

Chapter: 10 CORPORATE GOVERNANCE AND PUBLIC SECTOR UNDERTAKINGS

Introduction:

Corporate Governance has succeeded in attracting a good deal and public interest because of its apparent importance for the economic health of corporations and society in general. Corporate Governance is a field in business that investigates how to secure/motivate efficient management of corporations by the use of incentive mechanisms such as contracts, organizational designs and legislations. Good corporate governance in public enterprises implies attention to issues larger than those of law and stock exchanges. They need to address the principles of government and public enterprise relationship and create the fundamental pillars based on which the governing board can become effective.

Corporate Governance is the system by which companies are directed and controlled. It deals with the ways in which suppliers of finance to corporate assures themselves of getting a return on their investment. In simple words, the corporate governance explains the management of a company. Management of a company broadly includes planning, organization, staffing, direction, controlling, budgeting, and reviewing. Management of modern corporations yield enormous powers over the lives of many people, through their decisions

On such important aspects as location of new plants, or closing of old plants, supplier contracts, decisions on hiring and layoffs, on pricing, investments and technology choices. The board of directors is responsible and accountable to its shareholders (owners) and stakeholders (government, employees, tax collection authorities, and creditors, suppliers of goods, banks, financial institutions, customers and society at large). Corporate governance is a combination of corporate ethics, corporate transparency as well as corporate accountability. It mean a set of core principles followed by a corporate entity, emerging from its human values as reflected in its performance. It denotes decision and control of the affairs of a company. It is also said as the relationship between owners and managers in directing and controlling companies as a separate legal entity.

An effective corporate governance system should provide mechanism for regulating directors' duties in order to restrain them from abusing their powers and to ensure that they act in the best interests of the company in its board.

Corporate governance has been defined as system of structuring, operating and controlling a company with a specific aim of goals of the owners; consider and care for the interests of employees, past, present and future; take account of the needs of the environment and local community; maintain excellent relations with both customers and suppliers; maintain proper compliance with all the applicable legal and regulatory requirements. Corporate Governance encircles with certain basic premises such as:

1. Sound Management:

The board of directors should adopt sound management policies leading to adequate Return on Investment (ROI).

2. Fiduciary Relationship:

Fiduciary Relationship where-in owner, managers or professional managers must adhere to strictly to their role relationships, refrain from unethical practices and think in terms of protecting the natural resources and society as a whole.

3. Responsibility:

Board of directors are responsible for governance of their companies. Shareholders role is to appoint the directors and auditors and satisfy themselves that an appropriate structure is in place. The responsibilities of board of directors include selecting the company's strategic aims, providing the leadership put them in to effect, supervising the management of the business and reporting to shareholders on their stewardship.

4. Accountability:

The basic corporate governance is sue relating to the accountability is largely the matter of directors' disclosure of transparency, of explaining a company's activities to which the corporation has responsibilities.

Corporate Governance is the burning concept, which cannot be static in nature. It refers to management of corporate affairs by board of directors and renders report to the shareholders to whom they are accountable. But all the matters of good corporate governance cannot be introduced as statutory provisions. Hence, many established companies have voluntarily adopted the methods of good corporate governance.

THE SEBI AND CORPORATE GOVERNANCE:

The SEBI has made listed companies and companies proposed to be listed in the corporate sector, to adopt several measures to improve the standards of corporate governance. According to the Clause 49 of listing agreement, a listed company should take the following steps:

1. Board of Directors – Composition:

- **Strength of non-executive directors:**

Non-executive directors should be not less than 50 percent of the total strength of the Board.

- **Strength of independent directors:**

In case the board as a non-executive chairman, independent directions should be at least one-third of the total strength of the board. In case of an executive chairman, at least half the Board should comprise of independent Directors.

2. Audit Committee:

The company shall constitute a qualified and independent audit committee of the Board subject to following conditions:

- The audit committee should have minimum three non-executive directors other than managing and whole time director.
- The majority of the non-executive directors should be independent and at least one of them should have financial and accounting knowledge.
- The committee shall meet at least thrice a year.

3) Remuneration of Directors:

The company shall make the following disclosures on the remuneration of directors in the section on corporate governance in the annual report:

- Full particulars of remuneration like salary, benefits, bonus, stock options, pension etc.,
- Performance linked incentives along with the performance criteria and fixed component of incentives,

- Particulars of service contracts, notice, period, severance fees, and
- Stock option details like whether issue price is at a discount over market price, period of option etc. The Board shall decide the remuneration of non-executive directors.

4. Board Procedure:

The Clause 49 of the listing agreement requires companies to ensure that the gap between two Board meetings shall not exceed 4 months. And it has been specified that a director shall not become a member in more than 10 committees nor a Director acts as a chairman of more than 5 committees.

5. Management:

Every listed company shall include in its Directors 'Annual report or separately, a Management Discussion and Analysis Report, which shall form part of the annual report to the shareholders. The Management Discussion and Analysis report should contain a discussion on the following aspects:

- industry structure and developments,
- opportunities and threats,
- segment-wise or product wise performance,
- outlook,
- internal control systems and their adequacy,
- discussion on financial performance with respect to operational performance, and
- material developments in Human Resource/Industrial relations' front including number of people employed.

6. Shareholders:

- In the case of appointment of a new Director or reappointment of a Director, the shareholder must be given:
 - a brief resume of the Director,
 - nature of the experience in specific functional area and
 - names of companies in which he is director and in which he holds membership of committee.
- The company shall supply quarterly results and presentations made by it to stock exchanges to make them to put the information on their own websites.

- The company shall constitute a shareholders/Investors Grievance Committee under the chairmanship of a non-executive Director specifically to look into complaints in respect of transfer of shares, non-receipt of balance sheet, non-receipt of dividend, etc.

- The company shall delegate the power of transfer to an officer or to a committee or to the Register and share transfer agents and the delegated authority shall attend to share transfer work once in a fortnight.

7. Report on Corporate Governance in the Directors' Report:

Every listed company is requested to include in a separate section in the annual report, a detailed compliance report on corporate governance. Non-compliance of any item of clause 49 of listing agreement should be mentioned in the compliance report.

8. Certificate of Compliance:

The company shall obtain a certificate from the auditors of the company regarding compliance of the conditions of the corporate governance as per clause 49 of the listing agreement and annex the same with the Directors Report. Copy of the certificate shall also be sent by the company to the stock exchanges concerned along with the annual report.

Non-mandatory Requirements:

Clause 49 of the listing agreement includes the non-mandatory requirement of corporate governance. They shall be implemented as per the direction of the company. But in the section on corporate governance the company should disclose whether any of the non-mandatory requirements has been adopted or not.

All the companies seeking listing in stock exchanges for the first time are required to comply with the conditions of corporate governance immediately. The stock exchanges shall ensure that these provisions have been complied with before granting any new listing. For this purpose, it will be satisfactory compliance, if these companies have set up the Board and constituted the committees such as Audit Committee.

Shareholders/Investor Grievance Committee etc. Before seeking listing. A reasonable time to comply with these conditions may be granted only where the stock exchange is satisfied that the genuine legal issue exists which will delay

such compliance. In such cases, while granting listing, the stock exchanges shall obtain an undertaking from the company. In case the companies failing to comply with this requirement without any genuine reason, the application money shall be kept in an escrow account till the conditions are complied with.