

# **ICSI Recommendations to Strengthen Corporate Governance Framework**



**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

# INTRODUCTION

The Satyam revelations in January 2009 led to a re-look at the regulatory provisions that exist. The Council of the Institute accordingly constituted a Core Group to analyse the issues arising out of Satyam Episode and to inter alia make suitable recommendations for policy and regulatory changes in the legal frame work.

The Core Group undertook a detailed study of the prevailing corporate governance practices across the world, the recommendations of various committees and corporate governance codes, the best practices adopted by the industry and after benchmarking the best practices that can be mandated, made its recommendations which were approved by the Council of the Institute. The recommendations of the Institute to improve the governance practices are placed in the subsequent pages.

## **1. MAXIMUM TENURE OF INDEPENDENT DIRECTORS**

Excessively long tenure for independent directors can indicate

- closeness of the relationship between the independent directors and management.
- lack of board renewal - boards need to be regularly refreshed with new blood.

### **UK Combined Code**

A director will not be considered to be independent if he has served on the board for more than nine years from the date of their first election.

### **Clause 49**

The non-mandatory recommendation - Independent Directors may have a tenure not exceeding, in the aggregate, a period of nine years, on the Board of a company.

### **Banking Regulation Act, 1949**

In terms of Section 10A(2-A)(i) of the Banking Regulation Act, 1949 no director of a banking company, other than its chairman or whole-time director, by whatever name called, shall hold office continuously for a period exceeding eight years;

### **ICSI Recommendation 1**

A Maximum tenure of 6 years in aggregate should be specified for independent directors and be made mandatory.

## **2. INDEPENDENT DIRECTORS' DEFINITION**

The definition of independent directors as contained in Clause 49 of the Listing Agreement is comprehensive. However, certain positive attributes of independent directors could be identified and included in the definition.

### **OECD Principles**

In defining independent members of the board, some national principles of corporate governance have specified quite detailed presumptions for non independence which are frequently reflected in listing requirements. While establishing necessary conditions, such 'negative' criteria defining when an individual is not regarded as independent can usefully be complemented by 'positive' examples of qualities that will increase the probability of effective independence. Independent board members can contribute significantly to the decision-making of the board. They can bring an objective view to the evaluation of the performance of the board and management. In addition, they can play an important role in areas where the interests of management, the company and its shareholders may diverge such as executive remuneration, succession planning, changes of corporate control, take-over defenses, large acquisitions and the audit function. In order for them to play this key role, it is desirable that boards declare who they consider to be independent and the criterion for this judgement.

### **Maldives - Corporate Governance Code – Capital Markets Development Authority**

Each director must be well-qualified to carry out his duties. Such qualifications can be shown through relevant prior experience. As a guide, the following basic qualifications and professional competencies must be exhibited:

- (i) Integrity in personal and professional dealings.
- (ii) Wisdom and ability to take appropriate decisions.
- (iii) Ability to read and understand financial statements.
- (iv) An acknowledged record of business acumen and achievement so as to effectively contribute to the company's management.
- (v) Ability to deal with others with a sense of responsibility, firmness, and cooperation.

- (vi) Ability to interact with and consult with the company's employees in order to achieve high management standards.
- (vii) A track record of a range of skills and experience as well as the ability to think strategically and with foresight.

### **Companies Bill 2009**

Independent director :

“Independent director”, in relation to a company, means a non-executive director of the company, other than a nominee director—

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

### **Clause 49**

The definition of independent director in terms of Clause 49 of the Listing Agreement lists out negative criteria defining when an individual is not regarded as independent.

## **ICSI Recommendation 2**

Clause 49 needs to be suitably amended by specifying positive attributes for independent directors such as integrity, experience and expertise, foresight, managerial qualities and ability to read and understand financial statements etc.

### **3. NOMINEE DIRECTORS**

In March 1984, the Banking Division of the Ministry of Finance, Department of Company Affairs issued its Policy Guidelines relating to Stipulation of Convertibility Clause and Appointment of Nominee Directors. The Guidelines stipulated that “nominee directors should be given clearly identified responsibilities in a few areas which are important for public policy”. An illustrative list of such responsibilities was provided, including (a) financial performance of the company; (b) payments of dues to the institutions; (c) payment of government dues, including excise and custom duties, and statutory dues; (d) inter-corporate investment in and loans to or from associated concerns in which the promoter group has significant interest; (e) all transaction in shares; (f) expenditure

being incurred by the company on management group; and (g) policies relating to the award of contracts and purchase and sale of raw materials, finished goods, machinery, etc. In addition the Guidelines specified that “the nominee directors should ensure that the tendencies of the companies towards extravagance, lavish expenditure and diversion of funds are curbed.”

### **Naresh Chandra Committee**

Recommendation 4.1 which defines an independent director inter-alia states:

An employee, executive director or nominee of any bank, financial institution, corporations or trustees of debenture and bond holders, who is normally called a 'nominee director' will be excluded from the pool of directors in the determination of the number of independent directors. In other words, such a director will not feature either in the numerator or the denominator.

### **Companies Bill 2009**

An independent director means a non-executive director, other than a nominee director.

### **Clause 49**

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

### **ICSI Recommendation 3**

Clause 49 specifically states that a nominee director be considered independent.

The nominee directors have a clear mandate to safeguard the constituency they represent i.e. the financial institution they represent. Hence to term them independent is an anomaly.

This anomaly needs to be rectified in clause 49.

## 4. SEPARATION OF ROLES OF CHAIRMAN AND CEO

It is perceived that separating the roles of chairman and chief executive officer (CEO) increases the effectiveness of a company's board.

It is the board's and chairman's job to monitor and evaluate a company's performance. A CEO, on the other hand, represents the management team. If the two roles are performed by the same person, then it's an individual evaluating himself. When the roles are separate, a CEO is far more accountable.

