of Independence should certify that the auditor together with its consulting and specialized services affiliates, subsidiaries and associated companies or network or group entities has not/have not undertaken any prohibited non-audit assignments for the company and are independent vis-à-vis the client company.

4.3 Rotation of Audit Partners and Firms:

4.3.1 In order to maintain independence of auditors with a view to look at an issue (financial or non-financial) from a different perspective and to carry out the audit exercise with a fresh outlook, the company may adopt a policy of rotation of auditors which may be as under:-

a) Audit partner - to be rotated once every three years

b) Audit firm - to be rotated once every five years.

4.3.2 A cooling off period of three years should elapse before a partner can resume the same audit assignment. This period should be five years for the firm.

4.4 Need for clarity on information to be sought by auditor and/or provided by the company to him/it:

4.4.1 With a view to ensure proper and accountable audit, there should be clarity between company management and auditors on the nature and amount of information/documents/ records etc. and periodicity/frequency for supply/obtaining such information/documents/ records etc.

4.4.2 In any case the auditor concerned should be under an obligation to certify whether he had obtained all the information he sought from the company or not. In the latter case, he should specifically indicate the effect of such non receipt of information on the financial statements.
4.5 **Appointment of Internal Auditor:** In order to ensure the independence and credibility of the internal audit process, the Board may appoint an internal auditor and such auditor, where appointed, should not be an employee of the company.

5. **SECRETARIAL AUDIT:**
Since the Board has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company, it is important that the Board processes and compliance mechanisms of the company are robust. To ensure this, the companies may get the Secretarial Audit conducted by a competent professional. The Board should give its comments on the Secretarial Audit in its report to the shareholders.

6. **INSTITUTION OF MECHANISM FOR WHISTLE BLOWING:**
Since the Board has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company, it is important that the Board processes and compliance mechanisms of the company are robust. To ensure this, the companies may get the Secretarial Audit conducted by a competent professional. The Board should give its comments on the Secretarial Audit in its report to the shareholders.

6.1 The companies should ensure the institution of a mechanism for employees to report concerns about unethical behavior, actual or suspected fraud, or violation of the company's code of conduct or ethics policy.

6.2 The companies should also provide for adequate safeguards against victimization of employees who avail of the mechanism, and also allow direct access to the Chairperson of the Audit Committee in exceptional cases.

2.5 **Companies Bill 2008: Provisions for Corporate Governance:**
The Company Bill, 2008 was introduced in the Loksabha as ‘Bill No. 57of 2008’ on October 23, 2008 by the Ministry for Corporate Affairs, Government of India. The Bill contains total 426 clauses splitting into 28 chapters. The Bill wanted to enable the Indian Corporations to operate in a regulatory environment suitable to the best
International Practices which cultivate and promote the inclusive growth in the dimensions of Entrepreneurship, Investment and Governance. Beyond the fundamental guidelines and clauses, a number of other improvements were proposed in this Bill those are briefly elaborated in the following contents under this regulatory framework.

1. SHAREHOLDERS:

1.1 Shareholders Right:

1.3.2 Voting Rights:

a) **Equity Shareholders Voting Rights:** Under the provision of sub-section (2) of section 44, every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company and his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

b) **Preference Shareholders Voting Rights:** Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the right attached to his preference shares, any resolution for the winding up of the company or for the repayment or reduction of its preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company.

c) **Electronic Voting:** Unless the articles provide otherwise, a member may exercise his vote at a meeting by electronic means in a manner as may be prescribed.

d) **Postal Ballot:** Notwithstanding anything contained in this Bill, a company shall, in respect of such items of the business as the Central government may, by notification, declare to be transacted only by means of postal ballot, and may, in respect of any items of business, other than ordinary business and any business in respect of which directors or auditors have right to be heard at any meeting, transferred by means of postal ballot in such manner as may be prescribed, instead of transferring such business at a general meeting. If the resolution is assented to by the requisite majority
of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

1.1.2 Rights in Further Issue of Share Capital:

a) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered first to the persons who at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the share capital paid up on those shares by circulating an offer for sale subject to such terms and conditions relating to the time within which the offer has to be accepted; the renunciation of such offer and such other matters as may be prescribed.

