

Syllabus

PAPER 8 : GOVERNANCE, BUSINESS ETHICS AND SUSTAINABILITY

Level of knowledge : Expert Knowledge

Objective : To provide knowledge on global development and best practices in the corporate world.

Detailed Contents :

Part A: Corporate Governance (50 Marks)

1. Evolution, concept, principles and development.
2. Management structure for corporate governance; Board structure; building responsive boards - issue and challenges; effectiveness of Board, board committees and their functioning in particular audit committee, legal compliance committee and Stakeholders' relationship committee; appraisal of Board performance, transparency and disclosure; internal control system and risk management.
3. An analysis of legislative framework of corporate governance in various countries - such as UK, USA, India.
4. Corporate communication; art and craft of investors relations; shareholders activism, investor protection and changing role of Institutional Investors.
5. Corporate Social Responsibility and good corporate citizenship.
6. Various corporate governance forums - Common Wealth Association for Corporate Governance (CACG), Organization for Economic Cooperation Development (OECD), International Corporate Governance Network (ICGN), National Foundation for Corporate Governance (NFCG), etc.

Part B : Business Ethics (30 Marks)

7. Genesis, significance and scope; organization perspectives.
8. Ethical principles in business - codes and innovations.
9. Concept of the stakeholders' organization.
10. Activity analysis, business dilemma versus decision, characteristics of ethical dilemmas; the dilemma resolution process; business ethics as a strategic management tool; stakeholders' protection.
11. Challenges of business ethics and corporate leadership.

Part C: Corporate Sustainability (20 Marks)

12. Genesis, meaning, nature, objectives, significance and scope of corporate sustainability.
13. Sustainability reporting - frameworks and guidance; trends and drivers; business benefits of corporate sustainability reporting; leadership programmes and stakeholder engagement; corporate sustainability management systems.
14. Legal framework; conventions and treaties on environmental, health and safety and social security issues.
15. Principle of Absolute Liability - Case studies.
16. Contemporary developments.

Content

Chapters

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PART - A : CORPORATE GOVERNANCE 50 marks

| | | | |
|---|-----|---|----------|
| 1. Evolution and Development of Concept of Corporate Governance | 1.1 | - | 1.26 4.5 |
| 2. Issues and Challenges of an Effective Board | 2.1 | - | 2.12 6.0 |
| 3. Committees of the Board | 3.1 | - | 3.6 4.9 |
| 4. Internal Control System and Risk Management | 4.1 | - | 4.10 4.4 |
| 5. Legislative Framework of Corporate Governance in India | 5.1 | - | 5.8 6.2 |
| 6. Legislative Framework of Corporate Governance - An International Perspective | 6.1 | - | 6.6 0.9 |
| 7. Corporate Social Responsibility | 7.1 | - | 7.6 3.5 |
| 8. Investor Protection and Corporate Communication | 8.1 | - | 8.6 6.0 |
| 9. Corporate Governance Forums | 9.1 | - | 9.6 2.7 |

PART - B : BUSINESS ETHICS 30 marks

| | | | |
|---|------|---|-----------|
| 10. Business Ethics - Genesis, Significance and Scope | 10.1 | - | 10.6 6.6 |
| 11. Ethical Principles in Business | 11.1 | - | 11.8 11.0 |
| 12. Concept of Stakeholders Organisation | 12.1 | - | 12.8 6.8 |

PART - C : SUSTAINABILITY 20 marks

| | | | |
|---|------|---|----------|
| 13. Corporate Sustainability | 13.1 | - | 13.6 2.5 |
| 14. Sustainability Reporting | 14.1 | - | 14.6 4.5 |
| 15. Legal Framework; Conventions and Treaties on Environment, Health, Safety and Social Security Issues | 15.1 | - | 15.4 3.0 |
| 16. Principles of Absolute Liability | 16.1 | - | 16.4 2.8 |

- 1.26 4.5
- 2.12 6.0
- 3.6 4.9
- 4.10 4.4
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- 14.6 4.5
- 15.4 3.0
- 16.4 2.8

PART - A

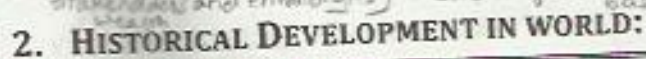
CORPORATE GOVERNANCE

1

The Institute of Company Secretaries of India has defined Corporate governance as:

4. Discharging Social Responsibility -
In general words of Milton Friedman, the Corporate Governance is .
Business as per stakeholder's desires.

- ### 1.1 PRINCIPLES OF SUSTAINABLE DEVELOPMENT (AS DEVELOPED BY ICSI)



2. HISTORICAL DEVELOPMENT IN WORLD:

Some of them are as follows:

1.1

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| Tread Way Commission, 1985 | Emphasized the need for setting up independent board and its committees and controlling internal audit function. |
| Committee of Sponsoring Organization, 1992 | Was formed as a result of the Tread way commission and provided the requisite control framework. |
| Sarbanes Oxley Act, 2002 | It provided for changes in serious aspects of corporate governance like: auditors independence, corporate responsibility, financial disclosures and penalties for default by managers and auditors. |
| Cadbury Report, 1992 | <p>(i) The committee on financial aspect was the 1st Corporate Governance code in UK and was incorporated in the London Stock Exchange listing rules.</p> <p>(ii) The recommendations of this report may be briefed up as follows:</p> <ol style="list-style-type: none"> 1. Separation of the role of CEO and Chairman. 2. Balanced Composition of BOD. 3. Selection process for Non-executive directors. <p>(iii) It was chaired by Sir Adrian Cadbury.</p> |
| The Greenbury Report, 1995 | <p>(i) It was formed in order to examine the remuneration of the directors like share options, large pay increase etc.</p> <p>(ii) It's important recommendation is the establishment of Remuneration committee comprising of non-executive directors, decide about the remuneration of the executive directors.</p> <p>(iii) Most of its recommendations were incorporated in listing rules of the London Stock Exchange.</p> <p>(iv) It was chaired by Sir Richard Greenbury.</p> |
| The Hampell Report, 1998 | <p>(i) It was established to see whether its recommendations of both, the Cadbury report and Greenbury, were implemented properly or not.</p> <p>(ii) Combining the recommendations of London Stock Exchange and Hampell committee together became Combined Code on Corporate Governance.</p> |
| The Turnbull Report | The Combined Code required the companies to include a narrative regarding the follow up of the |

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| | <p>teral control provisions but did not provide any guidelines as to how should these provisions be applied.</p> <p>As a result a working committee was formed under the leadership of Nigel Turnbull to issue the same</p> |
| Higgs Report, Smith Report and Tyson Report | <p>(i) Derek Higgs reviewed the effectiveness and role of non-executive directors as a part of review of combined code.</p> <p>(ii) Sir Robert Smith and his committee developed Guidance Audit committee in the Combined code.</p> <p>(iii) The Tyson report was commissioned on the Recruitment and development of Non-Executive directors.</p> |
| Combined Code on Corporate Governance | <p>(i) Set standards of good governance practice in relation to issue such as board composition and development, remuneration, accountability and audit and relations with shareholders.</p> <p>(ii) All companies incorporated in UK and listed on the main market of London Stock Exchange, hence, to report regarding compliance of combined code, under listing rules.</p> |



- Write a short note on —
- Cadbury Report 1992
 - Greenbury report.

➤ In United Kingdom, The Combined Code of Corporate Governance of 2008 is the result of studies made from time to time by various committees to prevent recurrence of scandals and financial collapses experienced in 1980s and early 1990s, when Cadbury Committee was first set up in 1992 which gave new dimensions to the corporate governance.

List out the three important recommendations of the Cadbury Committee and outline at least five major landmarks in the historical developments since the setting up of the Cadbury Committee for improvement in the Corporate Governance.

(CS JUNE 2010)

(CS DEC 2009)

3. DEVELOPMENT IN INDIA :

Various Corporate governance initiatives have been taken in India keeping in view the economic deliberation and globalization of the domestic economy and fast increasing global competition. Some of these Initiatives are:

1. **CII's Desirable Corporate Governance Code:** [Mr. Rakesh Bajaj, Past President of CII]
- Confederation of Indian Industry (CII) took the first initiative in India to develop and promote a code for Corporate Governance.
- The draft was released in April 1998 and was called Desirable Corporate Governance Code.

• It consists of 17 recommendations & complementary

• It is intended to build awareness within the corporate sector to implement "Best Practices" in Indian business & industry

Its brief summary is as follows:

| RECOMMENDATIONS | PROVISIONS |
|--|---|
| Recommendations I (Meetings) | BOD should meet <u>6 times a year</u> at an interval of 2 months with an agenda items that is discussed at least half a day. |
| Recommendations II (Composition) | <ul style="list-style-type: none"> (i) Application to companies with a turnover of ₹ 100 crores and above. (ii) At least <u>30%</u> of the board must consists of <u>Independent non-executive directors</u> if the Chairman is a non-executive director. (iii) At least <u>50%</u> of the board must consists of independent non-executive director if the Chairman and Managing Director is the same. |
| Recommendation III (Number of Directorships) | <p>A person cannot hold directorship in more than 10 listed companies excluding the directorship in:</p> <ul style="list-style-type: none"> (i) Subsidiaries wherein the group has an equity stake <u>50% over</u>. (ii) Associated companies wherein the group has an equity stake over <u>25%</u> but not more than 50% |
| Recommendation IV (Role of Independent Directors) | <p>Role of Non-executive directors:</p> <ul style="list-style-type: none"> (i) Participate actively in board. (ii) <u>Clearly define the responsibilities</u> in board. (iii) Must have a knowledge about Balance Sheet, Profit & Loss Account, Cash Flow Statement etc. |
| Recommendation V (Remuneration) | <p>Remuneration of Non-executive Directors:</p> <ul style="list-style-type: none"> (i) Commission over and above the sitting fees <ul style="list-style-type: none"> (a) 1% of Net Profit if a company has a managing director. (b) <u>3% of Net Profit</u> if there is <u>(no)</u> managing director. (ii) <u>Stock options as rewards</u> on the basis of performance can also be given. |
| Recommendation VI (Re-appointment) | <ul style="list-style-type: none"> (i) The attendance record of a concerned director seeking reappointment must be reviewed. (ii) If a director has been absent with or without leave for <u>50% or more meetings</u>, then the same must be mentioned in the resolution that is put to vote. |
| Recommendation VII (Key information to be reported to the board) | <p>The key information under this head includes:</p> <ul style="list-style-type: none"> (i) Annual Banquets / Operating plans. |

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| | <ul style="list-style-type: none"> (ii) Quarterly results for the company / its divisions / segments. (iii) Capital Banquets. (iv) Internal Audit Report. (v) Cases of thefts and dishonesty. (vi) Fatal / serious occurrences accidents (vii) Default in the payment of interest. (viii) Default in the repayment of public deposit. (ix) Joint Venture / Collaboration agreement details. (x) Labour problems and their proposed solutions. |
| Recommendation VIII (AUDIT COMMITTEE) | <p>It includes the followings:</p> <ul style="list-style-type: none"> (i) Listed companies with either a turnover of over ₹ 100 cores or a paid up capital of ₹ 20 cores should set up Audit Committee within 2 years. (ii) It should consists of at least 3 members all of them being non-executive directors and financially literate. (iii) Audit committee must have clearly defined terms of reference. (iv) It should assist board in performing functions like: <ul style="list-style-type: none"> (a) Corporate accounting. (b) Financial and accounting controls. (c) Public issue of any security etc. (v) It should constantly interact with statutory internal auditors. (vi) It should with utmost diligence, discharge its fiduciary responsibilities. (vii) Every listed company should have a strong internal audit department or an external auditor to do internal audit by the fiscal year 1998-99. |
| Recommendation IX (Additional Shareholder's Information) | <p>It should includes:</p> <ul style="list-style-type: none"> (i) High and low monthly averages of share prices in the stock exchange where the company is listed. (ii) Statement of value added (i.e.) total income - cost of all inputs and administrative expenses. |
| Recommendation X (Consolidation of Group Accounts) | <p>Consolidation of Group Accounts should be optional and subject to :</p> <ul style="list-style-type: none"> (i) The FIs allowing companies to leverage on the basis of the group's assets. |

| | |
|--|--|
| | <p>(ii) The Income Tax Department using the group concept is assessing corporate income tax.</p> <p>(iii) Companies who voluntarily consolidate their subsidiary's accounts do not hence to annex the account of its subsidiary companies under Section 212.</p> <p>(iv) However, if a company does so then the definition of "Group" the parent company and its subsidiaries company.</p> |
| Recommendation XI (Compliance Certificate) | <p>IT says that major stock exchanges should insist upon compliance certificate signed by CEO and CFO stating that:</p> <p>(i) Management is responsible for fairness, integrity and preparation of financial statements.</p> <p>(ii) Accounting policies are according to standard practice.</p> <p>(iii) Full disclosure where accounting policies aren't according to standard practice.</p> <p>(iv) Company's internal accounting administrative systems has been overseen by the board properly.</p> |
| Recommendation XII (Quality of disclosure) | <p>The quantity and quality of disclosure in case of domestic issue must be the same followed in case of GDR issue for all companies with a paid up capital of ₹ 20 cores or more.</p> |
| Recommendation XIII (Government Allowances) | <p>The government must allow greater funding to the corporate sector against the security of shares and other paper.</p> |
| Recommendation XIV (Nominee Directors) | <p>FIs must avoid appointing nominee directors in companies except:</p> <p>(i) In case of serious debt default.</p> <p>(ii) In case of the debtor company does not provide six monthly or quarterly operational data to the concerned FICs.</p> |
| Recommendation XV (Credit Rating) | <p>A company must disclose the ratings received by the all credit rating agencies in the prospectus in a tabular format that shows where the company stands relative to higher and lower ranking. In order to inspire the environment of transparency and confidence, it is essential to look at the quantity and quality of disclosures that accompany issue of company bonds, debentures and fixed deposits in USA and UK. Companies cannot have two sets of disclosure norms one for foreigners and one for Indian investors for making foreign debt.</p> |

Recommendation XVI (Default)

Companies that defaults on fixed deposit should not be permitted to:

- ✓ (i) Accept further deposits
- ✓ (ii) Make inter-corporate loan/ investments
- ✓ (iii) Declare dividends until the default is made goods.

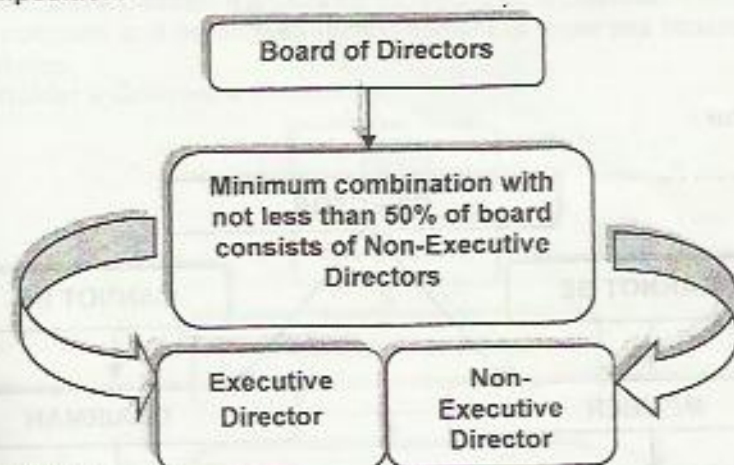
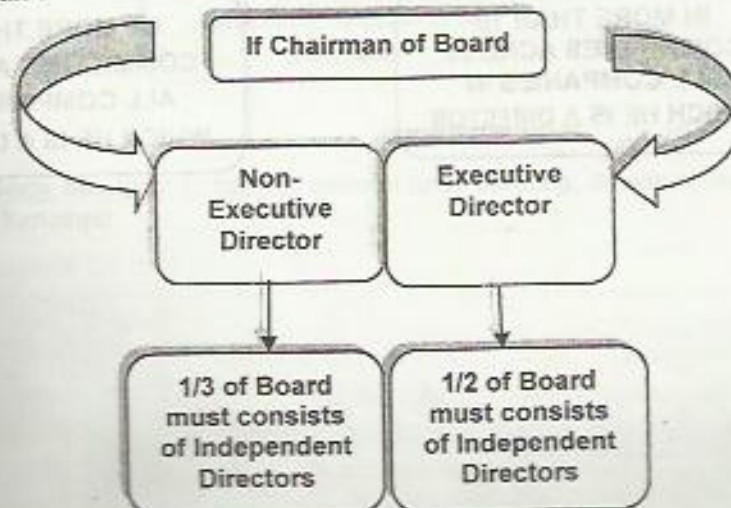
2. Kumar Mangalam Birla Committee:

It was formed under the chairmanship of Kumar Mangalam Birla as an initiative taken up by Securities Exchange Board of India (SEBI).

Its main aim was to evolve a code of Corporate Governance keeping in mind the existing conditions of Governance in Indian Companies and in the Capital Market.

These recommendations are:

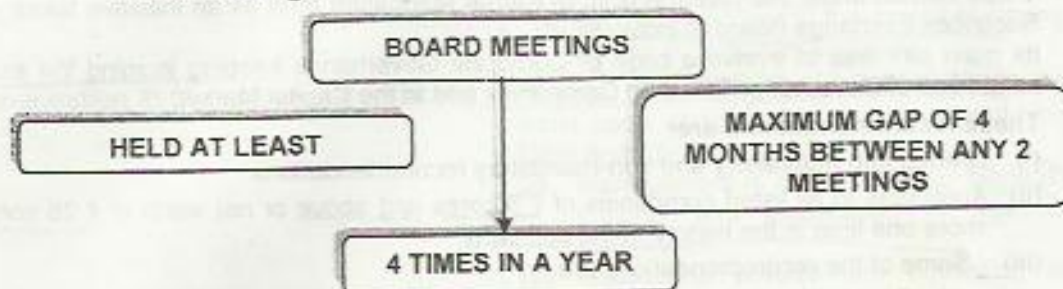
- ✓ (i) Divided into mandatory and non-mandatory recommendations.
- ✓ (ii) Applicable to all listed companies of ₹ 3 cores and above or net worth of ₹ 25 cores or more one time in the history of the company.
- ✓ (iii) Some of the recommendations are:

1) Composition:**2) Chairman :**

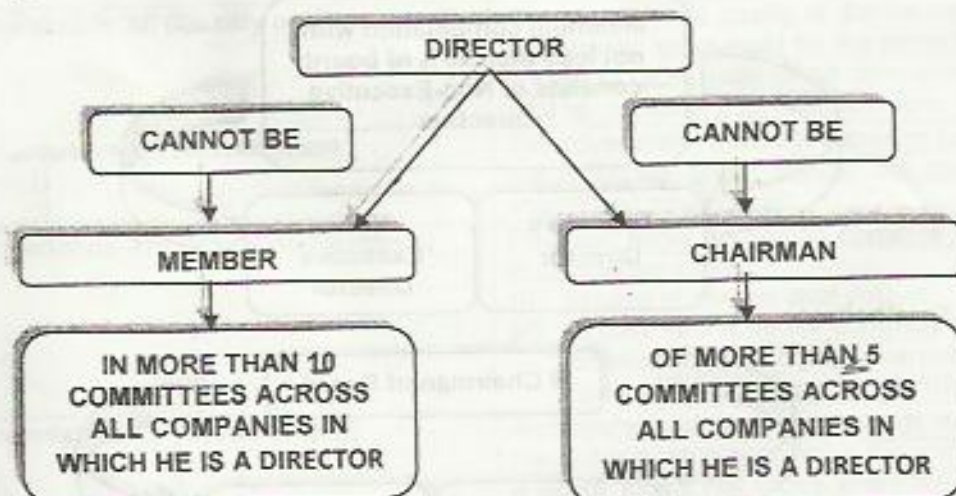
- Independent directors are:
 - (a) Who apart from receiving directors remuneration
 - (b) have no other material primary relationship or transactions
 - (c) with the company, its promoters, its subsidiaries, its management
 - (d) that may affect their independence.

3) Meetings :

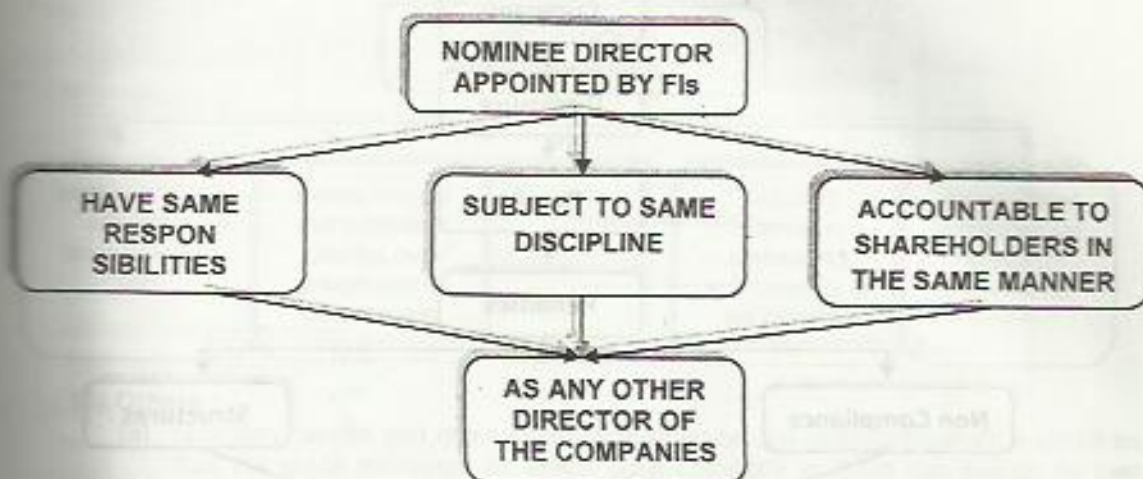
Board Meeting :



4) Director :

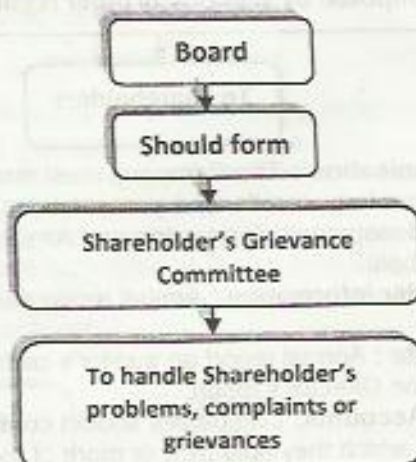


5) Nominee Director :



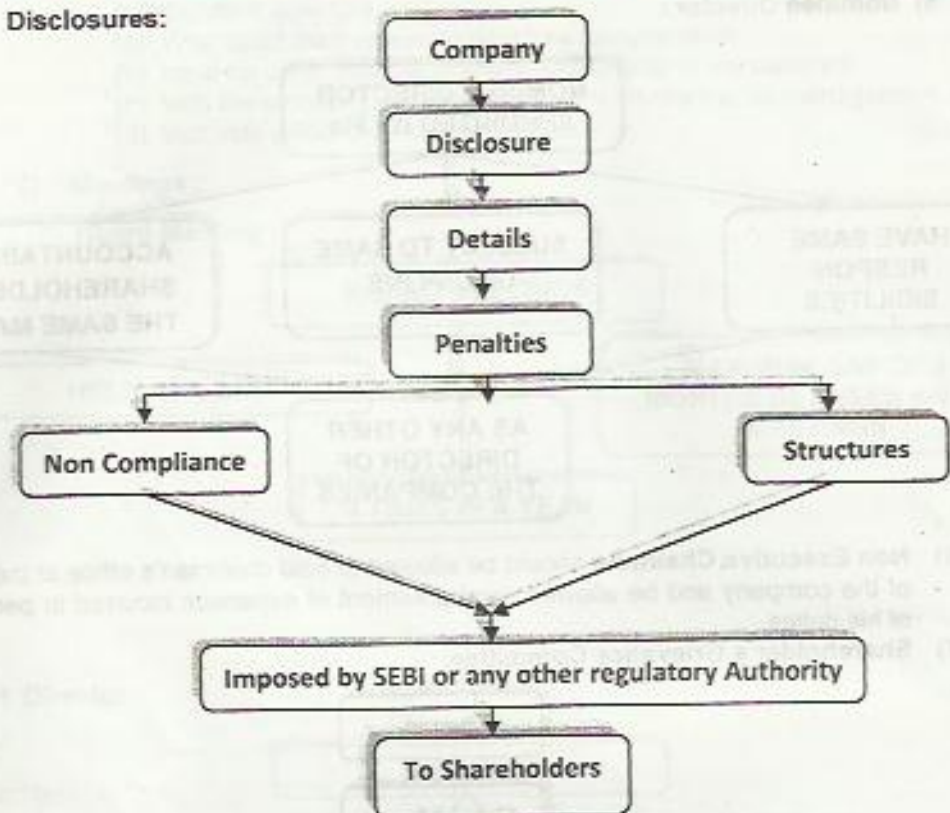
- 6) **Non Executive Chairman** should be allowed to hold chairman's office at the expense of the company and be allowed reimbursement of expenses incurred in performance of his duties.