The benefits of separation of roles of Chairman and CEO can be :

1. **Director Communication:** A separate chairman provides a more effective channel for the board to express its views on management.
2. **Guidance:** a separate chairman can provide the CEO with guidance and feedback on his/her performance.
3. **Shareholders' interest :** The chairman can focus on shareholders' interest, while the CEO manages the company.
4. **Governance:** a separate chairman allows the board to more effectively fulfill its regulatory requirements.
5. **Long-Term Outlook:** separating the position allows the chairman to focus on the long-term strategy while the CEO focuses on short-term profitability.
6. **Succession Planning:** a separate chairman can more effectively concentrate on corporate succession plans.

### OECD Principles

In a number of countries with single tier board systems, the objectivity of the board and its independence from management may be strengthened by the separation of the role of chief executive and chairman, or, if these roles are combined, by designating a lead non-executive director to convene or chair sessions of the outside directors. Separation of the two posts may be regarded as good practice, as it can help to achieve an appropriate balance of power, increase accountability and improve the board's capacity for decision making independent of management. The designation of a lead director is also regarded as a good practice alternative in some jurisdictions. Such mechanisms can also help to ensure high quality governance of the enterprise and the effective functioning of the board.

## U K Combined Code

### Main Principle

There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision.

### Supporting Principle

The chairman is responsible for leadership of the board, ensuring its effectiveness on all aspects of its role and setting its agenda. The chairman is also responsible for ensuring that the directors receive accurate, timely and clear information. The chairman should ensure effective communication with shareholders. The chairman should also facilitate the effective contribution of non-executive directors in particular and ensure constructive relations between executive and non-executive directors.

## USA

Although in the USA, there is no regulatory requirement for separation of roles of the Chairman and CEO, some high-profile firms have recently decided to divide these roles, for a number of reasons. Tom Siebel has relinquished the CEO title at Siebel Systems to former IBM executive J. Michael Lawrie. Disney shareholders stripped embattled Michael Eisner of his chairman's title and gave the job to George Mitchell, a former U.S. senator. At Oracle, CFO Jeff Henley was named chairman, with Larry Ellison remaining CEO. In an earlier, well-publicized case, Microsoft chairman and CEO Bill Gates turned over the chief executive reins to Steve Ballmer in 2000.

### ICSI Recommendation 4

There should be a clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/ CEO. The Roles of Chairman and CEO should be separated to promote balance of power.



A “comply or explain” approach should be adopted.

## **5. DIRECTORS' DEVELOPMENT**

Investing in board development strengthens the board and individual directors. There are two ways to improve the performance of directors - education and development. Education aims to produce competence in a particular area. Directors need education to ensure they achieve competence in specific areas of knowledge, for example, enhancing their financial knowledge to be better able to understand the work of the audit committee. Formal director training helps one understand the legal implications of the new role and the responsibilities of company boards.

It is good practice for boards to arrange to keep their members up to date with changes in governance, technologies, markets, products, and so on, through:

- Ongoing education;
- Site visits;
- Seminars; and
- Courses.

Director induction should be seen as the first step of the board's continuing improvement. The induction training would enable directors to gain an understanding of company's business, its products, financial position, strategy as well as the role, responsibilities and rights of directors.

Director development is linked to the evaluation of the individual director's performance.

### **OECD Principles**

In order to improve board practices and the performance of its members, an increasing number of jurisdictions are now encouraging companies to engage in board training and voluntary self-evaluation that meets the needs of the individual company. This might include that board members acquire appropriate skills upon appointment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial risks through in-house training and external courses.

### **U K Combined Code**

## **Main Principle**

All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.

## **Supporting Principle**

The chairman should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfill their role both on the board and on board committees. The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities.

## **Australia - ASX Corporate Governance Principles and Recommendations**

Induction procedures should be in place to allow new directors to participate fully and actively in board decision-making at the earliest opportunity. To be effective, new directors need to have a good deal of knowledge about the company and the industry within which it operates. An induction program should be available to enable new directors to gain an understanding of :

- the company's financial, strategic, operational and risk management position
- the rights, duties and responsibilities of the directors
- the roles and responsibilities of senior executives
- the role of board committees.

Directors should have access to continuing education to update and enhance their skills and knowledge.

## **Naresh Chandra Committee**

All independent directors should be required to attend at least one such training course before assuming responsibilities as an independent director, or, considering that enough programmes might not be available in the initial years, within one year of becoming an independent director. An untrained independent director should be disqualified under section 274(1)(g) of the Companies Act, 1956 after being given reasonable notice.

## **Clause 49**

### **Non- mandatory requirement**

## **Training of Board Members**

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

### **ICSI Recommendation 5**

Induction Training of directors should be made mandatory covering role, responsibilities and liabilities of a director. There should be a statement to this effect by the Board in Annual Report.

Further, Boards should adopt suitable training programmes for enhancing their skills etc.

## **6. PERFORMANCE EVALUATION OF DIRECTORS**

Board Evaluation, if conducted properly, can contribute significantly to performance improvements on three levels—the organizational, board and individual director level. Boards who commit to a regular evaluation process find benefits across these levels in terms of improved leadership, greater clarity of roles and responsibilities, improved teamwork, greater accountability, better decision making, improved communication and more efficient board operations.

A board performance evaluation is an important step for a board interested in transitioning to a higher level of performance. While informal board and individual director evaluations may be appropriate in some circumstances, the discipline for a formal assessment is generally a good option.

### **OECD Principles**

In order to improve board practices and the performance of its members, an increasing number of jurisdictions are now encouraging companies to engage in board training and voluntary self-evaluation that meets the needs of the individual company.

## **UK Combined Code**

### **Main Principle**

The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

### **Supporting Principle**

Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

### **Disclosure requirements**

The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted. The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors.

## **Australia - ASX Corporate Governance Principles and Recommendations**

Companies should disclose the process for evaluating the performance of the board, its committees and individual directors.

### **Commentary**

The performance of the board should be reviewed regularly against appropriate measures.

## **USA-NYSE Listing Rules**

### **Annual performance evaluation of the board.**

The board should conduct a self evaluation at least annually to determine whether it and its committees are functioning effectively.

## Clause 49

### Non-mandatory requirement

#### Mechanism for evaluating non-executive Board Members

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

### ICSI Recommendation 6

The board should undertake a formal and rigorous annual evaluation of its performance and that of its committees and individual directors.

Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties).

The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

#### Disclosure

The board should state in the annual report how performance evaluation of the board, its committees and its individual directors had been conducted.

## 7. LIMIT ON NUMBER OF DIRECTORSHIPS

Effective board room performance of directors is directly related to the time that they can devote. A person who is too stretched, doing many things at one time, will not be able to concentrate on promoting shareholders' interest. A director needs to spend enough time understanding the company if he is to be involved in the decision-making process.

## UK Combined Code

The board should not agree to a full-time executive director taking on more than one non-executive directorship in a FTSE-100 company nor the Chairmanship of such a company.

## **USA**

The National Association for Corporate Directors (NACD) recommends that directors with full time positions should not serve on more than three or four other boards.

### **Companies Act, 1956**

The Companies Act restricts the number of directorships that an individual can hold at 15 companies. This limit excludes directorship held in private limited companies which are neither holding company nor subsidiary companies, unlimited companies, associations not for profit and alternate directorships. The Act however does not differentiate between listed and unlisted public companies.

### **Companies Bill, 1997**

222 (1) No person shall hold office as a director in more than fifteen companies at the same time.

Provided that where any such person also holds office as a managing director or whole-time director in any company, the limit specified in the sub-section shall be reduced to ten.

The Bill, however, did not differentiate between listed and unlisted public companies.

### **Companies Bill 2009**

Clause 146 of the Companies Bill, 2009 provides as under:

146. (1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than fifteen public limited companies at the same time.

This implies that an individual can be a director in any number of private companies even if the private company is a holding company or a subsidiary of a public limited company.

The Bill, however, does not differentiate between listed and unlisted public companies.

### **ICSI Recommendation 7**

- For reckoning the limit of 15 directorships, the following category of companies be included: (i) public limited companies, (ii) Private companies that are either holding or subsidiary companies.
- In case an individual is a managing or whole-time director in a listed company, the number of companies at which such an individual can serve as non-executive director, be restricted to 10, and the number of listed companies at which such an individual can serve as a non-executive director, be restricted to 2.
- The maximum number of listed companies in which an individual can serve as a director be restricted to 7.

## **8. LIMIT ON MEMBERSHIP OF COMMITTEES**

Committees play a crucial role in the smooth functioning of the boards by devoting better and more focused attention on the affairs delegated to it. The effectiveness and performance of directors serving on too many committees gets affected due to constraints of time. To assume that only the committees that are required to be mandatorily constituted would demand the time and attention of the boards is an incorrect notion.

### **Clause 49**

A director shall not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a director. Furthermore it should be a mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

### **Explanation:**

1. For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies under Section 25 of the Companies Act shall be excluded.
2. For the purpose of reckoning the limit under this sub-clause, Chairmanship/membership of the Audit Committee and the Shareholders' Grievance Committee alone shall be considered.

### **ICSI Recommendation 8**

The limits reckoned on membership/chairmanship of committees should include all the committees of listed companies on which such director is a member. This should be on a 'comply' or 'explain' basis.

## **9. REMUNERATION COMMITTEE TO BE MADE MANDATORY**

Internationally, the remuneration committee is established to ensure that remuneration arrangements support the strategic aims of the business and enable the recruitment, motivation and retention of senior executives while complying with the requirements of regulatory and governance bodies, satisfying the expectations of shareholders and remaining consistent with the expectations of the wider employee population. This Committee normally consists of independent directors.

### **OECD Principles**

In an increasing number of countries it is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives. Such policy statements specify the relationship between remuneration and performance, and include measurable standards that emphasize the longer run interests of the company over short term considerations. Policy statements generally tend to set conditions for payments to board members for extra-board activities, such as consulting. They also often specify terms to be observed by board members and key executives about holding and trading the stock of the company, and the procedures to be followed in granting and re-pricing of options. In some countries, policy also covers the payments to be made when terminating the contract of an executive.



It is considered good practice in an increasing number of countries that remuneration policy and employment contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors. There are also calls for a remuneration committee that excludes executives that serve on each others' remuneration committees, which could lead to conflicts of interest.

### **UK - Combined Code**

The board should establish a remuneration committee of at least three, or in the case of smaller companies two, independent non-executive directors. In addition the company chairman may also be a member of, but not chair, the committee if he or she was considered independent on appointment as chairman. The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company.

The remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of 'senior management' for this purpose should be determined by the board but should normally include the first layer of management below board level

### **Australia - ASX Corporate Governance Principles and Recommendations**

#### **Recommendation 8 – Remunerate fairly and Responsibly**

\* The Purpose of the remuneration committee:

Particularly for larger companies, a remuneration committee can be a more efficient mechanism for focusing the company on appropriate remuneration policies. It is recognized that for smaller boards, the same efficiencies may not be apparent from a formal committee structure.

\* Composition of remuneration committee

- Consist of a majority of independent directors
- be chaired by an independent director
- has at least 3 members.

\* Charter

- The remuneration committee should have a charter that clearly sets out its role and responsibilities, composition, structure and membership requirements.

\* Responsibilities

The responsibilities of the remuneration committee should include a review of and recommendation to the board on:

- the company's remuneration, recruitment, retention and termination policies and procedures for senior executives
- senior executives' remuneration and incentives
- superannuation arrangements
- the remuneration framework for directors.

\* Remuneration policies

The company should design its remuneration policy in such a way that it:

- motivates senior executives to pursue the long-term growth and success of the company
- demonstrates a clear relationship between key executive performance and remuneration.

The remuneration committee may seek input from individuals on remuneration policies, but no individual should be directly involved in deciding their own remuneration.

The remuneration committee should ensure that the board, is provided with sufficient information to ensure informed decision-making.

Executive remuneration packages should involve a balance between fixed and incentive pay, reflecting short and long-term performance objectives appropriate to the company's circumstances and goals.

A proportion of executive directors' remuneration should be structured in a manner designed to link rewards to corporate and individual performance.

Incentive schemes should be designed around appropriate performance benchmarks that measure relative performance and provide rewards for materially improved company performance.