1.1.3 Rights of Copies of Balance Sheet:

a) A copy of financial statements, auditor’s reports and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every shareholders and members of the company, and to all persons other than such members or trustee, being the person so entitled, twenty one days before the date of the meeting.

2. AUDIT AND AUDITORS:

2.1 Appointment of Auditors: Every Company shall, at each annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of next annual general meeting. In case of a government company or any other company owned and controlled, directly or indirectly, by the central government, or by any state government or governments, or partly by central government and partly by one or more state governments, the Controller and Auditor General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of a company under this Bill, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the adoption of accounts of that financial year.

2.2 Eligibility, Qualification & Disqualification of Auditors: A person shall be eligible for appointment as an auditor of a company only if he is a Chartered
Accountant in practice. Where a firm is appointed as an auditor of a company, only the partners who are Chartered Accountants in practice shall be authorized by the firm to act and sign on behalf of the firm. None of the following persons shall be eligible for appointment of an auditor of a company namely;

i. A body corporate;

ii. An officer or employee of the company;

iii. A person who is a partner, or who is in the employment, of an officer or employee of the company;

iv. A person who, or his relative or partner;

   ⇒ Is holding any security of the company or its subsidiary, or of its holding or associate company, or a subsidiary of such holding company, of value in terms of such percentage as may be prescribed;

   ⇒ Is indebted to the company, or its subsidiary, or its holding or associated company, or a subsidiary of such holding company; or

   ⇒ Has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company, or a subsidiary of such holding company, for such amount as may be prescribed;

v. A person or a firm who has business relationship with the company, or its subsidiary, or its holding or associate company, or a subsidiary of such holding company of such nature as may be prescribed;

vi. A person whose relative is in employment of the company as director or key managerial position;

vii. A person who is in employment elsewhere or a person or a firm who holds appointment as an auditor in companies exceeding such number as may be prescribed on the date of his appointment.

Where a person appointed as an auditor of a company, after his appointment, incur any of the disqualifications mentioned as above, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

2.3 Remuneration of Auditors: The remuneration of the auditor of a company shall be fixed in its general meeting or in such a manner as may be determined
therein. The remuneration in addition to the fees payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and anything given to him otherwise than in cash, but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

2.4 Powers and Duties of Auditors: Every auditor of a company shall have a right of access at all time to the books of account and vouchers of the company, whether kept at the registered office of the company, or at any other place in India, and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and shall inquire into such matters as may be prescribed.

The Auditor shall make a report to the members of the company on the accounts explained by him and on every financial statement or other document which are required by or under this Bill to be laid before the company in general meeting and the report shall after taking into account the provisions of this Bill, the accounting and auditing standards and matters which are required to be included in the audit report under the provision of this Bill or any rule made there under or under any order made under sub section (11) of this Bill and to the best of his information and knowledge, the said accounts, financial statements or other documents give a true and fair view of the state of the company’s affairs as at the end of its financial year and such other matters as may be prescribed.

2.5 Auditors not to Rendered Certain Services: An auditor appointed under this Bill shall provide the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services, namely;

i. Accounting and book keeping services;
ii. Internal audit;
iii. Design of implementation of any financial system;
iv. Actuarial services;
v. Investment advisory services;
vi. Investment banking services;
vii. Rendering of outsourced financial services; and
viii. Management services.

2.6 Auditors to Sign the Auditor’s Report: Only the person appointed as an auditor of the company shall sign the auditor’s report or sign or certify any other document of the company, and the auditor’s report shall be read before the company in general meeting and shall be open for inspection by any member of the company.

2.7 Auditors to Attend General Meeting: All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as auditor of the company.