7) Shareholder's Grievance Committee:

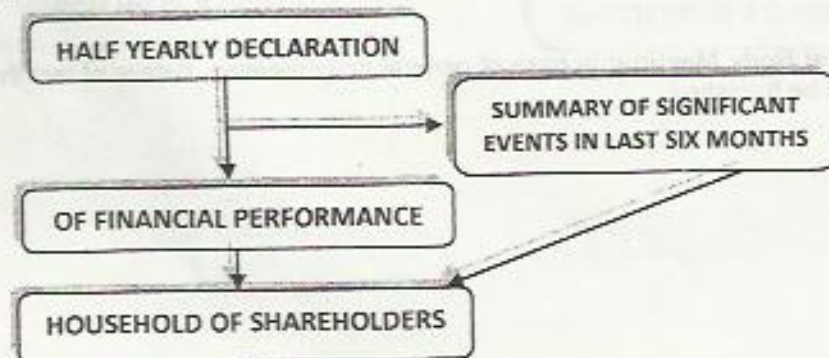


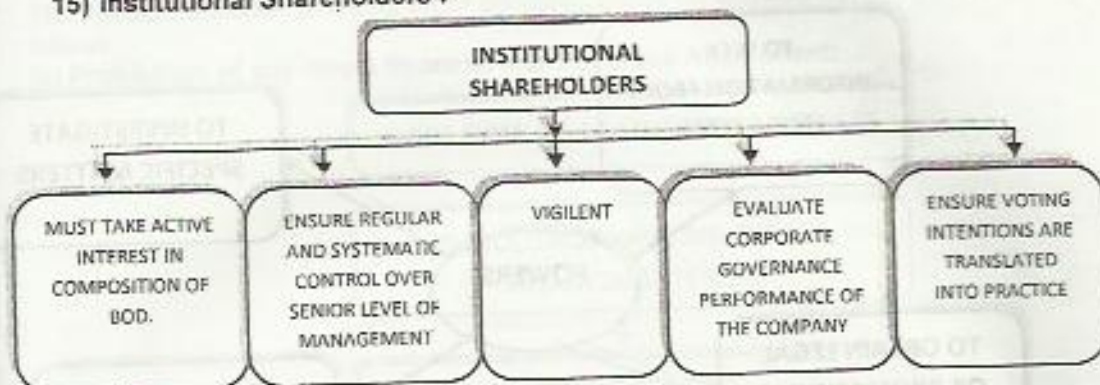
- 8) **General Body Meeting:** In case of general body meeting, details of last three AGMs should be furnished.

9) Disclosures:



- 10) **Means of Communication** : The Company must disclose the details of the mode of discrimination of quarterly results and presentations made to institutional investors and statement of Management Discussion and Analysis in its Half yearly report to be sent to each household.
- 11) **General Shareholder Information** : Annual report must include specific matters of interests.
- 12) **Auditor's Certificate** : Annual report an auditor's certificate on Corporate governance as an annexure to the Director's report.
- 13) **Consolidation of Accounts**: Companies should consolidate the accounts in respect of all subsidiaries in which they hold 51% or more of the capital.
- 14) **Declaration** :



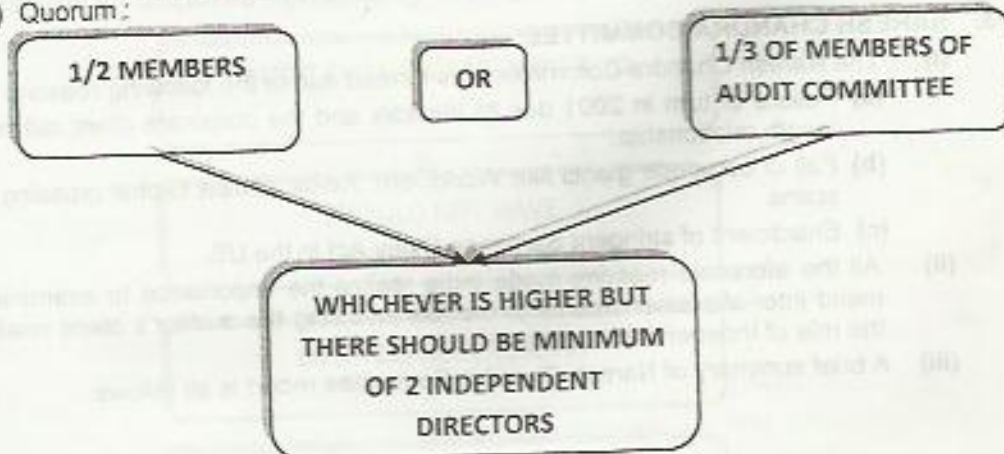
15) Institutional Shareholders :**16) Others :**

- Quarterly results and other information must be put upon company's website so that the stock exchange on which such company is listed can put on its own website.
- Shareholders can use the General meetings as a forum to ensure that the Company is being managed to maximize their interest.
- Board must constitute committee under the chairmanship of non-executive director to specifically handle shareholders grievances like non receipt of balance sheet, declared dividends etc.

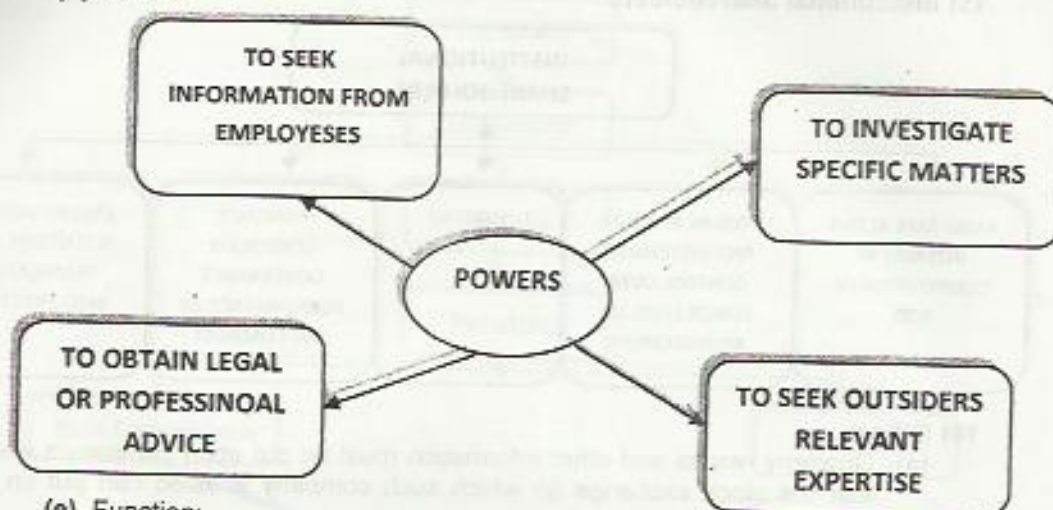
17) Audit Committee:**(a) Composition :**

- Minimum 3 Directors all of them being independent at least one director to have financial management knowledge.
- Chairman should be independent director and must be present at AGM.
- Company secretary to act as the secretary of the committee.
- The Audit committee can meet in the presence of such executives in the meeting of audit committee as it may think it necessary.

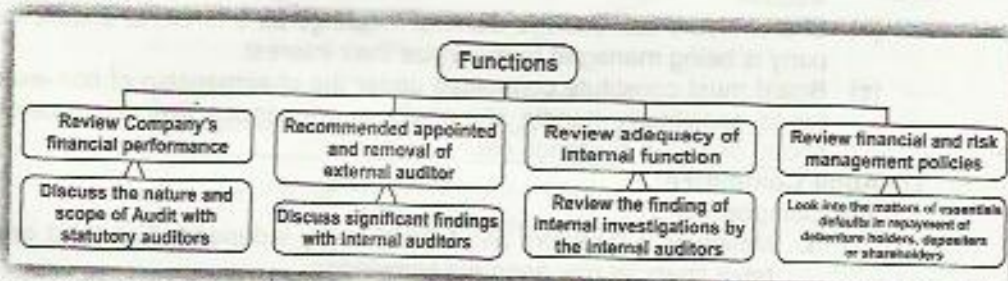
- Frequency of the Meeting: 3 times a year and one in every 6 months before finalization of annual accounts.

(c) Quorum :

(d) Powers:



(e) Function:



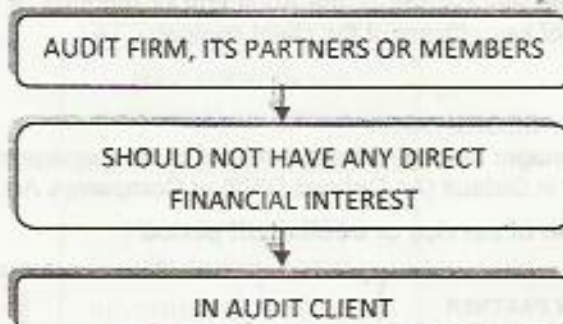
- List out the items to be included in the report on corporate governance in the annual report of the companies as recommended by the Kumar Mangalam Birla committee. **(CS DEC 2004)**
- What is the board procedure recommended by Kumar Mangalam Birla Committee on corporate governance and what information must be made available to the board as per the said committees' recommendations. **(CS DEC 2005)**

3. NARESH CHANDRA COMMITTEE:

- (i) The Naresh Chandra Committee was formed due to the following reasons :
 - (a) Failure of turn in 2001 due to auditors and the corporate client did not have arms length relationship.
 - (b) Fall of corporate giants like WorldCom, Xerox, Qwest Global crossing due to major scans.
 - (c) Enactment of stringent Sarbanes Oxley Act in the US.
- (ii) All the aforesaid reasons made India realize the importance to examine and recommend inter-alia amendments to the law involving the auditor's client relationships and the role of Independent directors.
- (iii) A brief summary of Naresh Chandra Committee report is as follows:

This recommendation provides list of disqualifications for auditing assignments which are as follows:

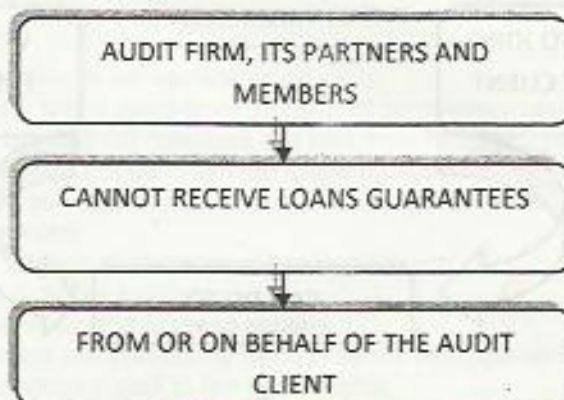
(a) Prohibition of any direct financial interest in the Audit client:



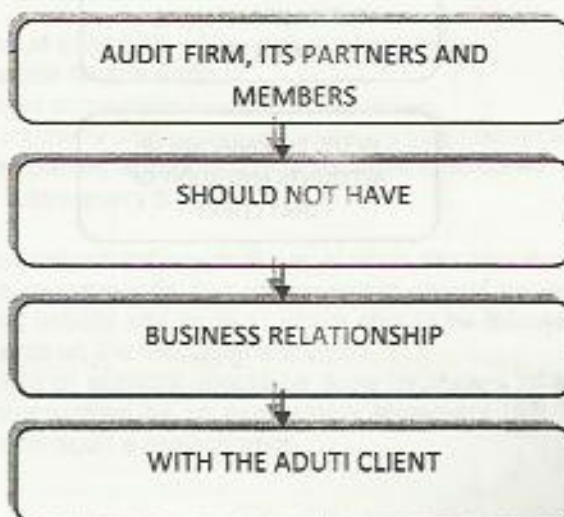
NOTE:

This prohibition is also applicable if any relative of the partners of the Audit firm or its members have an interest of more than 2% of the share of profits or Equity capital of the Audit client.

(b) Prohibition on receiving any Loans / Guarantees :



(c) Prohibition on Business Relationship :



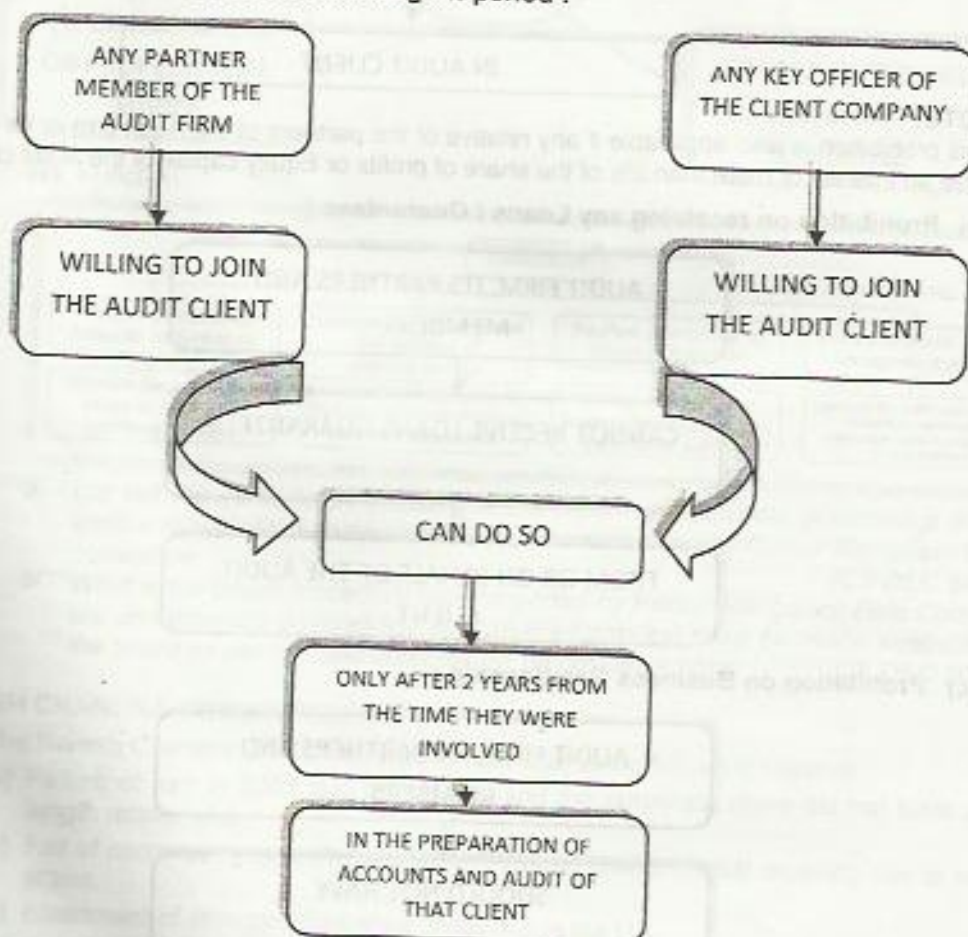
- (d) The recommendation provides that there is **prohibition on maintaining personal relationship** with key managerial personnel's of audit client.

NOTE:

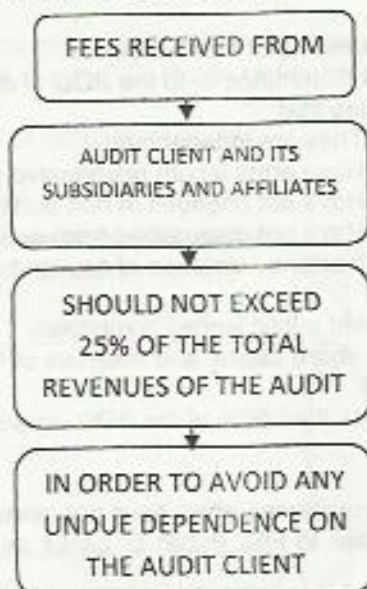
This will exclude any partner of the Audit firm or member of the engagement team being a relative of any of key officers of the client company; i.e.

- (i) CEO
- (ii) CFO
- (iii) COMPANY SECRETARY
- (iv) Senior manager belonging top two levels of the management.
- (v) An Officer in Default (As Defined U/S 5 of Companies Act, 1956)

- (e) **Prohibition of service or cooling off period :**



(f) Prohibition on under dependence on audit client:



NOTE:

- (i) This recommendation is not applicable on:
 - Audit firms for first 5 years from the date of commencement of their activities.
 - Audit firms whose total revenues are less than ₹15 lakhs per year.
- (ii) The Audit firm should not carry out the following activities :
 - Internal audit services.
 - Actuarial services.
 - Investment advisor or investment banking service.
 - Outsourced financial services.
 - Valuation services and fairness explain.
 - Staff recruitment and particularly hiring of senior management staff for the audit client.
 - Providing temporary staff to the audit clients.
 - Services related to IT systems for preparing financial or management accounts and information flows of a company.
- (iii) Rotation:
 - Partners and at least 50% of the engagement team
 - (a) Responsible for the Audit of;
 - (i) Listed companies
 - (ii) A company whose paid up capital by free resources exceeds ₹ 10 cores.
 - (iii) Companies whose turn over exceeds ₹ 50 cores.
 - (b) Should rotate every 5 years.

NOTE:

Persons who are compulsorily rotated can be allowed to return after a break of 3 years, if the need arises.

- (iv) The committee recommends that management should provide a clear description regarding material liability and its risks which should be followed by the auditor's clearly worded comments on the management views.
- (v) The replacement of auditors should be done by means of a special resolution which should be accompanied by an explanatory statement U/S 73(2) disclosing management's reason for such a replacement.

(vi) Appointment:

• Audit firm

1. Submit a certificate of Independence

a. To Audit Committee or to the BOD of client company.

i. Stating that:

1. They are independent
2. Have arms length relationship with audit client.
3. Have not engaged in non audited services.
4. Have not disqualified from audit assignment by virtue of any prohibitions / violation of any limits.

(vii) Composition:

(a) Any listed / unlisted public limited companies.

(b) Having paid -up share capital and reserves of ₹ 10 cores or more or turnover of ₹ 50 cores or more.

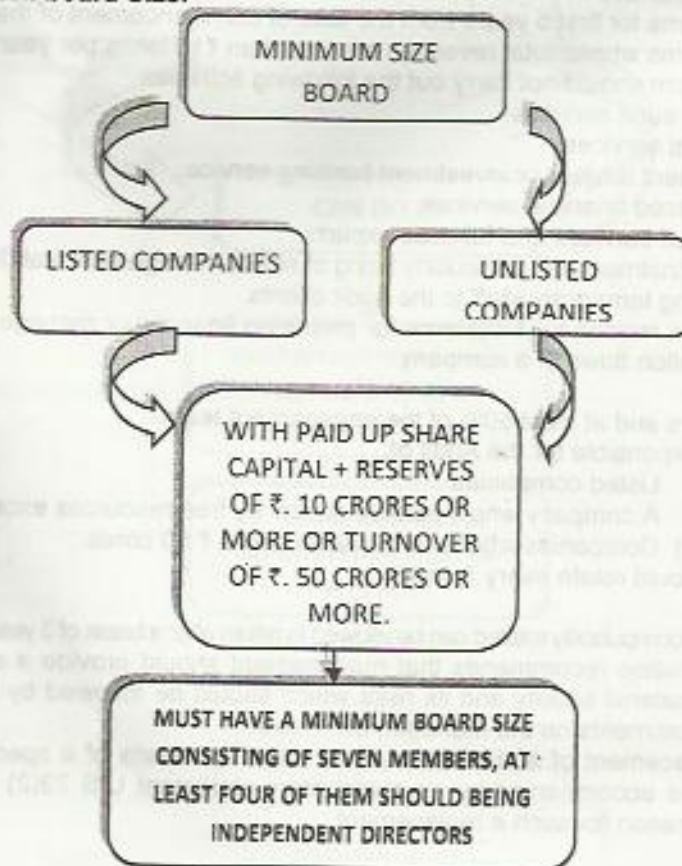
(c) Must have not less than 50% of the BOD consisting of Independent directors.

NOTE:

This will not apply to:

(a) Unlisted Public Companies which have not more than 50% shareholders and which have no debts due to FIS, Public or banks as long as they do not change their character.

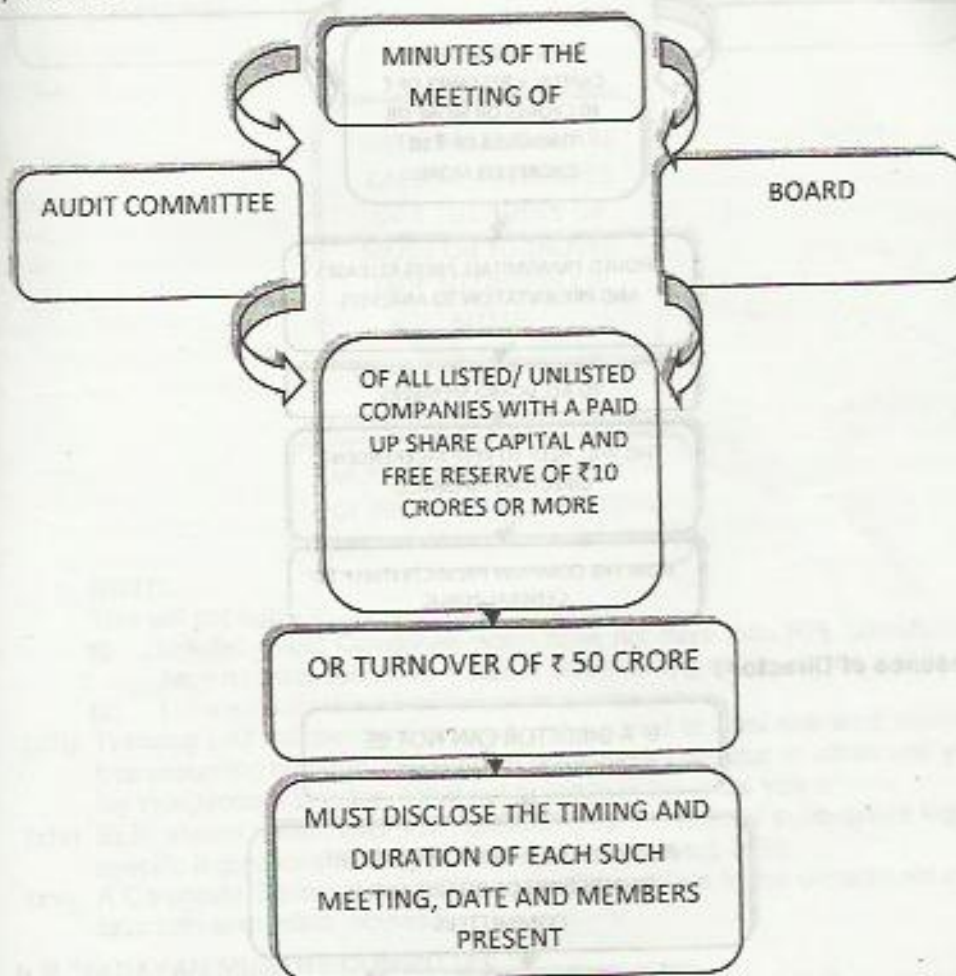
(b) Unlisted subsidiaries of listed companies.