### **USA - NYSE Listing Rules**

- \* Listed Companies must have Compensation Committee composed entirely of independent directors
- \* Its responsibilities include –
  - A) Review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and either as a committee or together with the other independent directors (as directed by the Board), determine and approve the CEO's compensation level based on this evaluation; and
  - B) Make recommendations to the Board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans that are subject to board approval; and
  - C) Produce a compensation committee report on executive officer compensation as required by the SEC to be included in the listed company's annual proxy statement or annual report on Form 10-K filed with the SEC.

### **Clause 49**

#### **Non mandatory requirement**

#### **Remuneration Committee**

- i. The board may set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, the company's policy on specific remuneration packages for executive directors including pension rights and any compensation payment.
- ii. To avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive directors may comprise of

at least three directors, all of whom should be non-executive directors, the Chairman of committee being an independent director.

- iii. All the members of the remuneration committee could be present at the meeting.
- iv. The Chairman of the remuneration committee could be present at the Annual General Meeting, to answer the shareholder queries. However, it would be up to the Chairman to decide who should answer the queries.

### **ICSI Recommendation 9**

The constitution of remuneration committee should be made mandatory.

The constitution, role and responsibilities of such a committee may be decided on the basis of the following:

*Applicability* - All listed companies must constitute a committee of the Board of Directors to be known as Remuneration Committee.

*Constitution* - The remuneration committee may consist of a minimum of three members (all being non-executive), the majority being independent directors.

The Chairman should be an independent director.

*Responsibilities* -

To recommend to the board

- executive remuneration and incentive policies
- the remuneration packages of senior management
- incentive schemes
- superannuation arrangements

## **10. NOMINATIONS COMMITTEE TO BE MADE MANDATORY**

Globally, there is a concept of nomination committee, which comprises of all or majority of independent directors. This committee is regarded as an efficient

mechanism for the detailed examination of selection and appointment practices of a company of its Board members.

Broadly, the responsibilities of a nomination committee include –

- assessment of the necessary and desirable competencies of board members.
- recommendations for the appointment and removal of directors.
- review of board succession plans.
- evaluation of the board's performance.

### **OECD Principles**

These Principles promote an active role for shareholders in the nomination and election of board members. The board has an essential role to play in ensuring that this and other aspects of the nominations and election process are respected. First, while actual procedures for nomination may differ among countries, the board or a nomination committee has a special responsibility to make sure that established procedures are transparent and respected. Second, the board has a key role in identifying potential members for the board with the appropriate knowledge, competencies and expertise to complement the existing skills of the board and thereby improve its value-adding potential for the company. In several countries there are calls for an open search process extending to a broad range of people.

### **UK Combined Code**

#### **Nomination Committee**

- There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. The nomination committee should make available<sup>5</sup> its terms of reference, explaining its role and the authority delegated to it by the board.
- The nomination committee should evaluate the balance of skills, knowledge and experience on the board and, in the light of this evaluation,

prepare a description of the role and capabilities required for a particular appointment.

- For the appointment of a chairman, the nomination committee should prepare a job specification, including an assessment of the time commitment expected, recognising the need for availability in the event of crises. A chairman's other significant commitments should be disclosed to the board before appointment and included in the annual report. Changes to such commitments should be reported to the board as they arise, and their impact explained in the next annual report.
- The terms and conditions of appointment of non-executive directors should be made available for inspection. The letter of appointment should set out the expected time commitment.

Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved and the board should be informed of subsequent changes.

- The board should not agree to a full time executive director taking on more than one non-executive directorship in a FTSE 100 company nor the chairmanship of such a company.
- A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director.

### **Australia - ASX Corporate Governance Principles and Recommendations**

\* The board should establish a nomination committee.

\* Purpose of the nomination committee:

In larger companies, a nomination committee can be a more efficient mechanism for the detailed examination of selection and appointment practices, meeting the needs of the company. Smaller companies without a nomination committee should have board processes in place which raise the issues that would otherwise be considered by the nomination committee.

- \* Composition of nomination committee
  - Consist of a minimum of three members, the majority being independent directors
  - The Committee should be chaired by an independent director
- \* Charter
  - The nomination committee should have a charter that clearly sets out its role and responsibilities, composition, structure and membership requirements.
- \* Responsibilities include recommendation to the Board about:
  - The necessary and desirable competencies of board members
  - Review of board succession plans
  - The development of a process for evaluation of the performance of the board, its Committees and directors.
  - Appointment and re-election of directors.

### **USA - NYSE Listing Rules**

- \* Listed Companies must have a nomination committee composed entirely of independent directors.
- \* Its purpose and responsibilities must include:
  - To identify individuals qualified to become members, consistent with the criteria approved by the board
  - To develop and recommend to the board a set of corporate governance guidelines applicable to the corporation
  - To oversee the evaluation of the board and management

## **ICSI Recommendation 10**

**The constitution of nomination committee should be made mandatory.**

The constitution, role and responsibilities of such a committee may be decided on the basis of the following:

*Applicability* - All listed companies must constitute a committee of the Board of Directors to be known as Nominations Committee.

*Constitution* - The nomination committee may consist of a minimum of three members (all being non-executive), the majority being independent directors.

The Chairman should be an independent director.

*Responsibilities* -

- Assessment of the appropriate size of the Board
- Identification of necessary and desirable competencies of board members
- Identification of individuals qualified to become members, consistent with the criteria approved by the board and to make recommendations to Board
- Review of board succession plans
- Development of process for evaluation of the board's performance
- Recommendations for the appointment and removal of directors.
- To develop and recommend to the board a set of corporate governance guidelines applicable to the corporation.

## **11. CORPORATE COMPLIANCE COMMITTEE TO BE MADE MANDATORY**

The primary objective of the Compliance Committee is to review, oversee, and monitor:

- the Company's compliance with applicable legal and regulatory requirements,



- the Company's policies, programs, and procedures to ensure compliance with relevant laws, the Company's Code of Conduct, and other relevant standards;
- the Company's efforts to implement legal obligations arising from settlement agreements and other similar documents; and
- perform any other duty as are directed by the Board of Directors of the company.