3. APPOINTMENT AND QUALIFICATIONS OF DIRECTORS:

3.1 Appointment of Directors: When no provision is made in the article of a company for appointment of the first directors, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed in accordance of the provisions of this section. Same as otherwise expressly provided in this Bill, every director shall be appointed by the company in general meeting. No person shall be appointed as a director of the company unless he has been allotted the Director Identification Number (DIN) under section 135.

3.2 Board of Directors: Every company shall have a Board of Directors consisting of only individuals as directors and shall have:

i. A minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company (OPC) and,

ii. A maximum number of twelve directors, excluding the directors nominated by the lending institutions.

iii. One of the directors shall at least be a person ordinarily resident in India.
iv. Every listed public company having such amount of paid up share capital as may be prescribed shall have at least one-third of the total number of directors as independent director. The Central Government may prescribe minimum number of independent director in case of other public companies and subsidiaries of any public company. Where for the purpose of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

v. Every company existing on or before the commencement of this Act shall comply with the requirement of the provision of the above sub-section of independent director within one year from the date of commencement of this Act.

vi. “Independent Director”, in relation to the company, means a non-executive director of a company, other than a nominee director, who in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience along with no-relation status.

vii. An independent director shall not be entitled to any remuneration other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit-related commission and stock options as may be approved by the members.

3.3 Right of Persons other than Retiring Directors to stand for Directorship: A person who is not a retiring director shall, subject to the provision of this Act, be eligible for appointment to the office of the director at any general meeting, if he or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the office of the company, a notice in writing under his hand signifying his candidature as director or, as the case may be, the intension of such member to propose him as a candidate for that office, along with the deposit of such sum of money as may be prescribed and the amount so deposited shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as director or gets more than twenty-five percent of total votes cast.

3.4 Appointment of Additional, Alternate and Nominee Directors: The articles of company may confer on its Board of Directors the power to appoint any person, other than any person who fails to get appointed as director in a
general meeting, as additional director, at any time who shall hold office up to the date of next annual general meeting or the last date on which the annual general meeting should be have been held, whichever is earlier. The Board of Directors may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director during his absence for a period of not less than three months from India.

3.5 Disqualification for Appointment of Director: A person shall not be eligible for appointment as a director of a company, if

i. He has been found to be of unsound mind by a court of competent jurisdiction and said finding is in force;

ii. He is an un-discharged insolvent;

iii. He has applied to be adjudicated as an insolvent and his application is pending;

iv. He has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence;

v. An order disqualifying him for appointment as a director has been passed by a Court or Tribunal and the order is in force;

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

vii. He has been convicted of the offence dealing with related party transactions at any time during last preceding five years; or

viii. He has not obtained DIN numbers.

3.6 Number of Directorship: No person after the commencement of this Act, shall hold office as a director, including any alternative directorship, in more than fifteen public limited companies at a same time. Where a person accepts an appointment as a director in contravention of this clause, he shall be punishable with fine which shall not be less than five thousand rupees but
which may extend to twenty five thousand rupees every day during which the contravention continues.

3.7 **Duties of Directors:**

i. Subject to the provisions of this Act, a director of a company shall act in accordance with the company’s articles.

ii. A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interest of the company.

iii. A director of a company shall exercise his duties with due and reasonable care, skill and diligence.

iv. A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of company.

v. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates.

vi. A director of a company shall not assign his office and any assignment so made shall be void.

vii. Any director who contravenes the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend up to five lakhs rupees provided that he is found guilty of making any undue gain either to himself or to his relatives, partners or associates, he shall also be liable to pay an amount equal to that gain to the company.

3.8 **Resignation of Director:** A director may resign from his office by giving a notice in writing to the company and the board shall on receipt of such notice take note of the same and intimate the registrar in such manner and in such form as may be prescribed and shall also place the fact of such resignation in the subsequent general meeting held by the company.

3.9 **Removal of Directors:** A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 213, before the expiry of period of his office after giving him a reasonable
opportunity of being heard and following such procedure as may be prescribed.