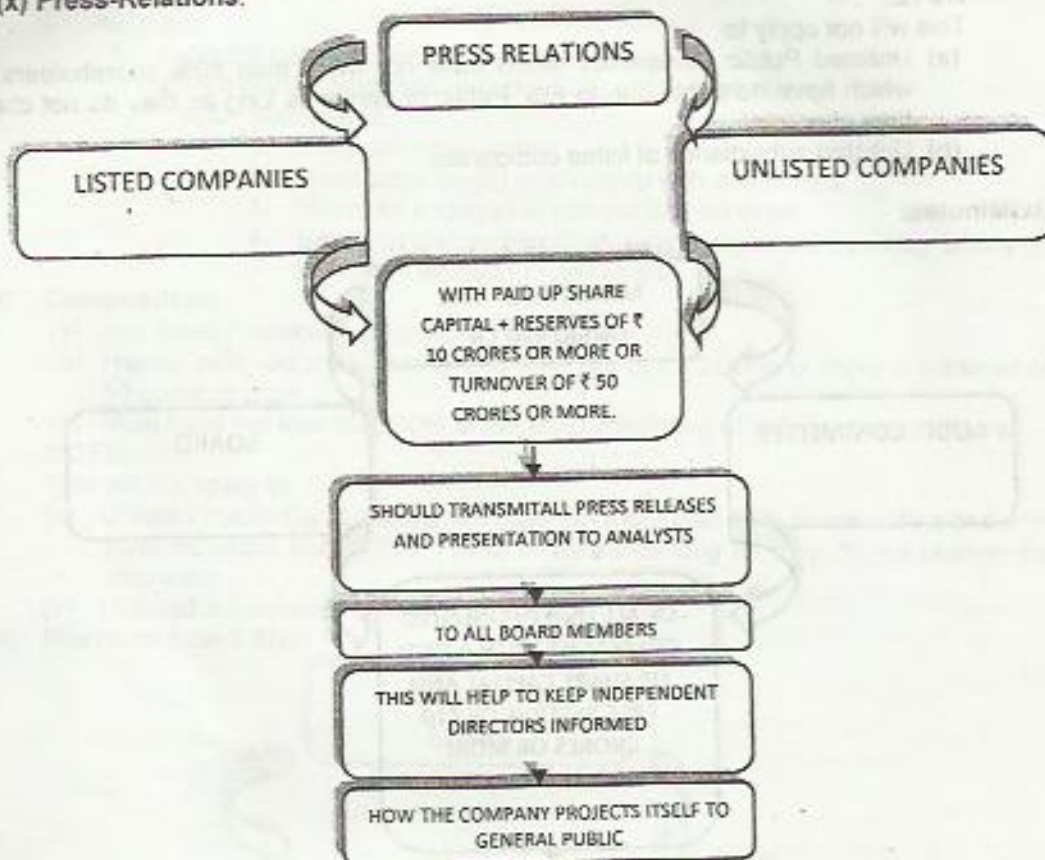
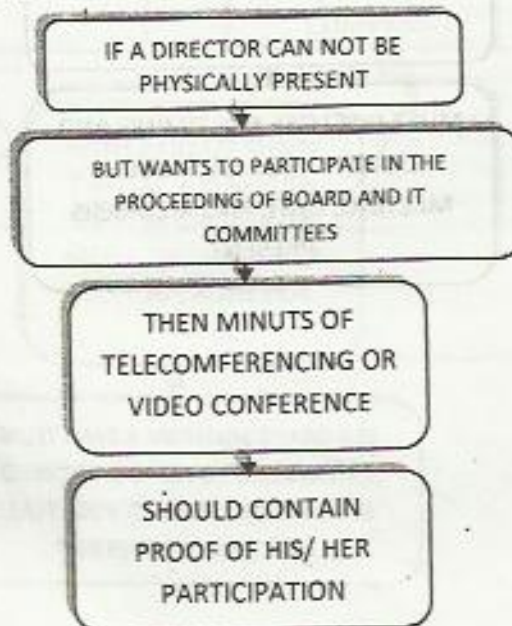
(viii) Minimum board Size:

NOTE:

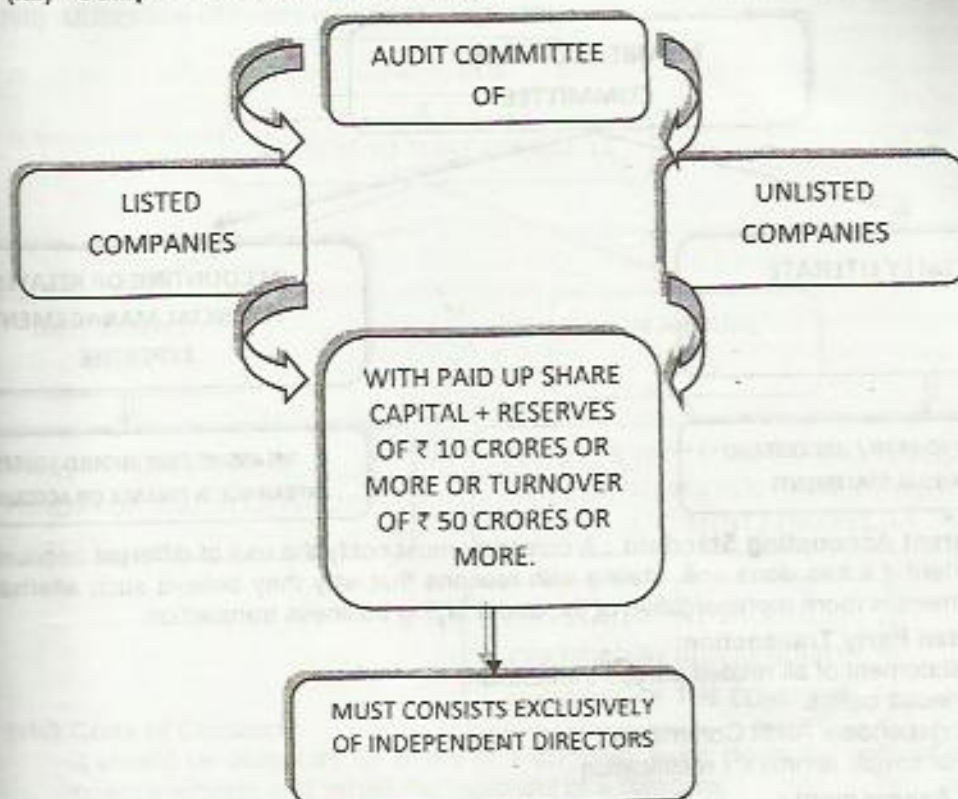
This will not apply to:

- (a) Unlisted Public Companies which have not more than 50% shareholders and which have no debts due to FIS, Public or banks as long as they do not change their character.
- (b) Unlisted subsidiaries of listed companies.

(ix) Minutes:

(x) Press-Relations:**(xi) Presence of Director :**

(xii) Composition of Audit Committee.

**NOTE:**

This will not apply to:

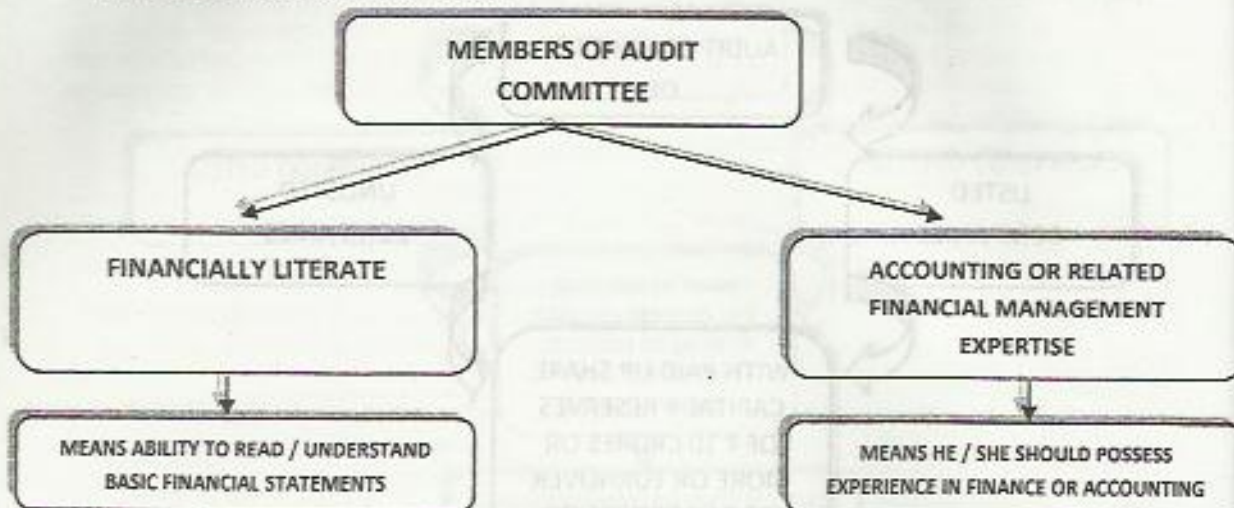
- (I) Unlisted Public Companies which have not more than 50% shareholders and which have no debts due to FIS, Public or banks as long as they do not change their character.
- (II) Unlisted subsidiaries of listed companies.
- (xiii) **Training** : All independent directors must attend at least one such training course before assuming responsibilities as an independent director or within one year of becoming independent director, if that not possible in the initial years.
- (xiv) SEBI should refrain itself from exercising its powers of subordinate legislation where specific legislations already exists in Companies Act, 1956.
- (xv) A Corporate Serious Fraud Office should be set up in the department of company affairs with specialists inducted.

N.R. NARAYAN MURTHY COMMITTEE :

SEBI constituted this committee under the chairmanship of Shri N.R. Narayan Murthy reviving complementation of the Corporate governance code by listed companies and issue of revised clause 49 based on the following recommendations :

- (i) **Mandatory Function** : Audit committee should mandatorily review:
 - Financial statements, Quarterly / Half yearly financial information.
 - Management discussion and analysis of financial condition.
 - Reports pertaining to compliance of law and to risk management.
 - Letters of internal control weakness.
 - Records of related party transactions.

(ii) Member of Audit Committee:



(iii) **Different Accounting Standard** : A company must notify the use of different accounting standard if it has done one, stating with reasons that why they believe such alternative treatment is more representative of the under laying business transaction.

(iv) **Related Party Transaction:**

- Statement of all related parties transaction
- Placed before
- Independent Audit Committee
- For formal approval / rectification

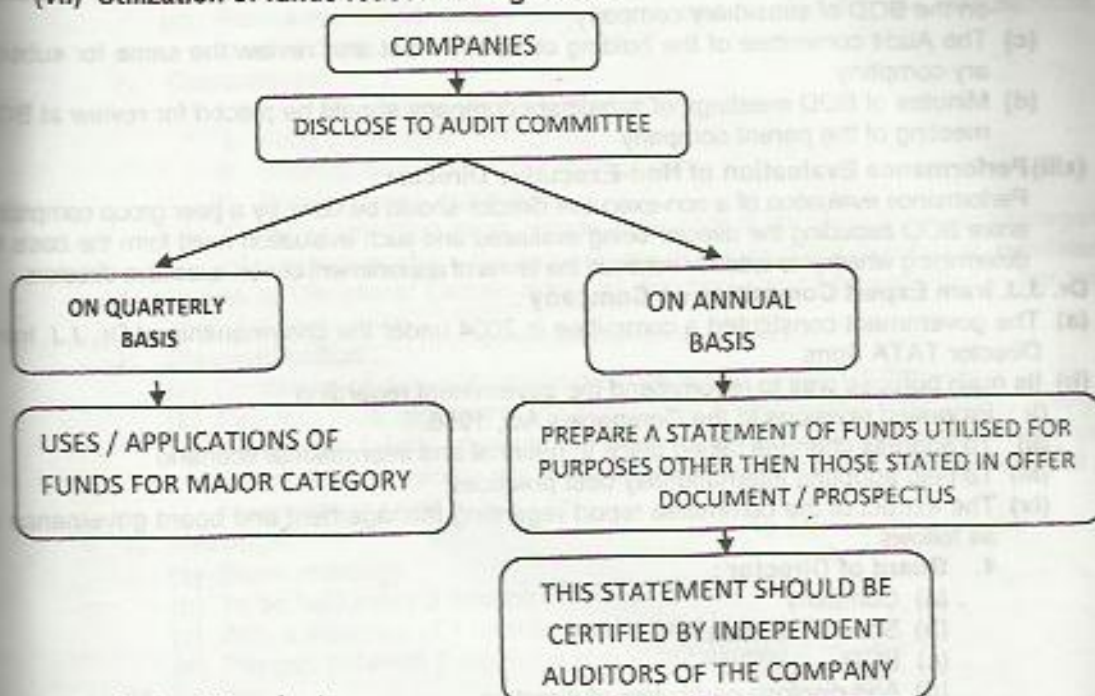
(v) **Risk Assessment :**

- Inform
- Board Members
- About risk assessment and minimization procedures
- To help management control risks through properly methods

(vi) **Quarterly Risk Report:**

- Place before BOD
- Every Quarter
- A report contains
 - Risk faced by the business
 - Measures taken to minimize risks
 - Any limitations to the risk taking capacity of the corporation.

(vii) Utilization of funds reused through JPO:



(viii) Code of Conduct :

It should be obligatory for Board of a company to lay down the code of conduct for all board members and senior management of a company.

(ix) Nominee Directors: It says that:

- (a) There shall be no nominee director
- (b) But where an institution wishes to appoint one then such appointment must be done by shareholders.
- (c) Nominee Director must have same responsibilities and be subject to same liabilities as any other directors.

(x) Compensation of Non-Executive Directors:

- (a) It fixed by the board and short may be approved by shareholders in general meeting. Limits should be set for maximum number of stock options that can be granted to non-executive directors in any financial year and in aggregate.
- (b) Companies should publish their compensation philosophy in respect of non-executive directors in their annual report.

(xi) Unethical behavior:

- (a) Any person
- (b) Who observes
- (c) Unethical / improper practice
- (d) Should inform audit committee
- (e) Without necessarily informing their supervisors

(xii) In case of Subsidiaries:

- (a) Provisions of composition of BOD of holding company should be same for subsidiary company.

- (b) At least one independent director on the BOD of parent company shall be a director on the BOD of subsidiary company.
- (c) The Audit committee of the holding company must also review the same for subsidiary company.
- (d) Minutes of BOD meetings of subsidiary company should be placed for review at BOD meeting of the parent company.

(xiii) Performance Evaluation of Non-Executive Director :

Performance evaluation of a non-executive director should be done by a peer group comprising entire BOD excluding the director being evaluated and such evaluation must form the basis for determining whether to extend / continue the terms of appointment of non-executive directors.

5. Dr. J.J. Irani Expert Committee on Company :

- (a) The government constituted a committee in 2004 under the chairmanship of Dr. J.J. Irani, Director TATA Sons.

- (b) Its main purpose was to recommend the government regarding :

- (i) Proposed revisions to the Companies Act, 1956.
- (ii) To address changes taking place in national and international scenario
- (iii) To help adopting internationally best practices.
- (iv) The extract of the committee report regarding management and board governance is as follows :

1. Board of Director :

- (a) Company
- (b) Should maintain
- (c) BOD
- (d) And disclose particulars of directors
- (e) Through statutory filing of information

- 2. Governance Framework :** The law should provide a framework of governance that should be complied with by all companies in the interest of company and its stakeholders above a particular age.

3. Minimum Members :

- (a) Law should provide only minimum number of directors necessary for various classes of companies.
- (b) There need not be any limit to maximum number of directors.
- (c) No age limit be specified in the act other than procedures for appointment to be followed by prescribed companies for appointment of directors.
- (d) Government should not interfere in the appointment and removal of directors in Non-government companies.

4. Non Resident Directors :

- (a) Every company should have at least one director resident in India.
- (b) There should not be any need to take prior approval from the Central Government before non resident managerial persons.

5. Independent Directors :

- (a) Presence of independent directors shows good governance.
- (b) Their role, alternatives, qualifications liability and manner of appointment must be clearly stated by law.
- (c) Number and proportion of directors in the board may vary depending on the size and nature of the company.

6. Remuneration :

- (a) Remuneration decisions should not be based on a "Government approval system" but should be left on the company.

shall be a director

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(b) No limits need to prescribed.

(c) Remuneration committee may be referred for deciding the remuneration in case of distribution of profits.

7. Committees:

(a) Law should provide for the formation of :

- i. Audit committee
- ii. Shareholders committee relationship.
- iii. Remuneration committee.

(b) Certain committee must include independent directors for certain categories of companies where the requirement of independent directors is mandated.

8. **Duties of Directors:** Certain duties of directors should be specified in the act in an inclusive manner.

9. Disqualification :

(a) Conditions of disqualifications must be already stated in the Act.

(b) Directors must disclose to the board their previous disqualifications, (if any).

(c) If a director fails to attend board meeting for a continuous period of one year, he will have to vacate the office irrespective of the fact that the leave of absence was granted to him / not.

10. Meetings:

(a) Board meetings

(b) To be held every 3 months

(c) With a minimum of 4 meetings to be held in a year.

(d) The gap between 2 meetings should not exceed 4 months

11. Voting:

(a) Use of postal ballot should be allowed in meetings of the members for voting.

(b) Law should provide for voting through electronic mode.

(c) AGMs may be held at a place other than the place of registered office in India.

12. **Managing Director / whole time Director / Executive director** should be in the whole time employment of only one company at a time.

13. Key Managerial Personnel:

Every company should be required to appoint:

(a) Chief Executive officer;

(b) Chief Finance officer and

(c) Company Secretary as their key managerial personnel whose appointment and removal shall be by the BOD.



➤ Discuss the salient features of Narayan Murthy Committee's report on corporate governance. (CS DEC 2003)

Task Force on corporate excellence through Governance:

(a) In May 2000, the department of company affairs established a broad based group under the chairmanship of Dr. P.L. Sanjeev Reddy Secretary DCA.

(b) Its aim was:

(i) To examine the ways to operationalize the concept of corporate excellence end sustained basis.

(ii) To sharpen India's global competitive edge and to further develop corporate culture in the country.

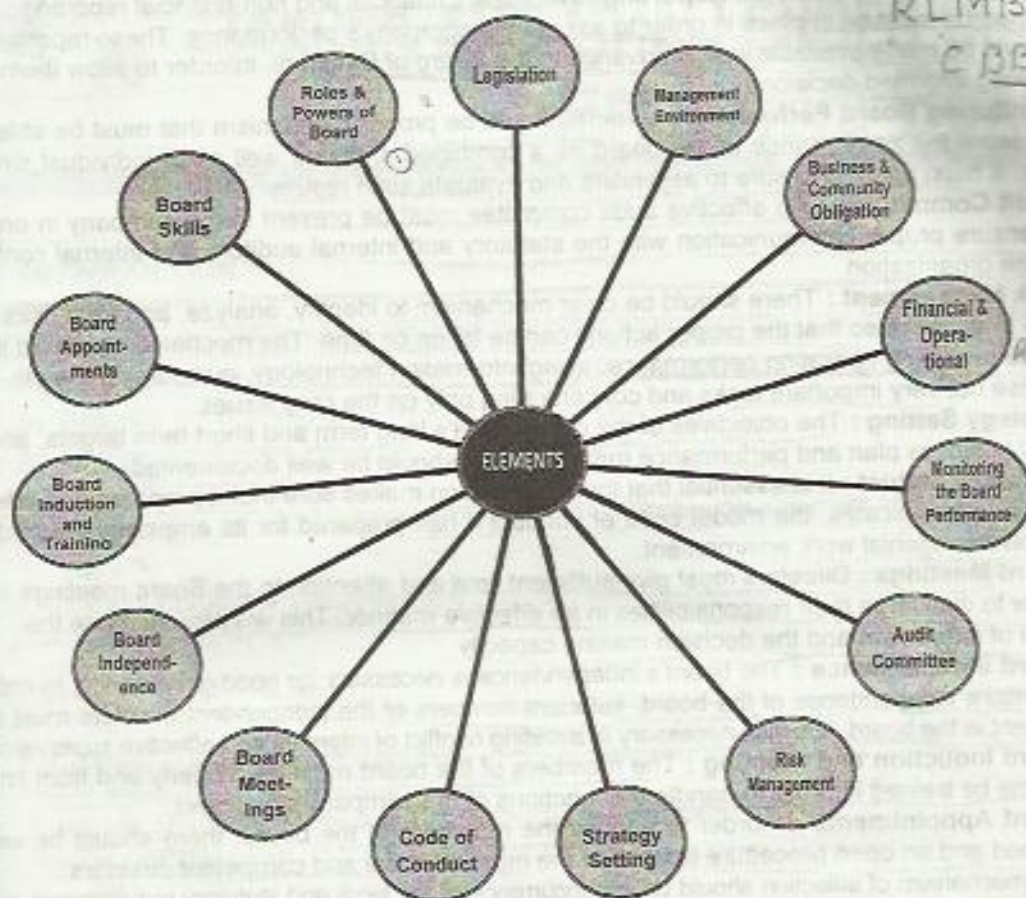
- (c) A task force on corporate excellence was setup by the group produced a report for raising the standard of corporate governance among all companies in India.
- (d) It also provided the setting up of centre for corporate excellence.
- (e) A summarization of the Report is :
 - (i) Higher delineation of independence criteria and minimization of interest conflict potential.
 - (ii) Commitment and accountability from directors can be ensured through more focused board and committee membership.
 - (iii) Introducing formal recognition of corporate social responsibility.
 - (iv) Apply the highest and toughest standard of corporate governance to listed companies.
 - (v) Surveillance of PSUs by agencies should be done away with and a commission should be appointed to draft a suitable code of public behavior.
- (f) Recommendations also stated the importance of :
 - (i) Meaningful and transparent accounting and reporting
 - (ii) Improved annual report
 - (iii) Greater facilitation for informed participation.
- (g) An autonomous centre for corporate excellence should be setup in order to conduct or promote policy research and studies, training and education in the field of corporate governance.
- (h) There should be a clear distinction between the policy making and oversight responsibilities of the BOD and the executive and implementation responsibilities of corporate management comprising of the managing director and his/her team of other directors.

4. OBJECTIVES OF CORPORATE GOVERNANCE :

Following are the main objectives of Corporate governance :

- (i) To leave a properly structured board which can take independent decisions.
- (ii) To have adequate number of independent directors that can address the interest of stakeholders.
- (iii) To enable board to adopt transparent procedures and help in taking decisions on the basis of the adequate decisions.
- (iv) To ensure board has proper mechanism at place which allows it to sub serve the needs of the stakeholders.
- (v) To keep the shareholders informed about the latest and all other important development relating to the company.
- (vi) To see that whether board regularly monitors the functioning of the management team.
- (vii) To see that board remains in effective control of the affairs of the company at all times.

5. ELEMENTS OF GOOD CORPORATE GOVERNANCE :



I Roles & Powers of Board :

- (i) Role & powers of board should be clearly defined.
- (ii) It should be clearly stated in the board charter.
- (iii) The board is mainly responsible for value creation for its stakeholders in the absence of which the attainment of goals of the organization would be threatened.

II Legislation : Legislations and other rules and regulations should be clear and unambiguous for effective corporate governance. They must be free from manipulations and misinterpretations.

III Management Environment: it includes:

- (i) Transparency at work.
 - (ii) Ethical framework.
 - (iii) Sound business planning.
 - (iv) Ensuring better business risk assessment.
 - (v) Performance evaluation measures.
 - (vi) Having right skills and right people for the right job.
- TESEPH

IV Business and Community Obligations : Although, profit earning is the inherent motive of an organization, it must also take care of its social responsibilities. These objectives should

be properly documented, approved by the Board of Directors and then properly communicated to the stakeholders.