### **OECD Principles**

Companies are also well advised to set up internal programmes and procedures to promote compliance with applicable laws, regulations and standards, including statutes to criminalize bribery of foreign officials that are required to be enacted by the OECD Anti-bribery Convention and measures designed to control other forms of bribery and corruption.

Moreover, compliance must also relate to other laws and regulations such as those covering securities, competition and work and safety conditions. Such compliance programmes will also underpin the company's ethical code. To be effective, the incentive structure of the business needs to be aligned with its ethical and professional standards so that adherence to these values is rewarded and breaches of law are met with dissuasive consequences or penalties. Compliance programmes should also extend where possible to subsidiaries.

### **Australian - Corporation Act, 2001**

Corporation Act, 2001 of Australia inter alia provides for constitution of Compliance Committee, its functions and duties of members for the companies having a registered managed investment scheme under their compliance plan.

### **ICSI Recommendation 11**

The constitution of Corporate Compliance Committee should be made mandatory in respect of all public limited companies having a paid-up capital of Rs. 5 crores or more.

*Constitution :*

**A balance of Executive and Non-executive directors.**

### *Charter of the Committee :*

To oversee the company's compliance efforts with respect to relevant laws and regulations, Company's policies and Company's Code of Conduct and monitor the company's efforts to implement legal obligations arising from agreements and other similar documents;

To review and ensure that company's compliance programme is well communicated, supports lawful and ethical business conduct by employees, and reduces risk to the company for non compliance with laws and regulations related to the company's business;

To review complaints received from internal and external sources, regarding matters other than the financial matters which are within the purview of the Audit Committee;

To periodically present to the Board for adoption appropriate changes to the policies, and oversee implementation of and compliance with these policies;

To review regularly the company's compliance risk assessment plan;

To investigate or cause to be investigated any significant instances of non compliance, or potential compliance violations that are reported to the Committee;

To coordinate with other Committees regarding matters brought to the Committee's attention that relate to issues of compliance with applicable laws and regulations;

Regularly report to the Board on the Committee's activities, recommendations and conclusions;

To discuss any significant compliance issues with the Chief Executive Officer;

To periodically report to the Board and CEO on the adequacy and effectiveness of the company's compliance program;

To retain at the company's expense, independent advisors to assist the Committee with carrying out its responsibilities from time to time;

To perform such other duties and responsibilities as may be assigned to the Committee by the Board.

## **12. REMUNERATION POLICY FOR THE MEMBERS OF THE BOARD AND KEY EXECUTIVES SHOULD BE CLEARLY LAID DOWN AND DISCLOSED**

Directors compensation/remuneration has recently attracted a lot of world attention. It is expected that the remuneration should be fair reasonable and clearly disclosed.

### **Australia - ASX Corporate Governance Council - Corporate Governance principles and Recommendations**

#### **Principle 8 : Remunerate Fairly and Responsibly**

- Companies should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear.
- Companies should clearly distinguish the structure of non-executive directors' remuneration from that of executive directors and senior executives.
- Incentive schemes should be designed around appropriate performance benchmarks that measure relative performance and provide rewards for materially improved company performance.

### **UK Companies Act, 2006**

In case of unquoted companies, schedule 6 of the UK Companies Act, 2006 provides for necessary disclosures about emoluments and other benefits of directors and others' in the notes to accounts (Sections 439 and 440). In case of quoted companies, it provides for preparation of Directors' Remuneration Report as per schedule 7A, which must be duly signed. The report inter alia must contain a statement of the company's policy on Directors' Remuneration, a detailed summary of any performance conditions to which a director's long-term incentive is subjected, the performance Graph (Sections 420, 421 & 422).

The auditors of the Company must also audit this report. The Act also provides for laying this report before the company in general meeting, approval by the members, delivery to the registrar and other related matters.

## **Relevant extracts from Companies Act, 2006, UK**

### **Chapter 6 - Quoted Companies: Directors' Remuneration Report**

#### 420 Duty to prepare directors' remuneration report

- (1) The directors of a quoted company must prepare a directors' remuneration report for each financial year of the company.
- (2) In the case of failure to comply with the requirement to prepare a directors' remuneration report, every person who—
  - (a) was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and
  - (b) failed to take all reasonable steps for securing compliance with that requirement, commits an offence.
- (3) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### 421 Contents of directors' remuneration report

- (1) The Secretary of State may make provision by regulations as to—
  - (a) the information that must be contained in a directors' remuneration report,
  - (b) how information is to be set out in the report, and
  - (c) what is to be the auditable part of the report.
- (2) Without prejudice to the generality of this power, the regulations may make any such provision as was made, immediately before the commencement of this Part, by Schedule 7A to the Companies Act 1985 (c. 6).

- (3) It is the duty of—
  - (a) any director of a company, and
  - (b) any person who is or has at any time in the preceding five years been a director of the company, to give notice to the company of such matters relating to himself as may be necessary for the purposes of regulations under this section.
- (4) A person who makes default in complying with subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### 422 Approval and signing of directors' remuneration report

- (1) The directors' remuneration report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.
- (2) If a directors' remuneration report is approved that does not comply with the requirements of this Act, every director of the company who —
  - (a) knew that it did not comply, or was reckless as to whether it complied, and
  - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved, commits an offence.
- (3) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **Chapter 9 - Quoted companies: members' approval of directors' remuneration report**

- (1) A quoted company must, prior to the accounts meeting, give to the members of the company entitled to be sent notice of the meeting notice of the intention to move at the meeting, as an ordinary resolution, a resolution approving the directors' remuneration report for the financial year.

- (2) The notice may be given in any manner permitted for the service on the member of notice of the meeting.
- (3) The business that may be dealt with at the accounts meeting includes the resolution.

This is so notwithstanding any default in complying with subsection (1) or (2).

- (4) The existing directors must ensure that the resolution is put to the vote of the meeting.
- (5) No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made by this section.
- (6) In this section—

“the accounts meeting” means the general meeting of the company before which the company's annual accounts for the financial year are to be laid; and

“existing director” means a person who is a director of the company immediately before that meeting.