4. MEETINGS OF BOARD AND ITS POWERS:

4.1 Meetings of Board:

i. Every company shall hold its first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board.

ii. The participation of directors in a meeting of Board may be either in person or through video conferencing or such other electronic means, as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings.

iii. A meeting of the Board shall be called by giving not less than seven days’ notice in writing or by electronic means to every director at his address registered with the company.

iv. Every office of the company whose duty is to give notice under this section and who fails to do so shall be liable to pay the penalty of twenty five thousand rupees.

4.2 Quorum for Meetings of Board:

i. The quorum for a meeting of Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other electronic means shall also be counted for the purpose of quorum under this sub-section.

4.3 Passing of Resolution by Board or Committee: No resolution shall be deemed to have been duly passed by the Board or by a Committee thereof by circular, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors or members of the committee, as the case may be, at their usual addresses in India, and has been approved by a majority of directors or members, who are entitled to vote on the resolution.
4.4 Committees of the Board:

i. The Board of Directors of every listed company and such other class or description of companies, as may be prescribed, shall constitute an Audit Committee and a Remuneration Committee of the Board.

ii. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority and at least one director having knowledge of financial management, audit or accounts.

iii. The chairman of an Audit Committee shall be an independent director.

iv. Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance of sub-section (ii) & (iii).

v. Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall include, among other things, the recommendation for appointment of auditors of the company, examination of financial statements and the auditor’s report thereon, transactions of the company with related parties, valuation of undertakings or assets of the company, wherever it is necessary, evaluation of internal financial controls and related matters.

vi. The Audit Committee may call for comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review financial statements before their submission to the board.

vii. The Audit Committee shall have authority to investigate into any matter in relation to the items specified in the sub-section (v) above or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

viii. The Auditors of the company and the key managerial personnel shall have a right to attend the meetings of the Audit Committee when it considers the auditor’s report but shall not have right to vote.

ix. The Board’s report under sub-section (iii) of section 120 shall disclose the composition of an Audit Committee and where the Board had not accepted
any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons thereof.

**x.** The Remuneration Committee shall consist of non-executive directors as may be appointed by the Board out of which at least one shall be an independent director.

**xi.** The Remuneration Committee shall determine the company’s policies relating to the remuneration of the directors, including the remuneration and other perquisites of the directors, key managerial personnel and such other employees as may be decided by the Board.

**xii.** The Board of Directors of a company having a combined membership of the shareholders, debenture holders and other security holders of more than one thousand at any time during a financial yea shall constitute a Stakeholders Relationship Committee consisting of a chairman who shall be a non-executive director and such other members of the Board as may be decided by the Board.

**xiii.** Stakeholders Relationship Committee shall consider and resolve the grievances of Stakeholders.

**xiv.** The chairman of each of the committee constituted under this section or, in his absence, any other member of the Committee authorized by him shall attend the general meeting of the company.

**xv.** In case of any contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but may extend up to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty five thousand rupees but which may extend to one lakh rupees, or with both.

**4.5 Power of the Board:**

**i.** The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do.
ii. No resolution passes by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution had not been passed.

iii. The Board of Directors of a company shall exercise following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely;

- To make calls on shareholders in respect of money unpaid on their shares;
- To authorize buy-back of securities under section 61;
- To issue securities, including debentures, whether in India or outside;
- To borrow monies including arrangement with its bankers for overdraft, cash credit or other account;
- To invest the funds of the company;
- To grant loans or give guarantee or provide security in respect of loans;
- To approve financial statement and the director’s report;
- To diversify the business of the company;
- To approve amalgamation, merger or reconstruction;
- To take over a company or acquire a controlling or substantial stake in another company.

iv. Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section.