- V **Financial and Operational Reporting** : Necessary financial and non-financial reporting standards must be in place in order to assess the company's performance. These reports should be made available well in advance to the Board of Directors, in order to allow them in making informed decisions.
- VI **Monitoring Board Performance** : There should be proper mechanism that must be able to measure the performance of the board as a combined entity as well as of individual directors. It must also make sure to assimilate and evaluate such results.
- VII **Audit Committees** : An effective audit committee must be present in the company in order to ensure proper communication with the statutory and internal auditors and internal control of the organization.
- VIII **Risk Management** : There should be clear mechanism to identify, analyze, and treat risks well in advance so that the proper actions can be taken on time. The mechanisms should include reviewing operating performance, using information technology, outsourcing the otherwise not very important tasks and concentrating only on the core issues.
- IX **Strategy Setting** : The objectives of the company, its long term and short term targets, annual business plan and performance measures etc. should be well documented.
- X **Code of Conduct** : It is essential that the organization makes sure that it prepares and effectively communicates, the model code of conduct it has prepared for its employees, in order to have congenial work environment.
- XI **Board Meetings** : Directors must give sufficient time and attention to the Board meetings in order to discharge their responsibilities in an effective manner. This will also increase the level of interaction and the decision making capacity.
- XII **Board Independence** : The board's independence is necessary for good governance. In order to ensure independence of the board, sufficient numbers of the independent directors must be present in the board. It is also necessary in avoiding conflict of interests and effective supervision.
- XIII **Board Induction and Training** : The members of the board must be properly and from time to time be trained in order to handle the functions of the company's business.
- XIV **Board Appointments** : In order to appoint the members of the board, there should be well defined and an open procedure to appoint the most effective and competent directors. The mechanism of selection should be in concurrence of the legal and statutory requirements and the letter of appointment of the directors should contain their duties and responsibilities in details.
- XV **Board Skills** : The board must have all the necessary skills in order to deliver better functions like :
 - (a) Operational or technical expertise.
 - (b) Financial skills
 - (c) Legal skills
 - (d) Awareness or knowledge about the government regulatory measures.



- Discuss the role of Board of Directors in the good corporate governance. (CS DEC 2009)
- On 8th February, 2009, The Hindustan Times published a news caption "crises of unimaginable proportions – Fraud @ Satyam. Company running out of cash to pay salaries – faces lawsuits."

It further remarked: "The country is rocked by possibly the biggest corporate fraud. The company's profits and cash had been doctored for several years with possible convenience of the auditors." Obviously, the company committed breach of good corporate governance legal lawsuits.

If you have to investigate the case, which aspect of corporate governance would you look into? (CS JUNE 2009)

TOTAL

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2 ISSUES AND CHALLENGES OF AN EFFECTIVE BOARD

1. INTRODUCTION

- We know that it is the Board of Directors that plays a key important role in the organization.
- They are seated on top of the hierarchy and play the following important role like:
 - (a) Ensuring good governance
 - (b) Monitor managerial efficiency
 - (c) Prevents conflict of interests
 - (d) Responsible for accountability, leadership, sustainable development and corporate citizenship.
- They also have to see that the organization duly follows all laws and regulations be it related to taxations, health or safety.

PREM

2. TYPES OF DIRECTORS

- Section 2(13) of Companies Act, 1962 defines 'directors' as any person occupying the position of a director, by whatever name called.
- There are different types of directors as provided by the law.
- They are differentiated on the basis of their powers, duties and responsibilities.
- The different types of directors are as follows:



2.1 EXECUTIVE DIRECTORS:

- (a) Companies Act does not define the term 'Executive Director'.
- (b) Although **Section 2(26)** of Companies Act, 1956 gives the definition of the Managing Director as —
- ✓ "Managing director means a director who, by virtue of an agreement with the company or
 - ✓ a resolution passed by the company in general meeting or by its Board of Directors,
 - ✓ by virtue of its Memorandum or Articles of Association,
 - ✓ is entrusted with substantial powers of the company, which may otherwise may not be exercisable by him,
 - ✓ And includes a person occupying the position of a director, by whatever name called.
- (c) Performs functions like:
- (i) Managing people
 - (ii) Hiring and firing
 - (iii) Looking after assets.
 - (iv) Entering into contract

2.2 NON-EXECUTIVE DIRECTORS:

- (a) They do not get involved in the day-to-day running of the business.
- (b) They may or may not be independent directors.

2.3 INDEPENDENT DIRECTORS:

- (a) These are those directors, who apart from receiving remuneration does not have any material pecuniary relationship with:
- ✓ Promoters
 - ✓ Senior management
 - ✓ Company or its subsidiaries.
- (b) The term has been explained in two ways:
- ✓ By the Naresh Chandra Committee.
 - ✓ By the clause 49 of listing agreement.
- ✓ **The Naresh Chandra Committee:** This committee defines the term as a non executive director who :-
- ✓ apart from receiving remuneration does not have pecuniary relationship with the:
 - 1. Company, promoters and its senior management
 - 2. Subsidiaries, holding or associated companies.
 - ✓ Has not been the executive of the company for last three years.
 - ✓ Has not been the executive or partner of:
 - 1. Statutory audit firm
 - 2. Internal audit firm
 - 3. Legal firms
 - 4. Consultancy firms, who have material association with the company, for last three years.
 - ✓ Is not related to promoters, Board of Directors or management one level below the BOD.

Managing Director as —
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below the BOD.

- is not a significant material supplier, vendor or customer of the company
- Does not hold more than 2% or more block of voting shares.
- Has not been director, independent or otherwise, of the company for more than three terms of three years each.
- For the above purpose the nominee directors appointed by the financial institutions will not be considered in determining the numbers of independent directors.

➤ **Clause 49 Listing Agreement** : According to it the term director means:

- Who apart from receiving remuneration does not have pecuniary relationship with the:
 - 1 Company, promoters and its senior management
 - 2 Subsidiaries, holding or associated companies.
- Has not been the executive of the company for last three years.
- Has not been the executive or partner of:
 1. Statutory audit firm
 2. Internal audit firm
 3. Legal firms
 4. Consultancy firms, who have material association with the company, for last three years.
- Is not related to promoters, Board of Directors or management one level below the BOD.
- Is not a significant material supplier, vendor or customer of the company.
- Does not hold more than 2% or more block of voting shares.
- Is of age not less than 21.



- Define an independent director. What are the provisions of clause 49 of the listing agreement related to the independence of a director. (CS DEC 06) Dec 2011
- What do you understand by the independent directors in the context of corporate governance? (CS JUNE 07)

2.4 CHAIRMAN:

Chairman is one who is primarily responsible for leading the Board and ensuring its effectiveness.

Its role is as follows:

1. Setting the board agenda.
2. Ensuring that directors receive correct and timely information about all necessary matters.
3. Addressing the development needs of the individual directors so that they are skilled and efficient to deliver their performance properly.
4. Evaluating the performance of the Board members.
5. Ensuring effective communication with the shareholders.
6. Helps to establish company's strategy and policies.



- "Chairman have no legal position." Elucidate [Dec 2011]
- "The chairman's responsibility is to lead the board and ensure its effectiveness". Elucidate the statement. (CS JUNE 2010) Dec 2011

The responsibility for ensuring that boards provide the leadership which is expected of them is that of its chairperson. A chairman though has no legal position, he is the person elected by the board to take the chair at a board meeting. Board are not bound to continue with the same chairman in successive meetings. In law, all directors have broadly equal responsibilities and chairman are no more equal than any other board member. chairman are an administrative convenience and a means of ensuring that board meetings are conducted

3. ROLE OF INDEPENDENT DIRECTORS

- (a) Balance conflict of stakeholder's interests
- (b) Countering pressure
- (c) Providing independent judgment
- (d) Helps in decision making
- (e) Act as coach and mentor
- (f) To protect the shareholder's interests.

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4. PROMOTING INDEPENDENCE OF DIRECTORS

Independence of directors can be promoted only:

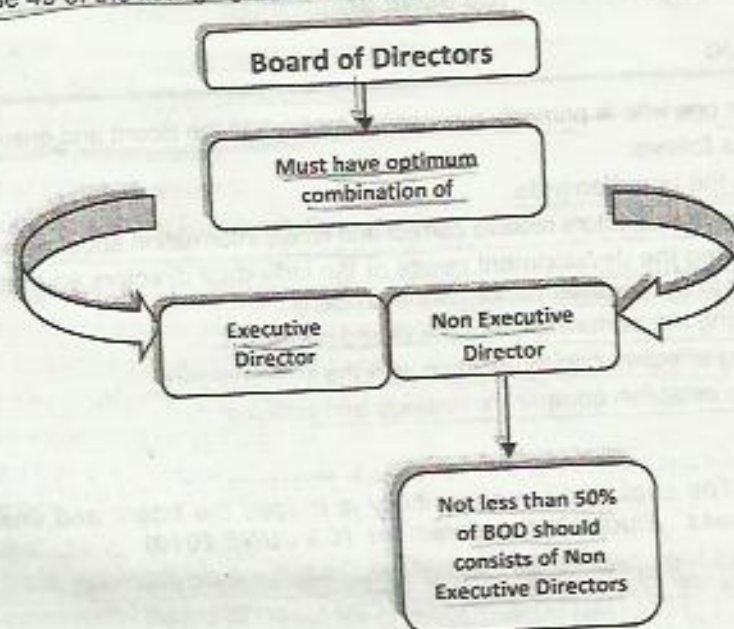
- (a) If it becomes a part of the corporate culture.
- (b) There has to be enough discussion on part of the Board to realize the importance of independent directors and how to maintain their independence.
- (c) The independence of directors can be ensured in the organization even by including the independent directors as part of the meeting.



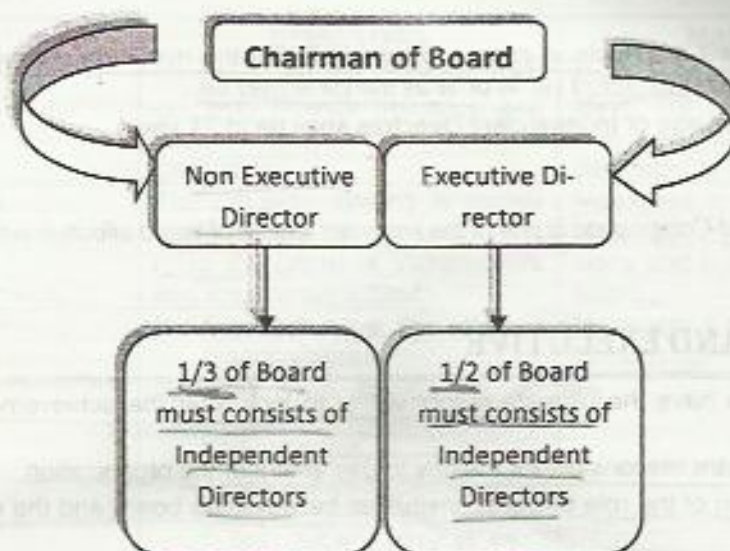
- > How can the independence be promoted in the directors?
- > Define independent directors. What are the provisions in clause 49 of the listing agreement related to independence of a director? (CS DEC 2006)

5. BOARD'S COMPOSITION

1. The Board's Composition in Indian context is governed by listing agreements in case of listed companies. Clause 49 of the listing agreement says that:
 - (i)



(ii)



(iii) Latest amendment in listing agreement says that :

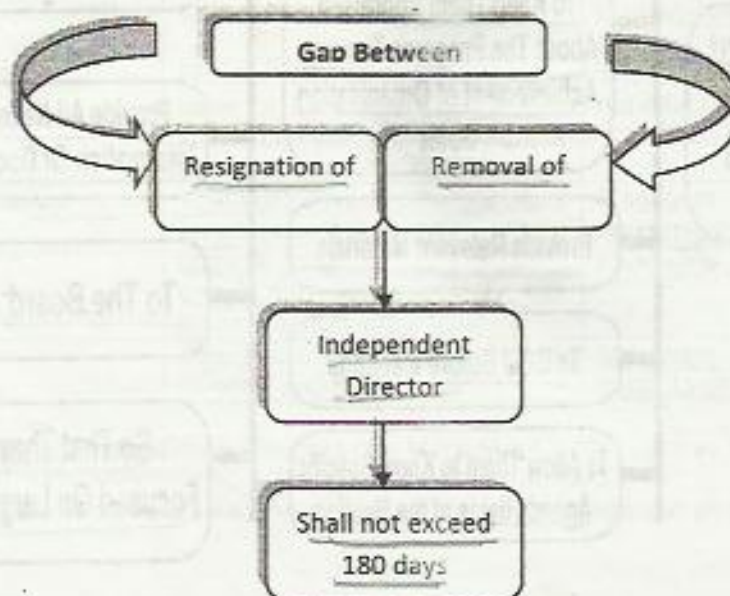
(a) If : Non Executive Chairman ;

- Is a Promoters
- Is related to Promoters
- Related to senior management one level below the Director.
- Then, $\frac{1}{2}$ of the Board must consist of Independent Director.

(b) Disclosure of relationship;

- Between directors inter-se must made in specified documents.

(c)



NOTE :

This provision will not apply in case a company fulfills the minimum requirements of Independent directors in its board i.e. $\frac{1}{3}$ or $\frac{1}{2}$ as the case may be.

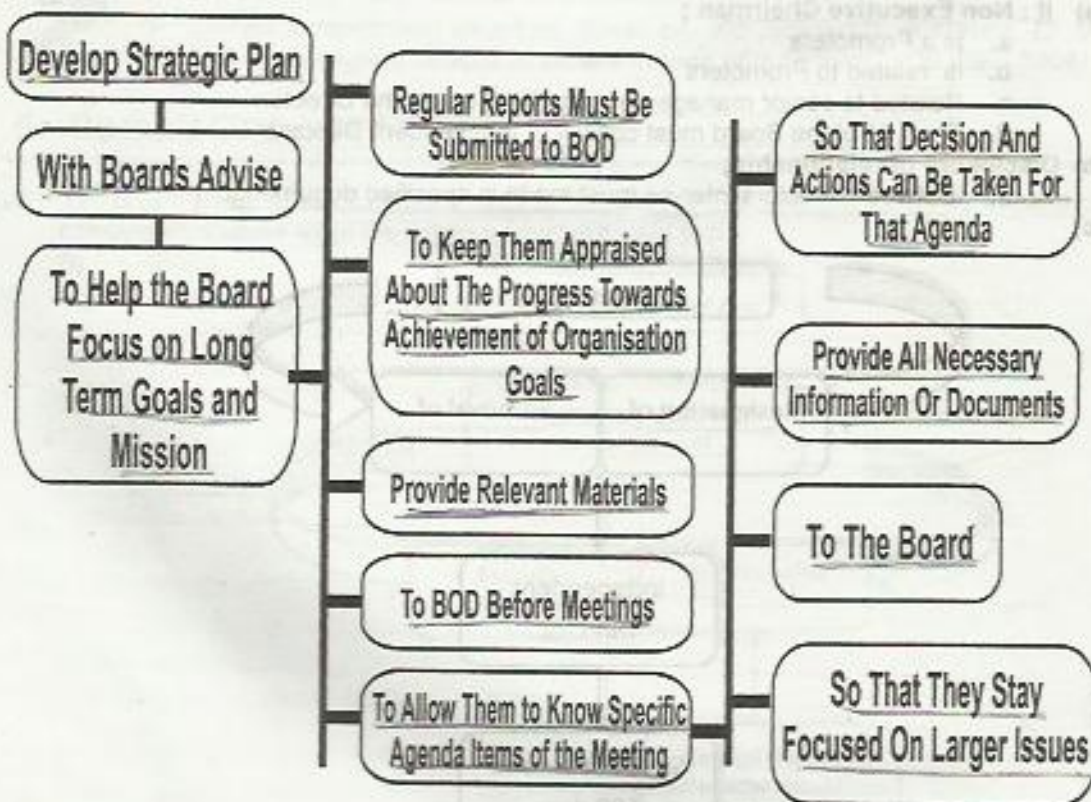
(d) The minimum age of Independent Directors shall be of 21 years.



Board Composition is one of the important factors of board effectiveness. Elaborate?

4. DIRECTOR AND EXECUTIVE

- ✓ Board members have the ultimate responsibility to look after the achievement of the company's objective.
- ✓ The Executives are responsible for the day to day affairs of the organization.
- ✓ Clear cut division of the role and responsibilities between the board and the executives must be done.
- ✓ In order to help board deliver its responsibilities properly, the executive management must do the followings:



| BASIS | DIRECTORS | MANAGERS |
|--|--|--|
| Leadership | Directors are the ultimate leaders who provide guidance and direction at the top of the organization. | Managers are on the other hand, are responsible to carry the work and responsibilities delegated to them by the board. |
| Decision Making | The decision making is mainly done by the Board keeping in mind the future of stakeholders and the company itself | Managers, on the hand, have to carry or implement the decisions and policies made by the board. |
| Duties and Responsibilities | (i) Directors have the ultimate responsibilities. (ii) They have to deliver their duties with due diligence and expertise. (iii) They may be made personal liable for the breach of duties in both civil and criminal law. | Managers have far fewer legal responsibilities. <i>Less</i> |
| Relationship with share holders | Directors are accountable to the share holders for the Company's performance and can be removed by them too. | Managers do not have any legal responsibilities towards the shareholders. They are appointed and removed by the Directors. |
| Ethics and Values | Directors are majorly responsible for determining the ethics and values of the Company. | Managers are majorly responsible for implementing those Ethics. |
| Company Administration | Directors are majorly responsible for the administration of the Company. | Managers may impart certain part of the administrative responsibilities so that directors can concentrate on core work. |
| Statutory Provision on Insolvency | Director may be held personally liable or be disqualified or may suffer criminal prosecution if a company goes into insolvency. | These statutory provisions do not effect managers. |
| Statutory Provision in General | There are several other statutory provisions that may create criminal liabilities on the directors if they fail to comply with those statutory provisions. | Managers are generally not responsible under statutory provisions. |
| Disqualification | Directors can be disqualified as Director under law. | Managers are under complete control with the Company. |



- Difference between Directors and Managers? *June 2011*
Or
➤ Differentiate between the role of director and managers in an Organization?

Answer :

- ✓ (a) Resistance to change
- ✓ (b) Complexity
- ✓ (c) Time management
- ✓ (d) Microp management
- ✓ (e) Clinging to the traditions
- ✓ (f) Past habits and confusions in roles.



➤ Mention the barriers in delivering effective leadership? (CS JUNE 2010)

Frank Martinelli - Lists the barriers with a view to helping companies identify them in their organizations and to remove them to facilitate visionary board leadership.

5. TRAINING OF DIRECTORS

Clause 49 of the listing agreement in its Non mandatory requirement with regard to training provides as under:

- A company may train its board members.
- In the business model of the Company.
- As well as risk profile of the trainee's parameters of the Company.
- Responsibilities of directors.
- The methods in which such duties may be discharged.

6. PERFORMANCE REVIEW OF INDIVIDUAL DIRECTORS

Performance review of individual directors is important because :

- ✓ (i) It improves CEO- Board relations
- ✓ (ii) Makes board operations effective;
- ✓ (iii) Enhances communication;
- ✓ (iv) Enhances clarity in roles & duties
- ✓ (v) Method to review performance of individual directors (Non Executive directors).
 - (a) Peer review method in which every director's performance is reviewed by the other directors.
 - (b) Self appraisal.

Factors considered while evaluating Directors Performance :

- ✓ (i) Quantity of issues raised in board and its committees meeting.
- ✓ (ii) Guidance provided by the board in light of changing market conditions.
- ✓ (iii) Method adopted by the board to share issues referred to them.
- ✓ (iv) Answerability of the top management to the board on performance related matters.
- ✓ (v) Overall value addition by the discussions taking place at the board meetings.
- ✓ (vi) Regularity and quality of participation in the deliberation of the board and its committees.

Corporate Governance is based on two core principles, these are:

- ✓ (i) Management must have the necessary freedom to drive the enterprise without undue restraints.
- ✓ (ii) This freedom of management should be exercised within a frame work of effective ability.



- Write a short note on performance review of individual directors?
- List the Principles of Corporate Governance?

7. RESPONSIBILITIES OF BOARD

- (i) Responsibilities of BOD are quite enormous and multidimensional.
- (ii) They are in a fiduciary position and must exercise their powers for the benefit of the Company.
- (iii) Responsibilities of BOD can thus be summarized as follows:

| | |
|--|---|
| Responsibilities towards Company | <ul style="list-style-type: none"> (i) To act in interest of the Company. (ii) To increase profit and turnover of the Company. (iii) To judiciously utilize the resources of Company. (iv) To enhance company's goodwill. |
| Responsibilities towards Management | <ul style="list-style-type: none"> (i) To guide, advice, support and direct the management. (ii) To ensure compliance of law and all the necessary disclosures. (iii) To take objective decisions. (iv) To follow company's code of conduct. |
| Responsibilities towards stake holders | <ul style="list-style-type: none"> (i) To increase stake holders' value. (ii) To discourage unfair trade practices. (iii) To properly address grievances of stakeholders. (iv) To follow the principle of equity towards stakeholders. (v) To disclose its policies to all the stakeholders. |
| Responsibilities towards Society or Corporate Social Responsibilities (CSR) | <ul style="list-style-type: none"> (i) To promote activities which are socially beneficial. (ii) To distribute the benefits of such activities to the society. (iii) To ensure that Company's product is socially acceptable. (iv) To take decisions that does not adversely affect the society. |
| Responsibilities towards Government | <ul style="list-style-type: none"> (i) To comply with all rules and regulations stipulated by the law. (ii) To support the Government in its initiatives of the promoting welfare and security of the nation. (iii) To see that the Government dues in the form of taxes, rates etc are paid by the company. |
| Inter-ship Responsibilities | <ul style="list-style-type: none"> (i) To fully disclose, any personal interest in any transaction, to all the other members of the board. (ii) To follow code of conduct set out by the board. (iii) To share all relevant information. (iv) To enable board in taking independent decisions. (v) To respect the knowledge, skill of the other members. |



Describe the responsibilities of the Board of Directors towards the company, management, stakeholders and government. (CS JUNE 2009)

8. BOARD'S ROLE

The role of a director can be explained as follows:

(i) Establishing Organization revision by Mission:

- (a) It is the most important function of the BOD.
- (b) They must act in best interest of the Company's mission.
- (c) They must see that all activities are in conformity to organization vision and mission.

(ii) To give strategic advice on direction:

- (a) Given to the position of the BOD they are in a position to provide strategic advice and direction to lower level of management.
- (b) They can provide useful guidance which the lower level of the management may not get readily.

(iii) Overseeing Strategy Implementation and measuring performance:

- (a) If the board's responsibility to oversee the implementation and execution of strategic.
- (b) Also, they must set benchmarks against which performance can be measured.

(iv) Developing and Evaluating CEO:

- (a) It is another important role of BOD.
- (b) In this fast changing world board needs to evaluate the performance of CEO and to management team.

(v) Human Resource Function:

- (a) It's the duty of BOD to see whether the organization has sufficient and appropriate human resource.
- (b) They are responsible for:
 - (i) Hiring the senior staff;
 - (ii) Giving direction to the senior staff person.
 - (iii) Evaluating the senior staff persons.

(vi) Ensuring Effective Stakeholders relations:

- (a) This can be ensured in following ways:
 - (i) Providing information about upcoming events.
 - (ii) Promoting their interest.
 - (iii) Providing necessary communication link with the general public.
 - (iv) Fostering awareness about the organization goals, objectives, and process among the shareholders.

(vii) Risk Mitigation:

- (a) The entire board must be involved in risk management process particularly relating to financial and legal matter.
- (b) They should chart out a plan / process that will help the organization to minimize the negative effect of risks.
- (c) They should also identify the different types of risks that can affect the sector of that particular organization.

- Handwritten notes and a summary list:
- ① Establishing organization revision by mission
 - ② To give strategic advice on direction
 - ③ Overseeing strategy implementation & measuring performance
 - ④ Developing & Evaluating CEO
 - ⑤ Human Resources
 - ⑥ Ensuring effective Stakeholders relations
 - ⑦ Risk mitigation
 - ⑧ Procuring Resources

(viii) **Procuring Resources:**

- (a) They (board) should ensure that an organization should have all necessary human, technological, financial resources that are highly essential for a business success.



- Every director should provide a creative contribution to the Board by providing objective criticism?