#### 440 Quoted companies: offences in connection with procedure for approval

- (1) In the event of default in complying with section 439(1) (notice to be given of resolution for approval of directors' remuneration report), an offence is committed by every officer of the company who is in default.
- (2) If the resolution is not put to the vote of the accounts meeting, an offence is committed by each existing director.
- (3) It is a defense for a person charged with an offence under subsection (2) to prove that he took all reasonable steps for securing that the resolution was put to the vote of the meeting.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In this section—

“the accounts meeting” means the general meeting of the company before which the company's annual accounts for the financial year are to be laid; and

“existing director” means a person who is a director of the company immediately before that meeting.

## Canada

Canadian securities regulators have published final rules on executive compensation disclosure. The new rules apply to executive compensation disclosure in respect of financial years ending on or after December 31, 2008.

- The summary compensation table will disclose total compensation, including the dollar value of share and option awards (based on grant date fair value), non-equity incentive plan compensation and pension compensation amounts.
- The identity of the "named executive officers" (NEOs) will be based on total compensation (excluding pensions) rather than just salary and bonus. Severance and other payments resulting from termination of employment are excluded from the calculation but other one-time compensation amounts (such as signing bonuses or equity replacement awards to new hires) are not.
- Retirement benefits will be quantified for each NEO under both defined benefit and defined contribution plans.
- Companies must disclose potential payments to each NEO on termination, resignation, retirement, a change of control of the company or a change in an NEO's responsibilities.
- A new "compensation discussion and analysis" (CD&A) must describe all significant elements of compensation and explain the rationale for specific compensation programs and decisions.
- The CD&A must cover all significant aspects of NEO compensation, including
  - the objectives of any compensation program or strategy;
  - what the program is designed to reward;
  - each element of compensation;

- why the company chooses to pay each element;
- how the company determines the amount (and, where applicable, the formula) for each element; and
- How each element of compensation and the company's decisions about that element fit with the overall compensation objectives and affect decisions about the other elements.

Where applicable, companies must describe any new actions, decisions or policies that were made after year-end that could affect a reasonable understanding of an NEO's reported compensation.

## **International Corporate Governance Network (ICGN)**

### **Remuneration Guidelines**

Remuneration has an important role in a company's ability to recruit and retain the executive talent. It also has the potential to damage reputation, affect employee morale and affect behaviour. Getting the balance on time scale and appropriate performance measures is critical. The updated ICGN Remuneration guidelines on remuneration are intended to provide a global benchmark to help shareholders and boards achieve this balance.

According to guidelines:

- The company should establish a formal, independent process for setting remuneration, which is wholly transparent and accountable to shareowners. A remuneration committee is considered complementary to the board, and does not remove ultimate responsibility for the full board regarding proper remuneration.
- In establishing the remuneration program and evaluating appropriate forms as well as levels of remuneration, the remuneration committee should take into account all relevant information. This may include the use of peer relative analysis and benchmarking to peer and market examples. However, care should be taken not to over emphasize the influence of peer group benchmarking on the ultimate design of the program. Peer group averages alone are not adequate justification for the design of a remuneration program or the levels of pay. Rather, each company's remuneration program should be carefully designed to fit its unique situation.



- Remuneration plans should be strongly linked to the company's performance that reflects and is consistent with value to long-term shareowners. It is acceptable to provide incentives to achieve both long-term and short-term goals, however, the performance drivers should not be duplicative, and a balance needs to be struck with the need to reward success over the long-term.
- Performance measures should include appropriate financial targets, but non-financial targets may also be highly relevant to long term sustainable commercial success.
- Remuneration levels may take into account relevant benchmarks and market conditions, but these criteria should not be used exclusively to justify levels of remuneration or plan design.

So far as disclosures are concerned, the views of ICGN are:

- The committee should be responsible for providing full disclosure to shareowners and the market of all aspects of the committee's structure, decision making process, and the remuneration program.
- The committee should provide disclosure on at least an annual basis that provides a detailed explanation of the remuneration program. This report should include the company's rationale for the program, including the company's overall remuneration philosophy and how the program is designed to support the company's business objectives. The report should also provide detailed disclosures of the remuneration of each key executive.
- Each component of the remuneration program should be identified and its role in the overall compensation program should be justified and explained.
- Special care should be taken in the remuneration report to provide a full explanation of the relationship of the plan to performance measures. It is the committee's responsibility to integrate all the components of the plan and ensure that the plan as a whole is sufficiently tied to long-term sustained superior performance. The remuneration report should include evidence of the committee's actions in this regard.

- The company should obtain shareowner approval of the remuneration report, a remuneration policy, or similar comprehensive disclosure as may be appropriate in the applicable jurisdiction. The purpose of obtaining shareholder approval is to provide owners with an opportunity to formally express their opinion regarding the performance of the company in regards to designing and implementing a remuneration program that is in shareowners' interests. In some cases, approval of a remuneration report is required by regulation or advised by market codes of best practice.
- Disclosures should be presented in a single location and in a clear and understandable format. To the degree possible, tabular disclosures supported by narrative descriptions should be used to organize information.

### **Australia – Corporations Act, 2001**

#### **Annual directors' report—specific information to be provided by listed companies (300A)**

The directors' report must include a discussion of: board policy for determining, the nature and amount of remuneration of the key management personnel for the company; and if consolidated financial statements are required—board policy in relation to the nature and amount of remuneration of the key management personnel for the consolidated entity; and discussion of the relationship between such policy and the company's performance.

The discussion of the company's performance must specifically deal with the company's earnings; and the consequences of the company's performance on shareholder wealth; in the financial year to which the report relates and in the previous 4 financial years.

In determining, the consequences of the company's performance on shareholder wealth in a financial year, have regard to:

- (a) dividends paid by the company to its shareholders during that year; and
- (b) changes in the price at which shares in the company are traded between the beginning and the end of that year; and
- (c) any return of capital by the company to its shareholders during that year that involves:
  - (i) the cancellation of shares in the company; and

- (ii) a payment to the holders of those shares that exceeds the price at which shares in that class are being traded at the time when the shares are cancelled; and
- (d) any other relevant matter.