4.6 Related Party Transactions: Except with the consent of Board of Directors of a public company accorded by a resolution passed at a meeting of the Board and subject to such conditions as may be prescribed, no such company shall enter into any contract or arrangement with a related party with respect to

- Sale, purchase or supply any goods or materials;
- Selling or otherwise disposing of, or buying, property of any kind;
- Leasing of property of any kind;
- Availing or rendering of any services;
- Appointment of any agent for purchase or sale of goods, materials, services or property;
Appointment to any office or place of profit in the company or its subsidiary company; and

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

4.7 Prohibition on Insider Trading of Securities:

i. No director or key managerial personnel shall either on his own behalf or on behalf of any other person, deal in securities of a company, or counsel about, procure or communicate, directly or indirectly, any non-public price-sensitive information to any person.

ii. If any director or key managerial personnel contravenes the provision of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to one crore rupees, or with both.

2.6 Companies Bill 2012: Provisions for Corporate Governance:

The Company Bill, 2012 was passed by the Loksabha as ‘Bill No. 121-C of 2011’ on December 18, 2012 enacted by Parliament, Government of India. The Act contains total 470 clauses splitting into 29 chapters. The Act wanted to consolidate and amend the law relating to companies enabling them to operate in a regulatory environment suitable to the best International Practices which cultivate and promote the inclusive growth in the dimensions of Entrepreneurship, Investment and Governance. This Act has been made applicable to many other categories of the companies beyond those incorporated under this Act or under any previous company law and any company or body corporate body governed by any special Act, in the absence of any corresponding provisions therein. This includes:

a. Insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;

b. Banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
c. Companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;

d. Any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and

e. Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

f. Formation of companies with charitable objects, etc.

Beyond the fundamental guidelines and clauses, a number of other improvements were proposed in this Act in addition to those have been discussed under the Company Bill 2008 in the above Para. These additional provisions related to the corporate governance have been briefly elaborated in the following contents under this regulatory framework.

1. **SHAREHOLDERS:**
   
   1.1 Shareholders Right:

   1.3.2 Rights in Issue of Bonus Shares: A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

   i. its free reserves;

   ii. the securities premium account; or

   iii. the capital redemption reserve account;

Provided that no issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. No company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares. The bonus shares shall not be issued in lieu of dividend.

2. **ACCOUNTS OF COMPANY:**

   1.1 Corporate Social Responsibility:

   i. Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five
crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

ii. The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

iii. The Corporate Social Responsibility Committee shall,—

a. Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

b. Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

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

iv. The Board of every company referred to in sub-section (1) shall,—

a. After taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

b. Ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

v. The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy: Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities and provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

1.2 Internal Audit:
i. Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

ii. The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

3. AUDIT AND AUDITORS:

3.1 Removal, resignation of auditor and giving of special notice:

i. The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner: Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

ii. The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

iii. If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

iv. Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.
4. APPOINTMENT AND QUALIFICATIONS OF DIRECTORS:

4.1 Manner of selection of independent directors and maintenance of data bank of independent directors:

i. Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by anybody, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors: Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

ii. The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

iii. The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

iv. The Central Government may prescribe the manner and procedure of selection of independent directors who fulfill the qualifications and requirements specified under section 149.

4.2 Appointment of director elected by small shareholders:

i. A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed. Explanation. — For the purposes of this section “small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

5. MEETINGS OF BOARD AND ITS POWERS:
5.1 Nomination and Remuneration Committee and Stakeholders Relationship Committee:

i. The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors: Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

ii. The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid-down, recommend to the Board their appointment and removal and shall carry out evaluation of every director’s performance.

iii. The Nomination and Remuneration Committee shall 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.

iv. The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that—

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: Provided that such policy shall be disclosed in the Board’s report.

v. The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other
security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

**vi.** The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

**vii.** The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorized by him in this behalf shall attend the general meetings of the company.

**viii.** In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both: Provided that non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

**5.2 Company to contribute to bona fide and charitable funds, etc.**

**i.** The Board of Directors of a company may contribute to bona fide charitable and other funds: Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent of its average net profits for the three immediately preceding financial years.

**5.3 Power of Board and other persons to make contributions to national defense fund, etc.:**

**i.** The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defense Fund or any
other Fund approved by the Central Government for the purpose of national defense.

ii. Every company shall disclose in its Profits and Loss Account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates.
References:

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END OF CHAPTER – II