9. FILL IN THE BLANKS WITH APPROPRIATE WORD / WORDS:

- (i) Non executive directors may or may not be _____. (*Independent directors.*)
- (ii) Independent directors are those directors who apart from receiving director's remuneration do not have any other _____ with the company its promoters, its management or its subsidiaries which in the judgment of _____ may affect their independence of judgment. (*Material pecuniary relationship or transactions and board*).
- (iii) According to Naresh Chandra's Committees definition of Independent directors one clause says that he is that who has not been _____ of the Company for _____. (*Executive and last 3 years*).
- (iv) Substantial shareholder in context to Independent director is one who holds _____ shares. (*two percent or more of the block of voting*)
- (v) Associate shall mean a _____ which is an associate as defined in _____, "Accounting for investments in associates in consolidated financial statements, issued by ICAI. (*company and accounting standard (AS) 23*)
- (vi) The gap between the resignation removal of an, independent director and appointment of another independent director shall not exceed _____. (*180 days*).
- (vii) If the chairman is _____ at least one third of the board should comprise of _____. (*Non executive director and Independent director*)
- (viii) Directors of a company are in a _____ and must exercise their powers for the benefit of the company. (*fiduciary position*)

10. STATE WHETHER THE FOLLOWING STATEMENTS ARE TRUE OR FALSE :

- (i) Training of directors pertains to mandatory requirements under clause 49 of the listing agreement. (*False, Non-Mandatory*)
- (ii) If the Chairman is an executive director, at least 1/3 of the board should consist of Independent Directors. (*False, at least half of the board should comprise of Independent Directors*)
- (iii) The minimum age of an independent director according to clause 49 of the listing agreement is 21. (*True*).

- (iv) The nominee directors appointed by any bank or financial Institutions will be excluded from the directors in the determination of the number of independent directors. *(True)*
- (v) Non executive directors can handle day to day running of the business. *(False, they cannot get involved in day to day running of the business)*
- (vi) All non executive directors are independent directors. *(False, all independent directors are non-executive directors but all non executive directors may or may not be independent).*

1. INTRODUCTION

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2. IMPACT

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MANDATORY

AUDIT COMMITTEE

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3 COMMITTEES OF THE BOARD

1. INTRODUCTION

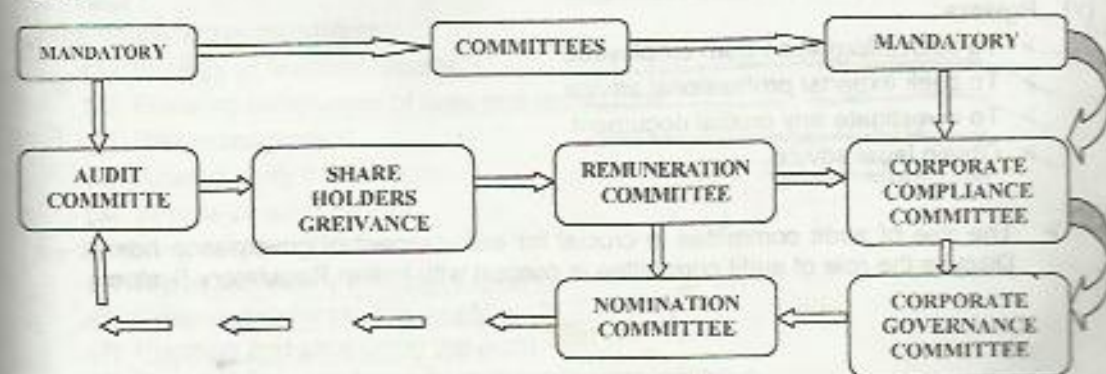
- ✓ The BOD are constantly under the pressure to perform well in this (age of globalization.) *Global Scenario*
- ✓ They have to follow loads of rules and regulation.
- ✓ And hence it becomes imperative to delegate a part of its work or responsibilities which leads to the emergence of committees.
- ✓ We can say that committees in the organization help the BOD to deliver their work efficiently and effectively, by allowing them to concentrate on the core work.

2. IMPORTANCE

- Following are the reasons as to why are committees important. They are important because they:
 - ✓ (i) Review in great details any important issue before it is placed before the BOD
 - ✓ (ii) Share responsibilities
 - ✓ (iii) Get more members involved in decision making process
 - ✓ (iv) Enhances efficiency and effectiveness
 - ✓ (v) Enhances specialization
 - ✓ (vi) Provide experience to the non-experience holders.



- To enable better and more focused attention on the affairs of the corporate, the BOD delegate particular matters to committees of the Board set up for the purpose. Elucidate the statement and list out the advantages of forming committees.



AS NCCP

3. MANDATORY COMMITTEES

(A) AUDIT COMMITTEE :

1. It is formed under clause 49 of the listing agreement:

(i) Minimum 3 directors as members:

- Two – third ($2/3^{rd}$) of members shall be independent directors.
- Chairman of the committee has to be independent director
- The company secretary has to act as the secretary of the committee.
- The committee may call/ invite executives at the meetings if they feel inappropriate.
- The members must be financially literate (able to read and understand basic financial terms and least one member shall have accounting/ financial management expertise (i.e. he/she must have professional certification in accounting or any other experience that results into his/her financial sophistication)

(ii) Meetings:

- At least 4 meetings in a year
- Not more than 4 months shall elapse between 2 meetings.

(iii) Quorum:

- Either 2 members or one-third ($1/3^{rd}$) of members of Audit committee
- Whichever is GREATER.
- At least 2 independent members must be present.

(iv) Role of Audit Committee:

- To see financial statement are credible and correct.
- To recommend BOD regarding appointment, reappointment, replacement or removal of statutory auditor.
- To approve the payment to statutory auditors.
- To review quarterly financial statements
- To review performance of statutory internal auditors
- To review the adequacy of internal audit function.
- To discuss the nature and scope of audit with statutory auditors before audit begins.
- To discuss any significant findings with the internal auditors.
- To review Whistle Blower Mechanism

(v) Powers:

- To seek information from employees
- To seek experts/ professional advice
- To investigate any crucial document
- Obtain legal advice.



- The role of audit committee is crucial for enforcement of governance norms – Discuss the role of audit committee in context with Indian Regulatory Systems.?

2. Under Section 292A of the Companies Act. CR PD

- ✓ Every public company with paid-up capital ₹5 cores or more has to constitute Audit Committee.
- ✓ If Audit Committee is formed u/s 292A, it has to additionally follow the requirement of clause 49 of the Listing Agreement.

(i) Composition:—

- ✓ At least 3 directors and such number of other directors as Board may determine.
- ✓ 2/3rd of total members shall be directors other than managing or whole time directors.
- ✓ Chairman is selected amongst the members itself.

(ii) Right to Vote:— The internal auditors and the director in charge can participate at the meeting of audit committee but cannot vote.

(iii) Recommendations:—

- ✓ Audit committee formed u/s 292A shall give its recommendations which shall be binding on the Board.
- ✓ The shareholders must be informed about recommendations not followed by the board by recording due reasons.

(iv) Powers:—

- ✓ To seek professional/legal advice
- ✓ To access information contained in records of the company
- ✓ To investigate into any matter in relation to the items specified in Sec.292A

(v) Default:—

- ✓ If a default is made in complying with the provisions of Section 292A of the Companies Act, 1956, company and every officer who is in default shall be punishable with:
 - ✓ (i) Imprisonment up to 1 year or
 - ✓ (ii) Fine ₹ 50,000/- or
 - ✓ (iii) Both (i) and (ii)



- What are the Audit Committee's a) primary responsibilities, and b) enabling responsibilities?

Answer :

(a) Primary responsibilities:

- ✓ (1) Integrity of financial reports
- ✓ (2) Ensuring compliance of laws and regulations
- ✓ (3) Risk management
- ✓ (4) Related party transactions
- ✓ (5) Whistle-blowing process

(b) Enabling responsibilities:

- ✓ (1) Responsible for periodical appraisal
- ✓ (2) Responsible for private meetings
- ✓ (3) Planning and structuring the audit
- ✓ (4) Ensuring independence from management influence
- ✓ (5) Maintaining code of conduct and ensuring quality enforcement.

REIEW

PREMC



- Draw a comparison between the audit committees formed under Clause 49 of the listing agreement and Section 292A of the Companies Act, 1956.

(CS DEC. 2009, CS JUNE 2010)

- What is the audit committee? Prepare a board note explaining the provisions of Clause 49 of the listing agreement to audit committees.

(CS DEC 2006)

(B) SHAREHOLDER'S GRIEVANCE COMMITTEE :

- ✓ It is also called as **Investor Grievance Committee**
- ✓ It is formed according to the of **Clause 49-IV (6) (iii)** of listing agreement
- ✓ **Chairman** of this committee must be a **non-executive director**
- **It is Formed to look into redressed of shareholder's and investors complaints i.e. non receipt of dividend warrants, transfer of shares etc.**
- ✓ Number of meetings depends on the business requirement.
- ✓ As per **Clause 49-IV (6) (iv)**, the Board of the company shall delegate the ^{technique} **pioneer of share transfer to an officer or committee or to the registrar and share transfer agents the delegated authority must attend to such formalities once in fortnight.**



- Enumerate various committees of the board of directors which are required to be formed under the Clause 49 of the listing agreement. (CS JUNE 2009)

4. NON- MANDATORY COMMITTEE

A. CORPORATE COMPLIANCE COMMITTEE:

- The **objectives** behind the formulation of this community are :-
 - ✓ (i) To see that company complies with the laws and statutes
 - ✓ (ii) To see that companies policies, programs and procedure comply with company's code of conduct and other laws and statutes.
 - ✓ (iii) To impart duties as may be conferred by the Board.
- **Duties and Responsibilities:**
 - ✓ (i) To review company's overall compliance program are throughout well communicated
 - ✓ (ii) To look into the complaints, both external and internal, except the financial matters.
 - ✓ (iii) To monitor company's compliance training initiatives on trade practices, competition etc.
 - ✓ (iv) To see that company implements legal obligations arising from agreements.
 - ✓ (v) To have discussions with CEO regarding compliance issues
 - ✓ (vi) To investigate the cases of non- compliance
 - ✓ (vii) To regularly report the committees activities to the Board
 - ✓ (viii) Perform functions as many be designated (conferred) by the Board



- Prepare a note for the Board on the need to constitute compliance committee stating therein the role of compliance committee and the matters that can be referred to it.

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B. CORPORATE GOVERNANCE COMMITTEE:—

This committee is formed:

- To help the board comply with corporate governance guidelines.
- To help implement corporate governance principles.
- To review corporate governance guidelines of the company.
- It is also responsible for composition of board of appointment of new directors as part of corporate governance duties.
- To help in strategic planning.
- To evaluate the boards performances.

C. NOMINATION COMMITTEE:—

This committee helps the Board to :

- Appointment of nominee directors to the Board and senior management levied.
- Termination of membership of individual directors according to the Boards principle.
- Evaluate the performance of nominee directors.
- Formulate rule-committees and delegate authority to them.
- Formulate formal board member capacity building program.

D. REMUNERATION COMMITTEE:—

(Compensation Committee)

- It is constituted to determine the remuneration of :
 - (i) CEO and directors
 - (ii) Executives, administrative employees
- It establishes overall compensation philosophies, incentives and benefit plans.
- Evaluates managerial performance.
- It is also called as compensation committee
 - (i) it administers the ESOS
 - (ii) it consists majority of independent directors
 - (iii) it formulates the terms and conditions of ESOS
 - (iv) to see that following regulations are not violated:
 - (a) SEBI (Insider Trading) Regulations, 1992; and
 - (b) SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, by an employee.



- State the manifestations of an effective committee.

Answer :

- (1) Purpose of formation of the committee must be clear to all.
- (2) Good communication between the members.
- (3) Good preparation on the part of both chairman and members.
- (4) Time to time self assessment of the performance of the committee.
- (5) Minutes of the committee must be complete in all respect.



- State the composition of 'remuneration committee' provided under clause 49 of the listing agreement. (CS JUNE 2008, JUNE 2010)

5. FILL IN THE BLANKS WITH APPROPRIATE WORD/ WORDS

1. _____ and _____ are mandatory committee which every listed entity has to constitute under Clause _____ of the listing agreement (**Audit committee and Shareholders Grievance Committees and 49**)
2. Regulatory Framework with regard to audit committee is also served under _____ of Companies Act, 1956 (**Section 292A**)
3. The audit committee shall have minimum _____ directors as with _____ of the members will be independent director according to clause 49 of listing agreement (**3 and 2/3rd**)
4. The audit committee should meet at least _____ in a year and not more than _____ shall elapse between two meetings. (**4 times and 4 months**)
5. Under Section 292A of Companies Act, 1956 every public company with paid-up capital of _____ shall constitute audit committee. (**₹5 Crores**)
6. The nature of the recommendations of the audit committee u/s 292A of Companies Act, 1956 _____ (**shall be binding on the Board**)
7. Clause 49 requirements are applicable to companies with paid-up capital of more than _____ or net worth greater than _____ of any time in the history of the company and to companies seeking/listing (**₹3 corer and ₹25 Cr.**)

6. STATE WHETHER THE FOLLOWING STATEMENTS ARE TRUE OR FALSE

1. Delegation of work to committees is ^{necessary} imperative today and after such delegation the Board is relieved from all responsibilities. (**False, Board still remains responsible for all acts**)
2. Section 291A of Companies Act, 1956 provides for the regulatory framework with regard to Audit committee. (**False, Sec. 292A**)
3. The audit committee formed u/s 292A of Companies Act has to additionally meet the requirements of sub-clause 11 of clause 49 of listing Agreement (**True**)
4. As per the requirements of Sec. 292A of Companies Act, 1956 members of the Audit committee have to be non-executive directors and any member can be a chairman (**True**)
5. In case if the board does not accept the recommendation of the Audit committee formed u/s 292A of the Companies Act, 1956, it is not necessary to record the reasons and communicate the same to the shareholders. (**False, it has to record and communicate the reasons to shareholders**)
6. In order to expedite the process of share transfer, the board of the company shall delegate the pioneer of share transfer to an officer or to a committee or to the registrar and share transfer agents and such delegated authority shall attend to share transfer formalities at least once in days. (**False, at least once in a fortnight**)

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4 INTERNAL CONTROL SYSTEM AND RISK MANAGEMENT

1. INTRODUCTION

- In the world of globalization, a business has to face tough competition.
- The business environment throws both threats and opportunities to the business.
- It is, therefore, becomes necessary to have efficient risk control measures in place to face risk.
- This leads to the emergence of internal control system that helps to identify balance and mitigate risks that business generally face.

1.1 DEFINITION :

- Internal control can be defined as a process which:
 - (i) Directs, monitors and measures organizations resources
 - (ii) Protects physical and intangible resources of an organization by detecting and preventing fraud reduces process variation and provides predictable outcomes
 - (iii) Helps business to exploit opportunity.
 - (iv) Helps business to comply with laws and regulations
 - (v) Helps business deal with changing business environment, economy and customer demands.



- Write a short note on internal control. (CS JUNE 2009)
- Managing director of the company is seriously concerned about the working of the purchase department. He asks you to examine the adequacy of the internal controls in existence and actual observance of the internal control system. Highlight the points that will be covered by you in the review. (CS DEC 03)

2. ADVANTAGES OF INTERNAL CONTROL

- Following are the advantages of IC.
 - (i) It helps to balance risk
 - (ii) Helps in exploiting bus-opportunities
 - (iii) Safeguard the assets by prevention and detection of fraud.
 - (iv) Helps in maintain proper accounting records thus ensuring effective financial controls.
 - (v) Help business to adopt with changes occurring in business environment.
 - (vi) Helps to ensure quality of internal and external reporting.
 - (vii) Helps to comply with applicable laws and regulations



➤ What are the benefits of an effective Internal Control?

3. COSO DEFINITION OF INTERNAL CONTROL

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mp

➤ COSO stands for Committee of Sponsoring Organizations of the Treasury Commission

➤ It is a U.S private sector initiative.

➤ **Main objective:**

- ✓ (i) To report factors that cause fraudulent financial reporting
- ✓ (ii) To report the same to the board to reduce its impact.

➤ It has three parts:

- ✓ (i) Definition
- ✓ (ii) Key concept
- ✓ (iii) Components

▪ **Definition** :— According to COSO, Internal Control means :

- ✓ (a) a process
- ✓ (b) conducted by BOD
- ✓ (c) to achieve objectives of the organization like:—
 - ✓ 1. Effectiveness as efficiency of operations.
 - ✓ 2. Reliability of financial reporting
 - ✓ 3. Compliance with laws and regulation.

ERC

✓ **Key Concept :**

- ✓ (a) It is a process, a means to an end not an end in itself.
- ✓ (b) It is effected by people, at every level of an organisation and not by mere policies manuals
- ✓ (c) It is aimed to achieve the objectives of the organisation.
- ✓ (d) It can provide only reasonable assurance and not absolute assurance.
- **Components:** Internal control consists of five interrelated components that apply to entities, small and midsize companies. These components are:—

✓ (a) **Control Environment:**

- It forms the foundation for all other components of internal control
- It includes :

- ✓ (i) Ethical values and competence of people
- ✓ (ii) Philosophy and operating style of management
- ✓ (iii) The way of delegation of authority and responsibilities
- ✓ (iv) Attention and direction provided by BOD

EPTA

- ① Control Environment
- ② Risk Assessment
- ③ Control Activities
- ④ Information & Communication
- ⑤ Monitoring

(b) Risk Assessment:

- It is analysis and identification of risks well in advance to help in the achievement of objectives.
- Risk can be either internal or external.
- Risk assessment is essential because environment (political, legal, business or social) keeps on changing.

(c) Control Activities:

- These activities are carried out to ensure that business activities are carried as per plans of policies and if any deviations occur, then these are corrected by taking necessary actions.
- These activities can be undertaken at all levels and in all functions.
- Includes :
 - (i) authorizations,
 - (ii) Verification
 - (iii) Reconciliation
 - (iv) Operating Performances Review

(d) Information and Communication:

- Internal control deals with the communication of all relevant information that helps in the decision making process and discharging responsibilities.
- This will also include providing information about external events.
- Similarly, effective communication must occur both upside and down side in an organization and there must exist proper means to support such system.

(e) Monitoring:

- Internal control system will run effectively only if continuous monitoring is done.
- It is done in order to see whether the internal control system is working properly or not.
- And if there is any deficiency of serious nature the same must be reported to the top management and the BOD.



- Explain the COSO of internal control.
- Mention the major key concepts of COSO.
- Explain the major components of COSO
- "Internal control refers to the design and utilization of all the means where by management is enabled most effectively to safeguard company's assets, administer the current operations, and plan for the future." In the light of the above statement, state the main components and objectives of the internal control and structure in the organization.

(CS JUNE 04)

4. RISK

MEANING :

It refers to the variations in the outcomes that could occur over a specified period of time, in a given situation.

➤ In other words:

- (i) It is possibility that an event will occur
- (ii) Which may adversely affect achievement of company's objectives.

➤ Greater the variations, greater is the risk.

➤ Types of Risk: Following are the different types of risks: IMM CLD SL

| | | |
|--|---|--|
| INDUSTRY AND SERVICES RISKS EMBRC | : | Economic risks i.e. dependence of one product on another etc |
| | : | Market Structure |
| | : | Business dynamics |
| | : | Risks related to customers |
| | : | Risks related to competition |
| MANAGEMENT AND OPERATIONS RISKS PRCERL+SL | : | Risks related to property |
| | : | Research and Development risks |
| | : | Changes in technology |
| | : | Environmental risks |
| MARKET RISKS QIFSRWCF | : | Risks related to labours, turnover, strikes, lock-out etc |
| | : | Quantity risks |
| | : | Interest rate risks |
| | : | Forex risks |
| | : | Suppliers risk |
| | : | Raw material rates |

of time, in a

another etc

out etc

| | | |
|------------------------|---|--|
| | : | Elections |
| | : | War risks |
| | : | Country risks |
| | : | Fiscal/ monetary risks |
| CREDIT RISKS BC | : | Bad debts |
| | : | Credit worthiness risks |
| LIQUIDITY RISKS ITB | : | Insolvency |
| | : | Tax risks |
| | : | Borrowing limits |
| DISASTER RISKS NMR | : | Natural calamities i.e. Floods, etc |
| | : | Man- made risks |
| | : | Risk of failure of disaster management plans |
| SYSTEM RISKS OCS | : | Risk of obsolescence |
| | : | Coordinating risks |
| | : | System reliability |
| | : | System capacities |
| LEGAL RISKS CIFI | : | Contract risks |
| | : | Indicial risks |
| | : | Insurance risks |
| | : | Frauds |

5. RISK MANAGEMENT

- Risk management is a process which is applied throughout the organization for identification and assessment of risks, its evaluation and implementation of risk management decisions

5.1 OBJECTIVES:

- ✓ (a) To identify new risks in a planned manner.
- ✓ (b) To enhance the effectiveness of internal and external reporting structure.
- ✓ (c) To develop a risk culture that encourages employees to identify risks.
- ✓ (d) To foresee risks, understand them and take important decisions to counter them.

5.2 ADVANTAGES:

- ✓ (a) Helps in better decision making.
- ✓ (b) Helps in assess new opportunity.
- ✓ (c) Problems are countered between before they arise.
- ✓ (d) Helps in achieving objectives.
- ✓ (e) Effectiveness of internal and external reporting structure gets improved.

5.3 STEPS IN RISK MANAGEMENT:

- Following are the steps in Risk Management :

- imp*
- ✓ (a) Identification of risk
 - ✓ (b) Evaluation/ measurement of risk
 - ✓ (c) Handling of risks.
 - ✓ (d) Implementation of risk management decisions.

▪ Identification of Risk :

- ✓ (a) It is the first step which deals with identifying risks that business environment throws a business.
- ✓ (b) This step must be taken properly else it is cause huge loss to an organization.
- ✓ (c) Following information is must for identification of risk:—
 - ✓ → Asset information i.e. book value, original cost etc.
 - ✓ → Process information i.e. raw material information, nature of plant etc.
 - ✓ → Product information i.e. consumer or industrial product
 - ✓ → Liability information i.e. information pertaining to stakeholders.

▪ Risk Evaluation / Measurement:

- Risk Evaluation includes the determination of :
 - ✓ (a) Probability or chances that losses will occur.
 - ✓ (b) The impact that losses will have upon the financial affairs of the firm
 - ✓ (c) To pre-evaluate losses that is likely to arise during the financial year.

▪ Risk Handling :

- Firms are not entirely free to handle risks on their own.

- ✓ The central and state governments have enacted compulsory insurance regulations, failure to comply with, will constitute a criminal offence or closing down of plant or establishment.

- ✓ Following are the methods of RISK HANDLING.

(a) Risk Avoidance:

- ✓ 1. It can be undertaken only at the planning stage.
- ✓ 2. But, avoiding risk completely is not possible as risk is inevitable.

(b) Risk Reduction:

- ✓ 1. Just like risk avoidance, it is beneficial to plan about risk reduction at the planning stage.
- ✓ 2. This will include reducing risk through insurance like, fire insurance, marine insurance, environment or handling of dangerous situations.

(c) Risk Retention:

- ✓ 1. It is also known as risk assumption or risk absorption.
- ✓ 2. It is the most common risk management technique and has two methods:
 - ✓ **Active Form:** Where risk is retained as part of deliberate management strategy after censorious evaluation of possible losses and causes.
 - ✓ **Passive Form:** Where risk is retained either unknowingly or negligently.