The material must be included in the directors' report under the heading "Remuneration report".

### **Companies Act, 1956**

Under the Companies Act, 1956, the payment of remuneration to directors is regulated by various provisions. Section 198 specifies the overall limit of remuneration payable to directors as 11% of the net profits of that company for that financial year computed in the manner specified. Section 269 specifies that the remuneration payable to a managing or whole-time director is to be paid in accordance with the provisions of schedule XIII or else necessary approval is to be obtained by the concerned company from the Central government. Further, Section 309, inter-alia, specifies the mode of payment of remuneration to ordinary directors. The remuneration is based on the company performance as the over all limit of remuneration to directors is linked with net profits of the company under section 198 of the Companies Act.

### **Companies Bill, 2009**

- MD/WTD/Manager shall be appointed by Board of Directors at meeting with consent of all directors present there and it shall be subject to approval by special resolution at next general meeting further notice convening Board/General Meeting will contain terms of appointment including remuneration.
- Remuneration to managerial personnel may be paid by way of a monthly payment or at a specified percentage of the net profits of company as per clause 175 of Companies Bill.
- Premium paid on insurance of managerial personnel shall not be treated as part of remuneration.
- A MD/WTD/Manager may be paid compensation for loss of office but any other director is not entitled for such compensation.

- As per clause 82, the annual return should inter alia include the particulars as they stood on close of the financial year regarding remuneration of directors and key managerial personnel.

Further, an extract of annual return shall form part of the Board's Report.

## **ICSI Recommendation 12**

- Remuneration policy for the members of the Board and Key Executives should be clearly laid down and disclosed.
- Executive remuneration packages should involve a balance between fixed and incentive pay, reflecting short and long term performance objectives appropriate to the company's circumstances and goal.
- Companies should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear.
- Remuneration plans should be strongly linked to the company's performance that reflects value to long-term shareowners.
- Performance measures should include appropriate financial targets, but non-financial targets should be taken into account for long term sustainable commercial success.
- Use of peer relative analysis and benchmarking to peer and market examples may be made to arrive at appropriate remuneration. However, care should be taken not to over emphasize the influence of peer group benchmarking on the ultimate design of the program.
- Incentive schemes should be designed around appropriate performance benchmarks and provide rewards for materially improved company performance.
- Remuneration Committee should be considered complementary to the board, as it does not absolve the ultimate responsibility of the full board regarding proper remuneration.

- There may be a separate set of disclosure requirements for the Listed Companies and unlisted companies. Private companies and small companies should be given freedom to decide about the remuneration and disclosure.

### **13. DIRECTORS' RESPONSIBILITY STATEMENT TO INCLUDE STATEMENT ON COMPLIANCES**

In the Directors' Responsibility Statement in terms of clause 120 of the Companies Bill, 2009, the statements required to be made by directors relate only to accounts and internal financial controls.

The responsibility of directors extends much beyond integrity in financial reporting. The directors have the responsibility of compliance with various laws. Therefore, there should be a statement in the Directors' Responsibility Statement with regard to the compliance of various laws.

#### **Companies Bill, 2009**

#### **Clause 120: Financial Statement, Board's Report, etc.**

120. (4) The Directors' Responsibility Statement referred to in sub-section (3) shall state that -

- (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (d) the directors had prepared the annual accounts on a going concern basis; and

- (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls have been complied with.

### **ICSI Recommendation 13**

Directors' Responsibility Statement should include a statement that the directors had devised proper systems to ensure compliance of all laws applicable to the company and that such systems were adequate and operating effectively.

## **14. SECRETARIAL AUDIT**

Protection of interests of Investors and other stakeholders is the recognised principle of good corporate governance the world over.

Today, in India, the corporate sector is governed by a complex web of laws, rules and regulations viz. Company Law, Competition Law, Economic Laws, Securities and Capital Market Laws, Consumer Protection Laws, Industrial and Labour Laws, Pollution Control Laws, Foreign Exchange Legislation, etc.

However, the experience so far shows that enactment of various laws is not enough and the desired results cannot be achieved unless their implementation is geared up. In fact, lack of implementation of laws with no mechanism of audit to check their compliances have resulted in various frauds/scams. There have also been a large number of cases of mis-management and misuse of public funds by several listed companies. Governments, multilateral institutions, banks and companies all have realized that the eye of the storm lies not in the inadequacy of legislation but in its implementation and compliance.

At present, the audit of financial aspects of a business enterprise are conducted by statutory auditors who are independent professionals governed by a code of conduct. The frauds and scams, which have been detrimental not only to capital market but have been a set back to the economy as a whole, have occurred despite and in spite of financial audit. The law enforcement agencies have not been able to tackle these problems and ensure effective enforcement of laws. It is also on record that several companies that have fallen sick had committed violations of various legal provisions and shown utter disregard for the various statutory compliances. This is so, because there is no mechanism in place to verify compliance of provisions of various laws applicable to a company.

A need is, therefore, felt to ensure compliance of laws in letter and spirit on continuous basis by an independent professional.

Secretarial Audit of company conducted by a Practising Company Secretary on the same lines as financial audit conducted by Chartered Accountants, seems to be the only answer to ensure that the legislations, the immaculate framing of which is such a herculean task, are duly respected and obeyed.

### **Concept of Secretarial Audit**

Secretarial Audit comprises of verification of compliance of provisions of various laws and rules/procedures, maintenance of books, records etc. by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes. It is essentially a pre-emptive check to monitor compliance with the requirements of stated laws.

### **The scope of Secretarial Audit extends to –**

- The Companies Act, 1956 and the Rules made under the Act;
- The Depositories Act, 1996 and the Regulations and the Byelaws framed under the Act;
- The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') –
- The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
- The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
- The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009; and
- The Securities and Exchange Board of India (Employees Stock Option Scheme and Employees Stock Purchase Scheme) Guidelines, 1999;
- The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the Rules made under the Act; and
- The Listing Agreements with various Stock Exchanges.