(d) Risk Transfer:

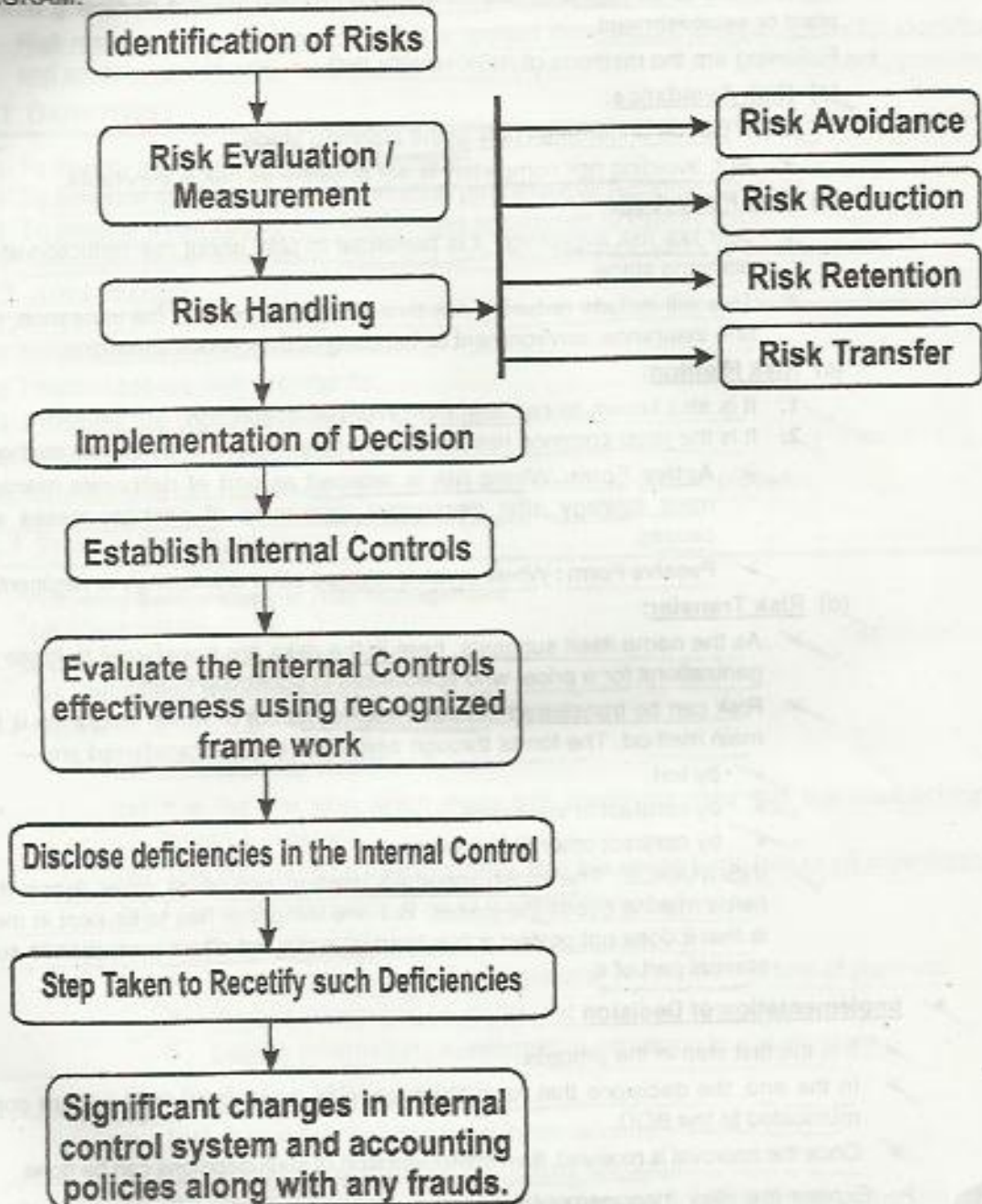
- ✓ As the name itself suggests, here in the risks are transferred to those organizations for a price, who specializes in accepting them.
- ✓ Risk can be transferred in three main forms out of which insurance is the main method. The forms through which risk can be transferred are:—
 - ✓ by tort
 - ✓ by contract of insurance
 - ✓ by contract other than insurance.
- ✓ **INSURANCE:** The most important method out of all other forms that helps making goods the losses. But one thing that has to be kept in mind is that it does not protect a firm from all losses but offers protection to substantial part of it.

✓ Implementation of Decision :

- ✓ It is the last step in the process.
 - ✓ In the end, the decisions that have been taken in order to counter risk are communicated to the BOD.
 - ✓ Once the approval is received, then implementation of such decisions can be done.
- Explain the Risk management process in diagrammatic format. What are the steps involved in it? (CS DEC 01, JUNE 04, JUNE 05, JUNE 09, DEC 09)
- What is the meaning of risk management? What are its objectives and advantages?
- Differentiate between risk reduction and risk retention. (CS JUNE 2010)



DIAGRAM:



6. ROLE OF COMPANY SECRETARY

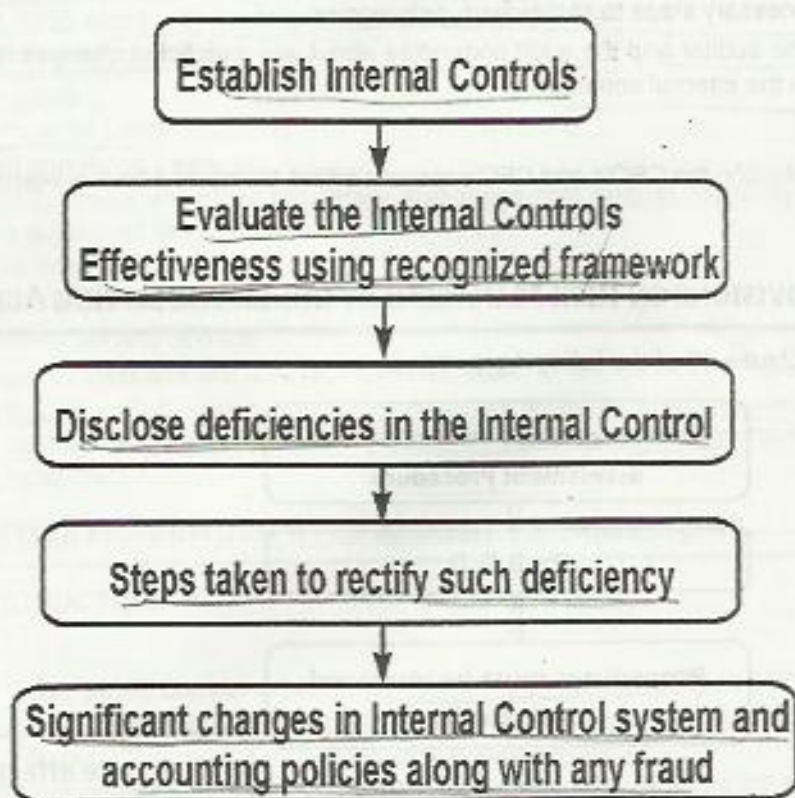
- (i) To review organizations risk management philosophy
- (ii) To see that this philosophy is understood by all personnel
- (iii) To review the strategic objectives of the organization and steps that have been undertaken to achieve them.
- (iv) To review internal and external factors that is likely to cause hindrance in achievement of organizational goal.
- (v) To assess organizations risk tolerance.
- (vi) To assess whether the steps taken are sufficient enough to counter actual risk.

Avoidance

Reduction

Retention

Transfer



➤ What is role of CS in risk management process?(CS JUNE 2010)

7. ROLE AND RESPONSIBILITIES WITH REGARD TO INTERNAL CONTROL

According to clause 49 of the listing agreement ;

- (i) The CEO i.e. managing director
- (ii) The CFO i.e. the whole time Finance Director or any other person heading the finance function; is responsible for internal control systems.

They are responsible to :

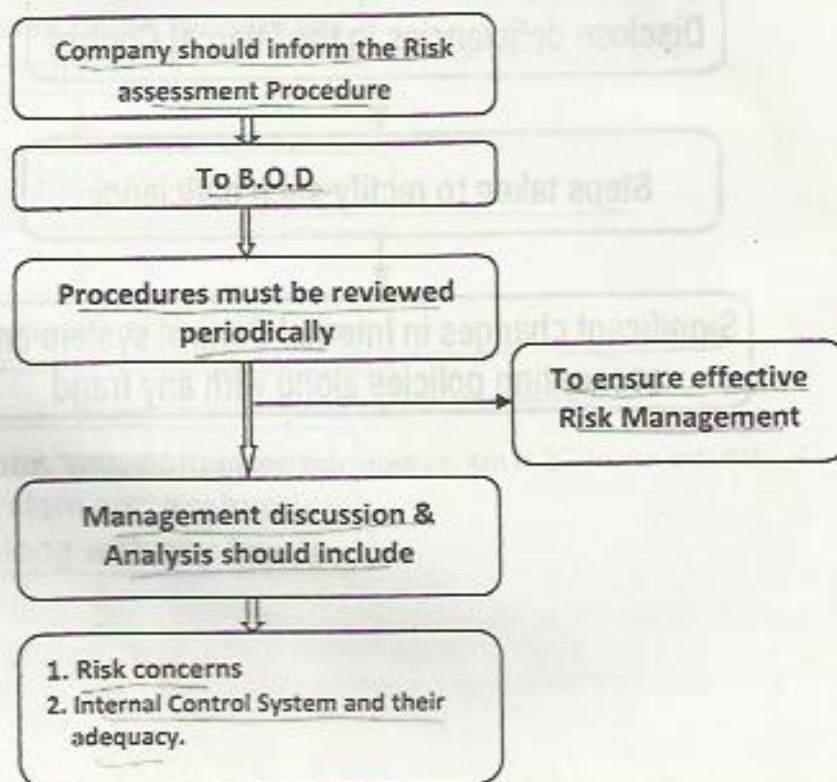
- (i) Maintain internal controls.
- (ii) Evaluate the effectiveness of the internal controls.
- (iii) Report any deficiencies in the internal control systems.
- (iv) Take necessary steps to rectify such deficiencies.
- (v) Inform the auditor and the audit committee about any significant changes that have taken place in the internal controls.



- Mention the CEO's and CFO's responsibilities to ensure effective Internal control.

8. LEGAL PROVISIONS ON RISK MANAGEMENT UNDER THE LISTING AGREEMENT

- In terms of Clause 49 of the listing Agreement.





5 LEGISLATIVE FRAMEWORK OF CORPORATE GOVERNANCE IN INDIA

1. INTRODUCTION

1. The corporate governance in India is mainly governed by the SEBI Guidelines and the Companies Act, 1956 along with the following other regulations like:
 - (a) Consumer Protection Laws
 - (b) Labour Laws
 - (c) Environmental Laws
 - (d) Money Laundering Laws, etc.
2. Also like SEBI, there are other regulatory authorities that help in following good corporate governance guidelines like:
 - (a) Reserve Bank of India
 - (b) FEMA/FERA (for imports and exports)
 - (c) Insurance – life and non-life
 - (d) Professional institutes like ICAI, ICSI, ICWA, etc.
3. The Securities Board of India is the prime regulatory authority which regulates all aspects of securities market. All companies that are listed on the stock exchange have to comply with the listing agreement.

2. LEGISLATIVE FRAMEWORK WITH RESPECT TO FOLLOWING

1. BOARD STRUCTURE:

(a) Size:

- (i) Every public company will have minimum 3 directors. (Section 252)
- (ii) In case of public company or private company which is the subsidiary of a public company the maximum number of directors can be 12.
- (iii) Increasing the number beyond this stipulated limit, requires the prior permission of the Government of India.
- (iv) The listing agreement does not provide for the size of the board.

(b) Composition :

- (i) Section 269 states that every public company or private company which is the subsidiary of a public company is required to have a **Managing Director or whole-time Director** if its paid up capital is more than ₹ 5 crore.

(ii) Listing agreement states that:

1. The board must have an optimum combination of executive and non-executive directors, with not less than 50% of directors as non-executive.
2. Where the chairman of the board is a non-executive director, one-third of the board must consist of independent directors and if he is an executive director, then at least half of the board must consist of independent directors.
3. If the non-executive director is the promoter of the company or is related to the promoter or person occupying the management positions at board level or one level below the board level, at least one half of the board must consist of the independent directors.

(c) Number of Directorship:

(i) Section 275 states that a person cannot hold office as Directors at same time in not more than 15 companies.

For the above mentioned purpose the directorships in the following companies will be excluded:

- a. Private companies
- b. Unlimited companies
- c. Non-profit association
- d. Alternate directorships

(ii) A director cannot be a member in more than 10 committees or act as the chairman of more than five committees across all companies in which he is a director.

For the above mentioned purpose the chairmanship/membership in audit committee and shareholders' committees will be considered.

(d) Board Meetings :

1. Every company must hold meeting of its BOD at least once in every three months and at least four such meetings must be held in every year. (Section 285)
2. Notice for such meeting must be given to every director for the time being in India at his usual address.
3. The quorum of such meeting shall be one-third of its total strength, or two directors whichever is higher.
4. Where the number of interested directors is or is more than two-third of the total strength, the remaining directors (i.e. the directors not interested) who are present at the meeting being not less than two, shall be the quorum of the meeting.

(e) Power of the Board:

(i) Section 291 states that BOD of a company shall be entitled to exercise all such powers, and do all such acts and things, as the company is authorized to exercise and do.

(ii) Section 292 states that the BOD of the company shall perform the following function only by means of passing a resolution at the board meeting :

- (a) Power to make calls on the shareholders in respect of the money unpaid on their shares.
- (b) The power to authorize the buyback referred to in the first provision to clause b of sub section (2) of section 77a.
- (c) The power to issue debentures.
- (d) The power to borrow money otherwise than on debentures.
- (e) The power to invest the funds of the company.
- (f) The power to make loans.

(iii) The power of the board is not spell out in the listing agreement.

- ① Size & Composition ② Number of Directorship ③ Board meeting
④ Power of the board.

2. COMMITTEES :

b. Audit Committee:

- (i) The audit committee has a very important role to play in the organization.
- (ii) Its role, powers and composition has already been discussed in chapter III.

c. Shareholder's Grievance Committee:

- (i) It is a committee under the chairmanship of a non-executive director who shall specifically look into the matter of shareholder's grievances.
- (ii) Problems may be like non-receipt of dividend warrant, transfer of shares etc.
- (iii) The number of meetings of this committee depends on the business requirements.
- (iv) The listing agreement also calls for the formation of

1. Remuneration Committee
2. Nomination Committee
3. Compensation Committee
4. Corporate Governance Committee
5. Corporate Compliance Committee

- (v) Although formation of this Committee is not mandatory.

3. DISCLOSURE AND TRANSPARENCY :

a. The company has to make the following necessary filings in order to ensure timely, accurate and transparent disclosures:

- (i) Company registration: all documents pertaining to incorporation has to be filed.
- (ii) Compliance related filing: this will include all statutory filing of e-forms:

1. Balance Sheet and Profit and Loss Account
2. Return of allotment
3. Return of buy back of securities
4. Return of appointment of managing directors
5. Statutory report
6. Notice of the appointment of auditor

(iii) Change services: This will include matters like:

1. Change in the authorized capital of the company.
2. Change of directors, secretary or authorized representative of the company.
3. Change in the situation of the registered office of the company.
4. Change in the charter or instrument governing the company.

(iv) Charge management: This includes filing the particulars of the charge created, modified and satisfied with the ROC.

(v) Investor services: This includes filling of complaints by the shareholders of the company in the specified e-form pertaining to issues like share/dividends, fixed deposits, and debentures/bonds.

(vi) Provisions related to Managerial Personnel: This includes application pertaining:

1. Increase in the number of directors
2. Appointment/reappointment of managing directors
3. Payment of commission to the directors
4. Removing disqualification of directors

b. The company has to send a copy of the balance sheet along with the profit and loss account, auditor's report, director's report and other documents attached along with the

balance sheet, to the shareholders at least 21 days before the holding of the general meetings in which such documents are required to be submitted.

- c. After presentation of such documents in the general meeting, these are required to be filed with the registrar within 30 days of presenting such documents in the general meeting.

4. DISCLOSURES ACCORDING TO THE LISTING AGREEMENTS :

| Clauses | Disclosures |
|--|---|
| Clause 19 ↓ SE ↓ Article 7 of the Articles ↓ BB ↓ DD ↓ IEP/OCRE ↓ O | Intimate the stock exchange at least 7 days in advance of holding the board meeting in which the following proposal is likely to be passed: 1. Buy back of shares. 2. Declaration of dividend. 3. Issue of convertible debentures or debentures carrying right to subscribe the equity shares. 4. Passing over of dividend. |
| Clause 20 ↓ SE ↓ within 15 ↓ B.M. clause ↓ OP ↓ 15/15/15 REGISTRATION, L.A. P.F., R.P. | Intimate the stock exchange immediately on the date of holding the board meeting considering the above mentioned matters within 15 minutes of the closure of such meeting through letter or fax about: 1. Dividend declared. 2. Decision on buy back of securities. 3. Total turnover, gross profit, provision for depreciation, tax provisions and net profits for the year. |
| Clause 22 → SE → within 15 min ↓ Increase in capital B/R Issue of shares Information to the C.A. Information to the | Intimate the stock exchange within 15 minutes of closure of the meeting of the board, held to consider the aforesaid matters, about particulars of: 1. Increase in the capital through bonus or rights issue. 2. Issue of forfeited shares or shares held in reserves for future use. 3. Alterations in the capital. 4. Any other information necessary from the point of view of the shareholders. |
| Clause 29 General Character Nature of the Co. | Intimate the stock exchange about any change in the general character or nature of the company. |
| Clause 30 ↓ Change ↓ Directorship ↓ no 1st agent auditor | Intimate the stock exchange about: 1. Change in the directorship of the company either due to death, resignation or removal. 2. Change in the Managing Directors, Secretaries or Managing agents. 3. Change in the auditors. |
| Clause 31 | Forward the following copies to the stock exchange: 1. 6 copies of statutory and director's report, profit and loss account and balance sheet. 2. 6 copies of all notices, resolutions and circulars relating to the issue of capital. |

| | | |
|--|---|--|
| of the general | | 3. 3 copies of all notices including the notices issued under Section 391 and Section 394 read along with Section 391. |
| required to be for general meeting | | 4. Copy of the proceedings of all annual and extraordinary general meetings. |
| | | 5. 3 copies of the notices and circulars issued by the company or by any other company which the proposed company is desirous to absorb, merge or amalgamate. |
| advance of holding proposal is likely to be | Clause 32 B/S along with cash flow consolidated financials | 1. Provide copy of the balance sheet and profit and loss account along with the cash flow statement prepared in accordance with AS-3. |
| features carrying right | | 2. The company will have to mandatorily publish consolidated financial accounts in its annual report by getting the same audited by a statutory auditor and file the copy of the same to the stock exchange. |
| The date of holding mentioned matters meeting through letter | Clause 35 → Shareholding pattern correct | File the shareholding pattern with the exchange in the specified format on a quarterly basis within 21 days from the end of each quarter. |
| for depreciation, tax | Clause 36 Inform SE about event strike, lock out | Inform the exchange about the events |
| of closure of the aforesaid matters | | 1. Like strike, lock outs, closure on account of power cuts, both at the time of occurrence of the event and at the time of cessation of the event to keep the exchange along with the shareholders informed about the position of the company. |
| rights issue in reserves for fu | Clause 41 un-audited financial result one month to SE make announcement with 15m Publish with Hdnr English newspaper national wide TGA in language | 2. And also such events that will have effect on the performance of the company and also the price sensitive information. |
| the point of view of | | Furnish un-audited financial results on a quarterly results with effect from the quarter ending March 31, 2000: |
| change in the general | | 1. Within one month from the end of the quarter to the stock exchange. |
| company either due to | | 2. Make announcement to the stock exchange where the company is listed, within 15 minutes from the end of the board meeting or meeting of the sub-committee in which such accounts are placed. |
| Secretaries or Manag- | Clause 49 QR QR Participation RMD RM | 3. Publish within 48 hours from the end of the board meeting or meeting of the sub-committee in at least one English newspaper having nation-wide circulation and in the language of the region in which the registered office of the company is situated. |
| change | | Disclosures pertaining to: |
| part, profit and loss | | 1. Quarterly results. |
| circles relating to | Clause 51 | 2. Annual reports. |
| | | 3. Participation of the directors in the board meetings and committee meetings. |
| | | 4. Remuneration of the directors. |
| | | 5. Risk management. |
| | | File the following information, statements and reports on the Electronic Data Information Filing and Retrieval (EDIFAR): |
| | | 1. Annual report, balance sheet, profit and loss account. |

| | |
|---------------------------------------|---|
| BUPOL AR, HR, Q, ES AR & Vna | <ol style="list-style-type: none"> 2. Half-yearly and quarterly financial statements. 3. Shareholding pattern statements. 4. Corporate governance report. 5. Actions taken against the company by any regulatory authority. Such other information that SEBI may specify from time to time. |
| Clause 52 | Includes Corporate Filing and Dissemination System and reporting information as may be specified by the participating stock exchange in this regard within the time limit as per the respective clause of the listing agreement. |



- What are the major disclosures dealing with transparency and disclosures by companies? (CS DEC 2009)
- Write a short note on maximum/minimum number of directorship in a company. (CS DEC 2003)
- Prabhavi is already a director in 14 companies. He is appointed as the director of another company known as Growfast Ltd. Advise him on the following issues:
 - 1) Restrictions on the number of directorship to be held by an individual and whether he can accept such appointment, your view thereof.
 - 2) Which are the companies to be excluded for the purpose of calculation of ceiling on the number of directorship? (CS JUNE 2003)
- Anubhav Ltd. held four Board meetings in a calendar with an interval of more than 3 months in between two Board meetings. Comment. (CS DEC 2003)
- What are the requirements with regard to quorum and frequency of board meetings? (CS JUNE 2006)
- What is 'audit committee'? Prepare a board note explain the provisions of clause 49 of the listing agreement related to audit committee. (CS DEC 2006)

3. SOME OTHER DISCLOSURES UNDER SEBI GUIDELINES

1. Disclosure under SEBI (Disclosure and Investor Protection) Guidelines.

- (a) **Filing of draft offer document** : The draft offer document should be made public for a period of 15 days from the date of filing the offer document with the board.
- (b) **Disclosure of IPO grading** : Every unlisted company must disclose:
 - (i) All the grades obtained from the credit rating agency.
 - (ii) Such disclosure has to be made in the prospectus, abridged prospectus and at all other places where the company is advertising for the IPO.
- (c) **Pre-issue advertisements** : Every company will have to:
 - (i) Issue an advertisement in one English national newspaper, one Hindi national newspaper and in one local newspaper of the region in which the registered office of the company is situated.
 - (ii) Such advertisement has to be made only after final observation has been obtained from the board regarding the offer document.
- (d) **Contents of the offer document** : The offer document must contain the following disclosures:
 - (i) Disclosures as per Schedule II of the Companies Act, 1956.
 - (ii) Disclosures prescribed under CHAPTER VI of SEBI (DIP) Guidelines.

(e) **Post-issue monitoring reports :** The due date for submitting the post-issue monitoring reports are:

(i) 3 day monitoring report in case of book building process, in this case due date is:
3rd day from the date of allocation
In the book building process

or

one day prior to the opening of the
fixed price portion, **whichever is earlier**

(ii) 3 day monitoring report in other cases, including the fixed price portion of book
building issue, in this case the due date is:

3rd day from the date of closure of the issue.

(iii) Final post-issue monitoring report for all issues, in this case the due date will be:
3rd day from the date of listing

or

78 days from the date of closure of
the subscription of the issue, **whichever is earlier**

(f) **Post-issue Advertisements :** The post-issue Lead Merchant Banker must ensure to give advertisements regarding the following particulars **within 10 days** from the date of completion of various activities, in at least one English National Daily newspaper, in one Hindi National Daily newspaper and in one local newspaper circulating in the region in which the registered office of the company is situated:

1. Details of over-subscription.
2. Basis of allotment.
3. Number, value, and percentage of application.
4. Date of completion of dispatch of refund orders.
5. Date of dispatch of certificates.
6. Date of filing of listing application.

2. Disclosure under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997

(a) Initial/Periodic Disclosures (Regulation 7)

1. Acquirer :

- (i) Any acquirer who acquires shares or voting rights which would entitle him to hold 5%, 10%, 14%, 54% or 74% of shares or voting rights in a company, shall disclose at every stage of acquisition of shares or voting rights to the company and to the stock exchange where the shares of the target company are listed.
- (ii) Any acquirer whose holding is between 15% to 55% of the shares or voting rights in a company, shall disclose purchase or sales aggregating to 2% or more of the share capital of the target company and to the stock exchange, where the shares of the target company are listed.
- (iii) The disclosure mentioned in the points (i) and (ii) has to be made within 2 days of:
 1. The receipt of the information of allotment of shares.
 2. The acquisition of shares or voting rights as the case may be.

2. **Company :** Every company, who has received initial disclosure from an acquirer, shall disclose to all the stock exchanges on which the shares of the said company are listed, the aggregate number of shares held by each person referred above within 7 days of receipt of information from the acquirer.

(b) Continual disclosures (Regulation 8)**(i) Acquirer/promoter :**

1. Every person including the person mentioned under Regulation 6, who holds more than 15% of shares or voting rights in any company, shall within 21 days from the financial year ending March 31, make yearly disclosure to the company, in respect of his holding as on March, 31.
2. A promoter or a person having control over the company shall, within 21 days from the financial year ending March 31, as well as from the record date of the company for the purpose of declaration of the dividend, disclose the number or percentage of the shares or voting rights held by him and person acting in concert with him, in that company to the company.

- (ii) Company :** Every company whose shares are listed on the stock exchange, shall within 30 days from the end of the financial year ending March 31, as well as from the record date of the company for the purpose of declaration of the dividend, make yearly disclosures to all the stock exchanges where the shares of the company are listed, about the changes in the holding of the acquirer/promoter.



- What is the concept of takeover? Explain the SEBI (Substantial Acquisition and Takeover Regulations), 1997 related to takeover of control and management of the company. **(CS DEC 2006)**

- Write a short note on:

- 1) Acquirer
- 2) Control

w. r. t. SEBI (Substantial Acquisition and Takeover Regulations), 1997
(CS JUNE 2008)

- Define person acting in concert w. r. t. SEBI (Substantial Acquisition and Takeover Regulations), 1997. **(CS JUNE 2008)**

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6 LEGISLATIVE FRAMEWORK OF CORPORATE GOVERNANCE : AN INTERNATIONAL PERSPECTIVE

1. INTRODUCTION

- > In this world of global competition, corporate round the world are realizing the importance of good governance practices.
- > Various legislations are also being used to implement corporate governance guidelines by them.
- > In this chapter, we will study about the structure of corporate governance mechanisms in the USA, UK and Australia.

(A) UNITED STATES OF AMERICA

- > The New York Stock Exchange has devised certain guidelines which are applicable to all the companies which are listed on the New York Stock Exchange
- > These guidelines regarding the Board structure, audit committee, remuneration committee and nomination committee are as follows :

I. BOARD STRUCTURE :

- (a) According to guidelines all listed companies must have majority of independent directors EXCEPT :
 - (i) Companies whose more than 50% of voting power is held by an individual, group or another company.
 - (ii) Limited partnership and companies involved in bankruptcy proceedings
 - (iii) All listed foreign private issuers can follow their home country practice in lieu of this provision.
- (b) The guidelines also determine independence of directors. Accordingly following is the criteria for determine the independence of a director :

| CANNOT BE INDEPENDENT DIRECTOR | UNTIL |
|--|---|
| (i) A director who is an employee or whose relative is an executive officer of the company | 3 years after the end of such employment relation |
| (ii) A director who or his relative receives more than \$ 100,000 as compensation except director or committees fees or pension | 3 years after he/ she ceases to receive more than \$ 100,000 per year in such compensation. |
| (iii) A director who or whose relative is employed or affiliated in a professional capacity by present/former internal/ external auditor | 3 years after the end of the affiliation / employment / auditing relations. |
| (iv) A director who or his relative is employed as an executive of any other company where | 3 years after the end of such service or the employment relationship. |

| | |
|--|---|
| any, of the listed company's present executives serve on that company's compensation committee | |
| (v) A directors who or his relative is an employee or an executive of a company that makes payments or receives. Payments from a listed company for services in an amount which exceeds \$ 1 million in a fiscal year. | 3 years after falling below such limit. |
| Or 2% of such other company's consolidated gross revenues. | |

II AUDIT COMMITTEE :

All listed company must have an audit committee.

(a) Compositions :

- (i) at least 3 members.
- (ii) All members must be independent
- (iii) Each member must be financially literate
- (iv) At least one of the members must have accounting or related financial management expertise.

(b) Functions :

- (i) To monitor the financial statements of the company.
- (ii) To ensure compliance with legal requirements.
- (iii) To monitor the performance of internal audit function.
- (iv) To prepare an audit committee report as required by the SEC to be included in the company's annual proxy statement.
- (v) Discussing risk assessment and risk management policies
- (vi) Meetings with internal auditors, independent auditors and management.
- (vii) Investigating frauds and discussing audit problems with auditors.
- (viii) Reporting to the BOD
- (ix) Establishing clear herring policies for employees.

III REMUNERATION COMMITTEE :

- (a) All listed companies must have a compensation committee with entirely independent directors as its members.

(b) Functions :—

- (i) To review corporate goals and objectives relevant to CEO compensation.
- (ii) To evaluate CEO's performance in light of those goals and objectives.
- (iii) To determine and approve the CEO's compensation level based on this evaluation.
- (iv) Recommending BOD regarding non CEO compensation and incentive plans.
- (v) Prepare a report to be included in company's annual statement.
- (vi) To evaluate the annual performance of the compensation committee.

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IV. NOMINATION COMMITTEE :

- (a) All listed companies must have a nominating committee with entirely independent directors as its members.
- (b) Functions :—
 - (i) To identify people who can qualify to become board members.
 - (ii) To recommend the BOD about the set of corporate governance principles which are applicable to the organization
 - (iii) To evaluate the board and management
 - (iv) To evaluate the annual performance of the committee itself.

V. SARBANES OXLEY ACT :

- SARBANES OXLEY ACT extends to all companies which are listed in the U.S
- It has created publicity funded. Oversight board whose main functions are :—
 - (i) To monitor the auditor
 - (ii) To strengthen the auditors independence
 - (iii) To CEO accountable for financial statements.
 - (iv) To devise heavy penalties for fraud and longer prison sentences for certain types of white-collar crimes.
- **Audit Committee** : The SOX Act defines the audit committee as the committee established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer or if no such committee exists with respect to an issuer, the entire of BOD of the issuer.
- The SOX defines an auditor as independent if he is not engaged in the following activities :
 - (i) Bookkeeping or other services related to accounting record.
 - (ii) Actuarial services.
 - (iii) Internal audit sourcing services
 - (iv) Valuation services
 - (v) Management functions or human resources
 - (vi) Legal services
 - (vii) Broker or dealer or investment adviser services.
- The securities Exchange Commission has set out the following rules which help in the implementation of SOX's governance provisions.
They are :—
 - (i) Standards relating to listed company audit committees.
This rule relates to :
 - Independence of audit committee members.
 - Their responsibility to select and monitor company's independent accounts.
 - Procedure for handling complaints.
 - Authority of the audit committee to seek outside advice.
 - (ii) Implementation of Standards of Professional Conduct for Attorneys.
 - Under this rule attorneys have to report all legal violations.
 - If lawyers see any wrong doings they must inform the company.

- The company must then take reasonable action, in absence of which the attorneys must bring into everyone's notice that company resigns from professional considerations.
- (iii) Strengthening the requirements regarding auditors independence:- this rule focuses on the non- engagement of the auditor in non-audit services.
- (iv) Disclosure required by Sections 406 and 407 of the Sarbanes Oxley Act.
This rule sets standards for ethics codes and the audit committee financial expert.



- *What are the activities prohibited by the Sarbanes Oxley Act, in which an audit firm cannot engage in?*

(B) UNITED KINGDOM

- All companies incorporated in UK and listed on London Stock Exchange have to report about their compliance with the combined code.
- Combined code is not a rigid set of rules rather a guide to good corporate governance practices.
- Compliance with combined code is not entirely necessary, but it is suggested to inform those shareholders about the cases of non-compliance, who are interested in the position of the company.
- The companies are required to report their adherence corporate governance in two forms.
 - (i) First, general compliance of codes principles
 - (ii) Second, non- compliance of any of the codes principles.

I BOARD STRUCTURE :

(a) Composition :

- (i) There should be a balance of executive and non-executives directors. Especially independent non- executive directors.
- (ii) Half of the board, excluding chairman consists of independent non- executive directors.
- (iii) Small companies should have at least two independent non- executive directors.

(b) Independence of Directors : All directors apart from the following are independent directors

- (i) Who has been an employee of the company for last 5 years.
- (ii) Who has, or has had material business relationship with the company, partner, director or senior management for last 8 years.
- (iii) Who has close family ties with director or senior or management level.
- (iv) Has significant links with other directors through involvement in other companies.
- (v) Is a significant shareholder.
- (vi) Has served on the board for more than 9 years from the date of their first election.

(c) Separation of the Role of Chairman and Managing Director :

- The code requires that chairman and managing director should not perform the same role.
- Their responsibilities must be clearly divided.
- In exceptional cases, the chief executive can be chairman provided major shareholders have consented for the same.

II AUDIT COMMITTEE :

(a) Composition :

- (i) It must consist of at least 3 or, in case of smaller companies, 2 non- executive independent directors.
- (ii) At least one member of the committee must have financial management expertise.

(b) Functions :

- (i) To monitor the financial statements of the company
- (ii) To monitor internal financial controls, internal control and risk management systems.
- (iii) To monitor the effectiveness of the company's internal audit functions.
- (iv) To make recommendations to the board regarding appointment, reappointment or removal of external auditor along with approving their remuneration.
- (v) To monitor the external auditor's independence

III REMUNERATION COMMITTEE :

(a) Composition :

- (i) At least 3 or, in case of smaller companies, 2 independent non-executive directors.
- (ii) The company may also be a member of the committee, but not to chair, only if he/she was considered independent on appointment as chairman.

(b) Functions :

- (i) To set remuneration for all executive directors and the chairman including pensions.
- (ii) To monitor, recommend the structure of remuneration for senior management.
- (iii) To invite shareholders specifically to approve long- term incentive schemes and changes in existing schemes.

IV NOMINATION COMMITTEE :

(a) Composition :

- (i) majority members should be independent non- executive directors.
- (ii) Chairman or an independent non- executive director should chair the committee.
- (iii) Point (ii) is not valid when the matter relates to the appointment of a successor to the chairmanship.

C. AUSTRALIA

- > The Australian Stock Exchange Regulates the behavior of ASX listed companies through its listing rules.
- > The ASX Corporate Governance Council issued Corporate Governance Principles in 2003 revised in 2007, came into effect from January 1,2008
- > These are just guidelines based on approach similar to that of combined code – "if not, why not approach".

I BOARD STRUCTURE :

(a) Composition :

- (i) Majority of board should consist of independent directors.
- (ii) It should have effective composition.

(b) Independence of Directors :

Following are the aspects that have to be considered while determining the independence of a director :

- (i) Whether he/she is a substantial shareholder of the company.
 - (ii) Whether he/she is/has been employed as an executive and whether a period of 3 years has elapsed between ceasing such employment and serving on the board.
 - (iii) Whether he/she, has material association with the company as adviser or consultant within last three year.
 - (iv) Whether he/she is a material supplier or customer of the company
 - (v) Whether he/she has material constructional relationship with the company.
- (c) The chairman of the Board should be an independent director responsible for efficient organization and conduct of the board's functioning.
- (d) The responsibilities of chairman and that of CEO must be clearly distinguished.

II AUDIT COMMITTEE :**(a) Composition :**

- (i) Consist only of non-executive directors
- (ii) Consist of a majority of independent directors
- (iii) Have at least 3 members
- (iv) It should be chaired by an independent chairman who must not be chairman of the board.

(b) Functions :

- (i) To monitor the internal audit function
- (ii) To recommend the board regarding appointment, reappointment and removal of external auditors.
- (iii) To review and assess the performances and independence of external auditors.
- (iv) To see whether external reporting is consistent with committee member's information and shareholders needs.

III REMUNERATION COMMITTEE :**(a) Composition :**

- (i) Consisting majority of independent directors.
- (ii) At least 3 members.
- (iii) Be chaired by independent directors.

(b) Functions :

- (i) Preparing remuneration, recruitment, terminating and retention policy.
- (ii) Deciding remuneration of senior executives.
- (iii) Preparing superannuation arrangements.

IV NOMINATION COMMITTEE :**(a) Composition :**

- (i) Consisting majority of independent directors.
- (ii) Be chaired by an independent chairman.
- (iii) Must have at least 3 members.

(b) Functions :

- (i) To evaluate performances of the board members.
- (ii) To appoint and re-elect directors.
- (iii) To review board succession plans.

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 a period of 3 years
 er or consultant
 for efficient organi-



CORPORATE SOCIAL RESPONSIBILITY

7

1. MEANING

- It is an evolving term which does not have any standard definition.
- The **WORLD BUSINESS COUNCIL** has defined CSR as the commitment of an organization to
 - Behave ethically, fairly and responsibly to accelerate the process of social and economic development.
 - That will improve the standard/ quality of life of the workforce and their families and meet the expectations of society at large.
 - And which will positively influence the society by taking the interests of its stakeholder into consideration while making decisions.
- It is also called as **Corporate Citizenship or Corporate Responsibility**.
- It includes :
 - Understanding organization's social, economical, political, ethical and moral responsibilities.
 - Complying with rules and regulations as stipulated by the law.
 - Facing challenges that business environmental throws to a business.
 - Management of corporate responsibilities.



- *Companies are aware that they can contribute to sustainable development by managing their operations that enhances economic growth and competitiveness along with protecting the environment and promoting social responsibility, including consumer interests. Elucidate.*

2. FACTORS INFLUENCING CSR

Following are the factors that have led to increase in the attention towards CSR :-

- **GLOBALISATION** : It has led to increase in the competition and also the number of choices a consumer can now have. So in order to pace up with this competition, organizations will have to think beyond the profit motive and serve the customer at large.
- **GOVERNMENTS** : The governments of various countries coupled with international organizations like UNO, ILO, OECD, have made guidelines on welfare that the participating companies are supposed to follow mandatorily.
- **ADVANCEMENT** : Advancement in communication technology has helped the stakeholders to track the corporate activities and disseminate information about them. So in order to maintain goodwill among them, it becomes necessary to offer all relevant information to them about the company's social activities.

- **CONSUMERS AND INVESTORS** : These days both consumers and investors demand more information from the corporate because it's their money which is invested in the business.
- **BREACHES** : Numerous breaches that have resulted in the past have compelled the organization to disclose all possible information to ensure transparency.
- **CITIZENS** : It's the citizens who have made it very clear that the organizations will have to meet social and environmental standards no matter wherever they operate.
- **BUSINESSES** : Businesses round the globe have now learnt that they can operate successfully only if they adopt effective CSR, which will not only open up new opportunities but will also reduce ample amount of risks and increase in reputation.



- Describe the factors that have made organizations to focus majorly on corporate social responsibility.

2.1 DIFFERENCE BETWEEN CSR AND PHILANTHROPY

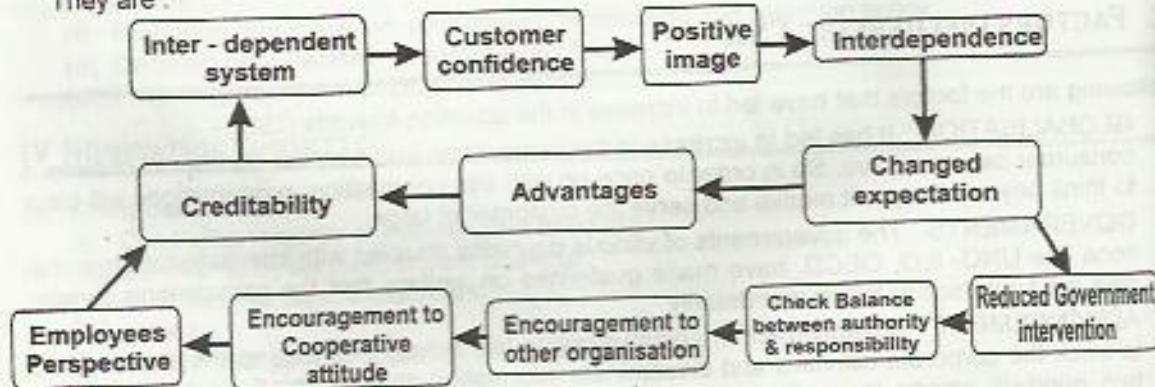
- **Philanthropy** is a charitable act of giving money, goods, time :
 - For the benefit of poor and the needy people,
 - Which is done selflessly or without an aim of earning profits or getting anything in return,
 - And can be done by both individual and corporate.
- **Whereas, CSR** is an approach of an organization to integrate its interests with the interests of its stakeholders at large in order to pursue long term sustainability and which is done to derive long-term benefits like goodwill etc., unlike philanthropy.



- Describe how CSR is different from charity or is beyond charity.

2.2 ADVANTAGES OF CSR

- The CSR brings along with it lots of benefits that an organization can enjoy in the long run. They are :



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CORPORATE SOCIAL RESPONSIBILITY

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- 1) **Customer's confidence** : An organization that caters to the need of all the stakeholders ultimately leads to win their confidence that helps to ensure organizational long term sustainability.
- 2) **Positive - image** : Because an organization fulfills the need and desire of the public at large it gains reputation and goodwill which is considered to be intangible assets of an organization.
- 3) **Interdependence** : It creates a sense of interdependence between society and organization. Society gains through neighbourhood and employment opportunity while organization benefits itself from a better community.
- 4) **Reduction in government intervention** : Since CSR encourages an organization to follow all rules and regulations and disseminate all necessary information, the government intervention reduces substantially.
- 5) **Changed expectations** : Change is an inevitable part of life. Therefore the customer's expectations too are destined to change, and CSR helps an organization to meet such change in demands.
- 6) **Interdependent-system** : Because society is an interdependent system, the internal activities of an organization affect the external environment too.
- 7) **Balance between authority and responsibility** : As it is a known fact that responsibility increases with the increase in authority, the same goes with the organization. Business organizations have great deal of power and money that confers on them great authority, and that is why they should be responsible enough to give society's interests due consideration. That is why we can say that CSR approach balances the both- the power and the duty.
- 8) **Encouragement to other organization** : All the organizations that follow CSR policy and derive benefit from it inspire others to follow the same.
- 9) **Encouragement to co-operative attitude** : An atmosphere of cooperation gets established wherein one organization helps in dealing the other solving social issues.
- 10) **Employees Perspective** : A company as a good corporate citizen will address the issues related to the employees to their full satisfaction, thereby creating atmosphere of growth and opportunities for them.
- 11) **Creditability** : Following CSR bestows upon the organization the creditability that helps an organization to get loans and advances on easy terms and conditions from financial institutions. It is because they have high degree of goodwill and reputation that these organization hold.



➤ The social responsibility of the business can be integrated into the business purpose so as to build a positive synergy between the two. Explain

3. CSR REPORTING STANDARDS



➤ **The AA 1000 :**

- (a) This framework is developed by the INSTITUTE OF SOCIAL AND ETHICAL ACCOUNTING
- (b) It provides standard for:
 - (i) Social and ethical accounting
 - (ii) Auditing and reporting.
 - (iii) Mandatory external verification.
 - (iv) Stakeholder engagement.
- (c) These standards help to:
 - (i) Develop stakeholder engagement strategy to strengthen the relationship.
 - (ii) Facilitate the stakeholder dialogues through planning design, and capacity building.
 - (iii) Capacity building through in house-training in stakeholder engagement.

➤ **THE SOCIAL ACCOUNTABILITY (SA 8000) :**

- (a) It is an international standard developed by COUNCIL on ECONOMIC PRIORITY ACCREDITATION AGENCY (CEPAA) and UNIVERSAL DECLARATION on HUMAN RIGHTS and THE CHILD.
- (b) It provides standards for:
 - (i) Child labour
 - (ii) Forced labour
 - (iii) Workplace health and safety
 - (iv) Working hours
 - (v) Discrimination
 - (vi) Discipline
 - (vii) Freedom of association
 - (viii) Collective bargaining and management systems for human resource.
 - (ix) Remuneration and wages.

➤ **THE GOOD CORPORATION :**

- (a) It has been developed by the institute of business ethics.
- (b) It provides standards for:
 - (i) Fairness to employees, customers, suppliers and providers of finance.
 - (ii) Contribution to the community.
 - (iii) Protection of the environment.
- (c) The performance of the company is assessed annually by an independent verifier.

➤ **THE UN GLOBAL COMPACT :**

- (a) It is an initiative to align the business world with common goals like:
 - (i) corruption
 - (ii) building markets
 - (iii) safeguarding environment
 - (iv) social development
- (b) It has resulted in unprecedented partnerships and openness among businesses, civil society, labor and THE UNITED NATIONS.
- (c) Over 4700 corporate from over 130 countries are its members.

| | | |
|------------------|--------------|--|
| HUMAN RIGHTS | PRINCIPLE 1. | Protection of internationally proclaimed human rights by the business. |
| | PRINCIPLE 2 | Business should not abuse human rights. |
| LABOUR STANDARDS | PRINCIPLE 3 | Businesses should recognize the freedom of association and collective bargaining. |
| | PRINCIPLE 4 | Elimination of all forms of forced and compulsory labour. |
| | PRINCIPLE 5 | Effective abolition of child labour. |
| | PRINCIPLE 6 | Elimination of discrimination in employment. |
| ENVIRONMENT | PRINCIPLE 7 | Business should develop well in advance the precautionary measure to deal with environmental challenges. |
| | PRINCIPLE 8 | Businesses must take all possible initiative to promote environmental responsibility. |
| | PRINCIPLE 9 | Businesses must undertake environmental friendly technologies. |
| ANTI-CORRUPTION | PRINCIPLE 10 | Businesses must not support corruption in any form, be it bribery or extortion. |

➤ **The OECD GUIDELINES for MULTINATIONAL ENTERPRISES :**

- (a) These guidelines are not legally binding.
- (b) It sets out recommendation on business conduct on:
 - (i) Combating bribery
 - (ii) Information disclosure
 - (iii) Employment and industrial relations
 - (iv) Human rights
 - (v) Taxation and science and technology



- Sound practices are often based on good standards of corporate governance which provide a good foundation of corporate social responsibility. Briefly explain the various reporting framework of CSR. (CS Dec 2009)

4. TRIPLE BOTTOM LINE APPROACH OF CSR

- Triple bottom line was developed by Ellington* in the year 1999.
- It is based on the concept that business's objective is not only restricted up to earning only profits, but also to take care of the needs of society and environment too.
- Business cannot exist in isolation; its goals are inseparable from that of the societies.
- Although it can earn short term profits but it will not be able to survive in the long run if it keeps on ignoring the stakeholders' interests.

Triple Bottom Line Figure



EXPLANATION:

- There are three important elements in this concept:
- (a) Planet: It includes following matters of concern:
- | | |
|---------------------------------|--|
| (i) Climate change | (v) Chemicals and toxic materials |
| (ii) Energy | (vi) Air pollution |
| (iii) Water | (vii) Waste management and afforestation |
| (iv) Bio diversity and land use | |
- (b) People: This point includes the following matter of concern:
- | | |
|----------------|---------------------------------|
| (i) Health | (iv) Ethnicity |
| (ii) Diversity | (v) Education and literacy |
| (iii) Safety | (vi) Prevention of child labour |
- (c) Along with the above mentioned two topics the last but very important factor in the triple line approach is **PROFIT**. This point says that after the organization has incurred all types of social and environmental costs it should be able to earn profits in the end.
- 2 ➤ While profitability is pure economic bottom line, social and environmental bottom lines are semi or non-economic in nature so far as revenue generation is concerned but it has certainly positive impact on the long term value that the enterprise commands. Explain. (Hint: Triple bottom line approach)

5. FILL IN THE BLANKS WITH APPROPRIATE WORD/ WORDS

- (1) The term _____ refers to the concept of business being accountable for how it manages the impact of its processes on stakeholders and takes responsibility for producing positive effect on the society. (*Corporate social responsibility*)
- (2) _____ is the act of donating money, goods or time selflessly for the help and betterment of the poor and the needy. (*Philanthropy*)
- (3) _____ standard of corporate governance is developed by _____ which provides for social and ethical accounting, auditing, and reporting including necessary external verification and stakeholder management. (*AA 1000 and The Institute of Social and Ethical Accounting*)
- (4) _____ was initiated by the Council of Economic Priority Accreditation Agency and the Universal Declaration on Human Rights and Child. (*SA 8000*)
- (5) The UN GLOBAL COMPACT was operational on _____ and launched at _____ (26th JULY 2000 and UN headquarters at NEW YORK)

6. STATE WHETHER THE FOLLOWING STATEMENTS ARE TRUE AND FALSE

- (1) SA 800 was developed by CEPPA and the Universal Declaration on Human Rights and Child. (*FALSE, it is SA 8000*)
- (2) The UN GLOBAL COMPACT aims to integrate world businesses with a view to build markets, combat corruption, labour development and protection of human rights. (*True*)
- (3) Philanthropy fetches business long term benefits to an organization. (*Partly true. It is a selfless act done for the betterment of the poor and the needy. Although it will surely raise company's reputation and goodwill which is considered as intangible asset and beneficial in the long run.*)
- (4) The thought that "The business of business is business" will always help an organization to keep itself ahead of all in the market. (*False. This thought by Friedman has outlived its utility. Now only those organizations who fulfill their social responsibilities can continue to grow in the long run.*)



8 INVESTOR PROTECTION AND CORPORATE COMMUNICATION

1. INVESTORS

- Anyone who **invests money** in the company's shares is called investor.
- Now because they invest money in the company they want that their money must be utilized in the correct manner and that is why they **have many expectations** associated with the company.

1.1 INVESTOR'S PROTECTION

- The **need to protect the investors** may arise because the managers who are appointed by the investors in trust and confidence may betray or cheat them.
- These managers are called or the people who are appointed by the investors, as **insiders**.
- These **insiders use essential information** which otherwise is not to be disclosed or must be kept as secret for their own benefit.
- **MULTIDIMENSIONAL** : Investor protection is multidimensional in the sense that they may have to be protected against the mal-practices of :
 - (a) Companies-problems like non-receipt of the allotment letter, refund orders etc.
 - (b) Member Brokers-problems like non-payment of delayed payments etc.
 - (c) Financial Intermediaries- problems like non-delivery of securities and non settlement of payments due to investors.
- **Types of unfair practices :**
 - (i) deliberate misstatement in offer statements
 - (ii) Price manipulation
 - (iii) Insider trading
- **SEBI'S Guidelines to Protect the investors** : SEBI has issued guidelines to protect the investors from the above mentioned unfair means :
 - (1) SEBI (Disclosure and Investor Protection) Guidelines 2000.
 - (2) SEBI (Ombudsman) Regulations 2003, to protect the investors from listed companies and intermediaries.
 - (3) SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations 2003, to protect investors from unfair trade practices in securities market.
 - (4) SEBI (Prohibition of Insider Trading) Regulations 1992 and Amended in 2002.
- **Methods to keep investors informed** : Investors may be protected from these unfair means if they are kept informed about the latest information and developments. These methods are —
 - (1) Prospectus.
 - (2) Advertisements and other means of media.
 - (3) Research reports.
 - (4) Journals, news items, advices from the friends, share brokers etc.

2 INSTITUTIONAL INVESTORS

- Institutional investors are those organizations that pool in large amount of money and invest them in various companies.

2.1 TYPES OF VARIOUS INSTITUTIONAL INVESTORS:

- ✓ Development banks like IDBI, IFCI etc.
- ✓ Insurance companies like GIC, LIC
- ✓ Banks
- ✓ Mutual funds (UTI etc.)
- ✓ Pension funds.

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2.2 ROLE OF INSTITUTIONAL INVESTORS :

- The role of institutional investors has been mentioned in various reports.
- ✓ Some of them are as follows:
 - (1) **Kumar Mangalam Birla Committee** : According to this committee, institutional investors :-
 - ✓ (a) hold large stake in the listed companies on behalf of the retail shareholders.
 - ✓ (b) Because of this, the retail shareholders expect them to use their voting rights positively.
 - ✓ (c) Must maintain arms length distance from the management.
 - (2) **Combined Code 2008** : It stated the following principles of good governance for the institutional investors —
 - ✓ (a) **Dialogue with company** : Institutional investors must maintain interaction through dialogues with the company to maintain mutual trust and understanding.
 - ✓ (b) **Evaluation of governance disclosure** : Institutional investors must keep in mind all relevant factors while evaluating governance practices.
 - ✓ (c) **Shareholder voting** : They must use their voting rights properly and for the betterment of the retail shareholders.
 - (3) **The Institutional Shareholders' Committee** : According to this committee, the institutional investors must act in the following manner :—
 - (a) **Policy document on activism** : This policy document contains the methods or ways in which institutional investors will carry their work. These are:
 - ✓ (i) Ways of their intervention.
 - ✓ (ii) How will the conflicts be resolved.
 - ✓ (iii) Policy on voting.
 - ✓ (iv) How will they interact with the management.
 - ✓ (v) How will the Investee Company be monitored.
 - ✓ (b) **Institutional investors should monitor performance** : They must, regularly and in a clear manner, monitor the performance of the investee company. It will include reviewing annual reports, circulars and attending meetings and seminars.
 - ✓ (c) **Institutional investors intervene when necessary** : Institutional investors intervene in circumstances like: operational performance of a company, internal control failures etc, and it is the duty of the Board of Directors to provide them with all important in-

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formation. And if they do not cooperate, then institutional investors can adopt any of the following methods:

- ✓ (a) Call Extraordinary General Meeting.
- ✓ (b) Public statement.
- ✓ (c) Acting with other investors.

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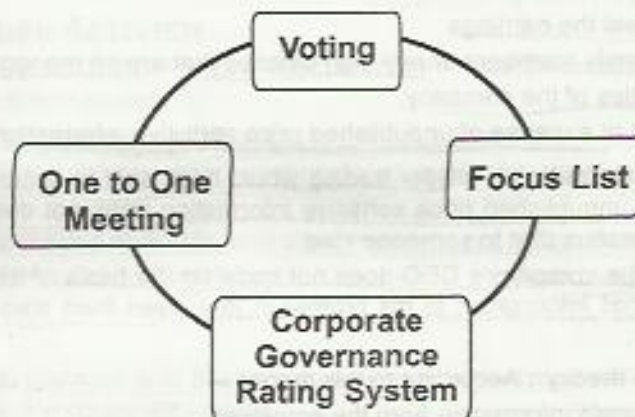


➤ Mention the role of institutional investors as described by:

- ✓ a) Kumar Mangalam Birla Committee.
- ✓ b) Combined Code 2008.
- ✓ c) Institutional Shareholders' Committee

2.3 TOOLS USED BY THE INSTITUTIONAL INVESTORS

- There are various methods which the institutional investors use in order to assess the investee company:



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- (1) **Voting** : Institutional investors hold shares largely on behalf of the retail shareholders and that is why they have major stake in the investee's company so if they think that a resolution is against their interests, they may opt to vote against it.
- (2) **One to one meeting** : This is a major source of ascertaining whether the company is following corporate governance practices because individual investors may not get a chance to judge an organization which can be best done by the large shareholders.
- (3) **Focus list** : In this method the institutional investors prepared a target list, comprising of companies which have underperformed on the scale of Standards and Poor's.
- (4) **Corporate Governance Rating System** : This is one of the most important methods wherein the institutional investors assess the company on the basis of credit rating given by various credit rating agencies. This is because the company with good corporate governance is generally perceived as more attractive to investors than one without.



- List out the various corporate governance tools used by the institutional investors to monitor the investee company.

3. INSIDER TRADING

- **Insider** is one who, by virtue of his position in the company or who is connected with the company, is expected to have
 - Access to unpublished price sensitive information related to that particular company's stock.
 - Or has access to unpublished price sensitive information.
- **Price sensitive information** : Following is considered to be price sensitive information:
 - (1) Periodically financial statements of the company.
 - (2) Declaration of dividend.
 - (3) Buy back of securities.
 - (4) Any major expansion plans, mergers, amalgamation, etc.
- **What does an insider do?** :
 - (1) Insider may steal the earnings.
 - (2) May employ family members or pay high salaries that are on managerial position.
 - (3) Sell the securities of the company.
 - (4) May gain profit at expense of unpublished price sensitive information.
- **Liability for insider trading** : Insider trading would have said to occur even if the person in possession of the unpublished price sensitive information does not deal on the basis of that information but transfers that to someone else.
For example : If the company's CEO does not trade on the basis of the price sensitive information but pass that information to his brother in law, even then also insider trading would have said to occur.
- **Misappropriation theory** : According to this theory —
 - Anyone who steals information from the employer,
 - Trades on the basis of that information in the stock of that company,
 - Is guilty of insider trading.
- SEBI has also framed guidelines to protect the investors from the aftereffects of insider trading, SEBI (Prohibition of Insider Trading) Regulations, 1992.
For example : If a journalist who works for company B learns about the takeover of company A, purchases the stock in company A, insider trading would still have said to occur. Although, he did not violate any duty towards the shareholders of the company A, but he did violate one against that of company B's shareholders.
- **Case law** : UNITED STATES vs. CARPENTER (1986)
 - The Supreme Court cited an earlier ruling while unanimously upholding mail and wire fraud convictions for a defendant who received information from a journalist rather than the company itself.
 - The journalist was also held convicted as he had misappropriated the information.
 - **It was held that** : a person who acquires special knowledge or information by virtue of a confidential or fiduciary relationship with another is not free to exploit the knowledge or information for his own personal benefit but must account to his principle for any profits derived there from.
- **Steps taken by SEBI to control insider trading**: Following are the acts and regulations that the SEBI has created to protect investors from insider trading:

SEBI (Investor Protection & Education Fund) Regulations, 2009 with guidelines for legal aid to investor to take action. Code of Conduct to all intermediaries operating in securities market.

- ① SEBI (Disclosure and Investor Protection) Guideline 2000
- ② SEBI (Ombudsman) Regulation 2003 to redress the grievances of the investors against the intermediaries or companies.
- ③ SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations 2003 to check any fraudulent and unfair trade practices act relating to the securities market.
- ④ SEBI (Prohibition of Insider Trading) with the main aim to check people who have access to unpublished price sensitive information for benefiting themselves from such information.



- Describe how does the Indian legal framework helps in prohibition in case of insider trading. (CS JUNE 2002)
- Write a short note on insider trading. (CS JUNE 2000)
- Define the term 'insider' as per SEBI regulations on insider trading. (CS JUNE 2000)
- What is insider trading? What are the steps taken by the government in order to check the same? (CS DECEMBER 2002)

3. SHAREHOLDER ACTIVISM

- Shareholder activism means:
 - **Active involvement** of stakeholders in the organization,
 - to ensure that it follows **good corporate governance practices** and implement beneficial policies,
 - can **resolve issues** in AGMs, and other meetings regarding financial matters,
 - and **includes** religious institutions, universities, environmental activists, human right groups, etc.
- **Objectives :**
 - To enter into dialogue with the company over important matters.
 - To influence the corporate culture.
 - To use the corporate democracy provided by the law.
 - To raise awareness about social and human rights concerning the organization.



- Bhopal gas tragedy is the best case
- What does shareholder activism mean?

4. INVESTORS RELATION

- It is a **strategic management responsibility** that integrates finance, marketing and securities' law compliances,
 - To **enable an effective two way communication** between a company, financial community, and other constituencies,
 - That will result into **fair valuation of the company's securities**.
- In some companies, this department is **managed by the Chief Finance Officer** while in **some others it is managed by the Communication or Public Relation Department**.
- Investor relation department must **maintain a closer look on the latest issues** that an organization is likely to face in the near future.
- It must also **closely work with the company secretary** in order to have an insight over regulatory and legal matters.

4.1 RESPONSIBILITY OF INVESTOR RELATION OFFICER:

- Creating interest in the firm on the buyer side.
 - Anticipating market reactions on latest development like M & As etc.
 - Enhancing the stakeholders' confidence in the firm.
- ?** ➤ Investor services are a pre-requisite to positive investor relationship. – Comment
(CS DEC 2003)
- Maintaining good investor relations is need of the day. – Comment
(CS JUNE 2008)

5. CORPORATE COMMUNICATION

- **Corporate communication** is that part of the management function that deals with sharing all possible information to the stakeholders in order to have:
 - Positive corporate image.
 - Corporate reputation.
 - Good government relations.
 - Proper advertising and media management.
 - Corporate communication can be **verbal and non-verbal**.
 - It can also be **external and internal**. Various types of external and internal communication are :
 - **Media** : This will include press releases, interviews, press conferences, events for media, etc.
 - **External event** : This will include meetings with suppliers/vendors/distributors, channel partner meetings etc.
 - **Internal communication (or employee's communication)** : Intranet, circulars, notices, company publications, etc.
 - **Brand management** : This will include all measures taken to promote company's brand.
 - **Crises communication** : This will include conveying all sorts of information needed to be conveyed in the event of crises through effective means of communication.
 - ✓ **Corporate blogging: the present day Communication Method**
 - Corporate blogging is one of the most sought after method of corporate communication with the help of which the corporate can communicate with the customers all over the world with the help of internet.
 - YAHOO, IBM, Harvard Business School are some of the examples of premier organizations that have realized the importance of corporate blogging over the years.
 - The importance of corporate blogging can be understood as follows :
 - It helps to **achieve customer intimacy** as he can now know the organization closely and mention complaints and grievances.
 - The organizations can **control and influence the public at large**.
 - Since the customers can get their grievances solved, the organization's **credibility gets improved**.
 - It also helps to gain the required level of **transparency**.
 - It also keeps the organization following the corporate blogging trend ahead of those who not, thereby giving an opportunity to **lead the market**.
- ?** ➤ List out the advantages of corporate blogging in today's modern context.
- Bring out the difference between corporate blogging and company's vertical communication.
(CS JUNE 2009)



CORPORATE GOVERNANCE FORUMS

9

1. INTRODUCTION

Corporate Governance Forums are those institutions or bodies that work for the implementation of globally accepted standards of corporate governance in public as well as private sector.

1.1 NEED :

Need or importance of corporate governance forums can be explained as follows :

- (a) They promote culture of compliance among the corporate.
- (b) They help in the implementation of globally accepted corporate governance standards.
- (c) Helps companies to attain long-term prosperity.
- (d) Necessity of companies in terms of:
 - National governance
 - Human governance
 - Societal governance
 - Economic governance, and
 - Political governance
- (e) They have a very valuable impact on every aspect of the society.

2. CORPORATE GOVERNANCE FORUMS



A THE INSTITUTE OF COMPANY SECRETARIES OF INDIA:

- **Vision** – “To be a global leader in development of professionals specializing in corporate governance”.
- **Mission** – “To continuously develop high caliber professionals ensuring good corporate governance and effective management and to carry out proactive research and development activities for protection of interests of all stakeholders, contributing to public good.”
- **Principles of ICSI :**
 - (a) **Sustainable development of all stakeholders :—**
It implies overall development of the all types of stakeholders that are associated with an enterprise be it government, shareholders, employees or customers.
 - (b) **Effective management and distribution of wealth :—**
It implies that managers must effectively manage the enterprise so as to maximize its wealth, here by maximizing the benefits to the all stakeholders.
 - (c) **Disclose of corporate social responsibilities :—**
It implies that enterprise must cater to the needs and interests of the society. It implies that the enterprise's conduct is such that it is acceptable to the people of the society i.e. it should not engage in any unscrupulous activities, or anti-trade practices.
 - (d) **Application of best management practices :—**
It implies the use of those practices at work that will provide excellence in the organization and leads to maximization of wealth. Such practices must be ethical and cater to overall development of organization as well as the stakeholders.
 - (e) **Compliance of law in letter and in spirit :—**
It implies that organization must follow law not only in letter but also with felling to abide by it.
 - (f) **Adherence to ethical standards :—**
It implies that enterprises must follow ethical standards to ensure integrity transparency, independence and accountability in dealings with all stakeholders.
- *State the principles of corporate Governance as evolved by the ICSI?*
(CS Dec 2009, JUNE 2010)
- *What Attributes are considered in ICSI Lifetime Achievement Award for Translating Excellence in Corporate Governance into Reality?*

Answer :

- (1) Contribution to social upliftment.
- (2) Contribution to stakeholders' value enhancement.
- (3) Contribution to innovation.
- (4) Adherence of statutory obligation.
- (5) Social Acceptance and approval.
- (6) Transparency and Accountability.
- (7) Team spirit, Integrity and leadership.

B NATIONAL FOUNDATION FOR CORPORATE GOVERNANCE :—

- NFCG has been set up by Ministry of Corporate Affairs in partnership with Confederation of Indian Industry (CII), ICSI, and ICAI.
- **Mission**
 - (a) To promote good corporate governance.
 - (b) To promote best practices, processes and ethics in the organization.
 - (c) To ensure stability and growth in the corporate sector.
 - (d) To ensure research in corporate governance.
- **Governing council:** Governing council consists of minister-in-charge at the apex level of ministry of corporate affairs, government of India.
- **Board of trustees**
 - (a) They are responsible for implementing policies and programs.
 - (b) It is chaired by secretary, ministry of corporate affairs.
- **Executive directorate**
 - (a) He is the chief Executive officer of NFCG
 - (b) He is responsible to exercise powers delegated to him by the Board of Trustees.



- Write short notes on NFCG?

C. ORGANIZATION FOR ECONOMIC DEVELOPMENT AND COOPERATION :—

- It was established in 1951 :
- It was one of the first non-governmental organizations that gave principles of good corporate governance.
- **Mission :** To help its member countries to achieve:
 - (a) Sustainable economic growth.
 - (b) Employment.
 - (c) Standard of living.
 - (d) Financial stability, in all its member countries.
- **Principles of OECD:** First issued in 1999.
 - Revised in 2004 to take into account the corporate government scandals. Principles are as follows :
 - (a) Governments should have effective institutional and legal framework to support good corporate governance practices.
 - (b) To have a framework that protects and facilitates shareholders rights.
 - (c) To equally treat minority, and forcing shareholders.
 - (d) To recognize the value of stakeholders.
 - (e) To have transparency and accountability.
 - (f) Principles regarding effective board structures, responsibilities and procedures.

The OECD principles help :

- (1) Governments and regulatory bodies in enforcing effective rules and regulation.
- (2) Guiding stock-exchanges, investors, companies and others in developing good corporate governance practices.



- Describe the main areas of corporate Governance.

D. The Institute of Directors, UK.

- It is non party-political business organization established in United Kingdom in 1903.
- **Objects :**
 - (a) To promote skill, knowledge, professional competence of directors for public benefit.
 - (b) To promote research and development and study of practices of corporate governance.
 - (c) To publish the results of such research.
 - (d) To encourage an atmosphere of favorable entrepreneurial activity.
 - (e) To promote interests of its member's i.e. all stakeholders.
- **Management :** The institute is managed by Executive Director headed by the Director General.

E. Common Wealth Association of Corporate Governance.

- It was established in 1998.
- Its objective is
 - (a) To promote best international standards through education, consultation and information.
 - (b) To achieve global standards of business efficiency.
 - (c) To promote institutions that promotes good corporate governance practices.
- The Institution is majorly funded through annual contributions made by member government.
- There are 53 countries as members of which 46 are currently common wealth foundation members.
- **Membership :** Voluntary and is open to all.

F. International Corporate Governance Network .

- It is a not for profit company limited by guarantee under the laws of England and Wales.
- **Purpose/Role:-**
 - (a) To exchange views on corporate governance issues.
 - (b) To examine corporate governance and practices.
 - (c) To develop and adhere to corporate governance standards.
 - (d) To promote good corporate governance.
- **Membership :** Open to all those who are committed to the development of good corporate governance.
- **Management :**
 - (I) It is governed by ICGN's MOA and AOA.
 - (II) Its affairs are managed by the Board of Governors. (BOG)
 - (III) BOG in turn appoints committees to performance functions mentioned by the Board.

G. The European Corporate Governance Institute

- It was founded in 2002.
- **Aim :** To improve corporate governance through scientific research and relative activities.
- **Role :**
 - (a) To undertake research on corporate governance.
 - (b) To disseminate the results of such research.
 - (c) Advises for the formulation of corporate governance policy.
 - (d) It also encourages interaction between scholars from different countries on various subjects like economics, law, finance etc.
- It is also a scientific non-profit association.

H CONFERENCE BOARD:

- It was established in 1916 in USA.
- It is a not for profit organization.
- **Role:-**
 - (a) To provide governance education to directors through directors training programme
 - (b) To create and disseminate knowledge about management issues.
 - (c) Conducts research on corporate governance issues and share its results with world-wide economies.
 - (d) Provide a platform for open dialogue on various issues relating to corporate governance.

I The Asian Corporate Governance Association :

- It was established in 1999.
- It is an independent non-profit organization.
- **Role :**
 - (a) To implement effective corporate governance practices through out Asia.
 - (b) **Research Role :** It conducts research about corporate governance developments across 11 markets in Asia.
 - (c) **Advocacy Role :** It exchanges views with stock exchanges, financial institutions and investors to implement corporate governance practices in Asia.
 - (d) **Educational Role :** It includes organizing meetings/ conferences to disseminate education regarding benefits of using/ implementing corporate governance practices.
- **Funds :** It is founded by network of sponsors and corporate members, financial institutions, leading pension funds etc.
- **Governing Council :** Comprises of directors from Asia.
- Its secretariat is at Hong Kong and is incorporated under its law.



- Describe briefly the scope of work of Asian Corporate Governance Association. (CS JUNE 2010)

J Global Corporate Governance Forum

- It was founded in 2001 by World Bank and the Organization for Economic Co-operation and Development.
- **REASON :** It was established following the financial crises in Asia and Russia.
- **OBJECTIVE :**
 - (a) To raise the standard of corporate governance standards
 - (b) To attain sustainable economic growth.
 - (c) To reduce poverty and unemployment in developing countries.
 - (d) Raise awareness about corporate governance practices through meetings, briefings, conferences.
 - (e) To sponsor research work.
 - (f) To disseminate information through publications etc.

3. FILL IN THE BLANKS WITH APPROPRIATE WORD / WORDS

1. _____ and _____ are objectives of corporate governance in broadest sense. (*wealth creation, management and sharing*)
2. The ICSI National Awards for Excellence in a corporate governance is given to _____ (*the corporate that establish and follow the corporate governance forums in letter and in spirit*).
3. The ICSI lifetime Achievement Award is given to a corporate leader for _____. (*Translating Excellence in Corporate Governance*)
4. The ICSI's post membership qualification course is to update members about _____. (*best practices in corporate governance*)
5. The OECD was one of the _____ to spell out principles that should govern _____. (*First non-government organizations and corporate*)
6. The mission of OECD has been to help its member countries to achieve _____ and _____ and to raise the standard of living in member countries while maintain financial stability. (*sustainable economic growth and employment*)
7. Global Corporate Governance Forum was founded by _____ and _____ in 2001. (*World Bank and the Organization for Economic Co-operation and Development*)
8. Global Corporate Governance Forum seeks to address the corporate governance weaknesses of _____ and _____ countries. (*middle income and low income*)
9. European Corporate Governance Institute (ECGI) was founded in _____ to improve corporate governance through _____. (*2002 and independent scientific research and related activities*)

4. STATE WHEATHER THE FOLLOWING STATEMENTS ARE TRUE OR FALSE

1. The Post membership qualification course introduced by ICSI is to help the members update about latest amendments in company law. (*False. To update them about best practices of corporate governance*)
2. The OECD was one of the first non-government organizations to spell out the principles that should govern corporate. (*True*)
3. The Institute of Directors was formed to promote high level of skills, knowledge, professional competence and integrity on the part of directors, and equivalent office holders however described of companies and other organizations. (*True*)
4. The conference board of Directors Institute is a primer provider of governance education for directors. (*True*)
5. ACGA is majorly funded by UNO. (*False. It is majority funded by sponsors and corporate members, pension and investment funds, listed companies and MNCS*)