Just as statutory audit deals with financial audit of companies and cost audit with audit of costing and pricing systems and records, secretarial audit deals with legal and procedural compliances that are expected from a company. It is conducted annually. While conducting Secretarial Audit, the secretarial auditor carries out an elaborate checking mechanism to verify from all the records and books maintained by the company as well as from the information provided to him and the information gathered by him, that the company is complying with the various requirements of different legislations.

The independent professional carrying out secretarial audit, not only ensures that the company has complied with the provisions of various laws but also extends professional help to the company in carrying out effective compliance and establishment of proper systems with proper checks and balances.

The concept of Secretarial Audit is not to burden the corporate sector with another audit but to ensure due compliance of legislations other than financial or costing aspects. It is an assurance to the board of directors that the company is compliant with various laws. The recent Satyam scam saw an exodus of independent directors from the Boards of various companies. A Secretarial Audit will serve as an assurance to the prospective directors to render their expertise to the companies that there as a mechanism in place to check legal and procedural compliances.

A Company Secretary in practice can act independently and fearlessly in giving his compliance report, which would give comfort and satisfaction to directors especially independent directors, the banks, financial institutions, creditors, suppliers and other stakeholders.

### **How the Secretarial Audit will Help**

Secretarial Audit can be an effective multi-pronged weapon to assure the regulator, generate confidence amongst the shareholders, the creditors and other stakeholders in companies, assure FIIs/FIs/SFCs/SIDCs/Banks and instill self regulation and professional discipline in companies. It is a tool of risk mitigation and will allow companies to effectively address compliance risk issues.

Once the Secretarial Audit Report is submitted by the Secretarial Auditor, the Government as well as other stakeholders can gauge in first instance the level of compliances or non compliances by the company concerned. It can then immediately take suitable corrective measures under the specific applicable legislations. The measure would act as a check on frauds as well as reduce the number of prosecutions by Government and consequent litigation on account of



non-compliance with the provisions of corporate and securities laws, thereby resulting in healthy and orderly development of the corporate sector. This would in turn lead to reduction of investor grievances and enhance various stakeholders confidence.

In addition to Government and shareholders, introduction of Secretarial Audit would be in the interest of companies themselves.

Secretarial Audit besides ensuring due compliance of the statute, will act as an aid to the management by proving to be a strong internal control device. It can relieve the company and their directors from consequences of unintended non-compliance of law. Independent Directors and Nominee Directors can be assured that the affairs of the company are being conducted as per law. Besides the Secretarial Auditor can act as a fearless adviser to the company so that the mistakes and lapses if any could be rectified well in time and management is reassured that internal systems are guarded.

The inclusion of Secretarial Audit Report in the Directors' Report would go a long way in reassuring public, financial institutions and all others dealing with the company about the quality of corporate governance in the concerned corporate entity.

Companies entering into joint ventures and foreign collaborations will need such an audit at least to assure foreign partners that the laws of the land are duly complied with. A Secretarial Audit will serve as a first line due diligence. The secretarial audit will provide an in-built mechanism for enhancing corporate compliances generally and help restore the confidence of investors in the capital market through greater transparency in corporate functioning.

### **Who can conduct Secretarial Audit**

A Company Secretary in Practice, conducts Secretarial Audit, corporate laws being his core area of specialization, just as a Chartered Accountant conducts financial audit and a cost accountant conducts cost audit.

In fact, there are clearly demarcated areas for the three professions i.e. CA, CS and CWA. While financial audit is the forte of a CA and Cost Audit of a CWA, the legal compliance Management of corporate laws and in particular, Company Law is the core strength of a Company Secretary.

A Company Secretary as competent professional comes in existence after exhaustive exposure provided by the Institute through compulsory coaching,

examinations, rigorous training and continuing education programmes. The members of the Institute are not only conversant with the technicalities and provisions of the corporate legal areas but are highly specialized professionals in the matters of procedural and practical aspects involved in the compliances enjoined under various statutes and the rules, regulations bye-laws and guidelines made thereunder. The detailed syllabus for Company Secretaryship synthesizes corporate, taxation, economic, financial, commercial, industrial and allied laws in addition to the management, administration, finance and accounts. It is well recognized that corporate laws is the core area of specialization of company secretaries. In fact, a Company Secretary is essentially a governance professional with compliance bent of mind.

Raising of finance in India and abroad, dealing with deposits, inter-corporate loans and investments, raising of funds from financial institutions, joint ventures and foreign collaborations, corporate restructuring, vetting of contracts, arbitration and other legal matters which every company has to address, are being handled by the professionally qualified company secretaries.

### **Appointment of Secretarial Auditor**

For effective functioning, secretarial auditor should be appointed by the members in general meeting from among the Secretaries in Whole-time Practice and all the provisions relating to appointment, remuneration and removal of auditors contained in Chapter X of the Companies Bill, 2009 (sections 224 to 226 of the Companies Act, 1956) should apply to appointment, remuneration and removal of secretarial auditor mutatis mutandis.

### **Reporting by Secretarial Auditor**

Secretarial Auditor shall make a report to the members of the company on the statutory compliances examined by him and shall state whether in his opinion the company is carrying out/not carrying out due compliances of the provisions of various corporate laws. The first line reporting of the secretarial auditor could be the Corporate Compliance Committee.

The report of the Secretarial Auditor should be attached to the Board's Report along with the Auditors' Report. The Board of directors should be bound to give in their report, full information and explanations on every reservation, qualification or adverse remark contained in the compliance audit report.

## **Accountability of Secretarial Auditor**

On the question of accountability for Secretarial Audit by the Company Secretary in Practice, it may be stated that a Company Secretary in Practice is subject to the Code of Conduct prescribed under the Company Secretaries Act, 1980 and runs the risk of cancellation of certificate of practice and even the basic membership, if found guilty of dereliction of duties, besides attracting punishment for false statements under section 407 of the Companies Bill, 2009.

## **Secretarial Audit already being conducted**

It is heartening to note that many forward looking companies have already introduced Secretarial Audit in their companies and are attaching the Secretarial Audit Report to their Board's Report. To name a few, these companies are – Reliance Industries Ltd., Infosys Technologies Ltd., Foseco India Limited, CMC Ltd., HDFC Ltd., ONGC Ltd., Mastek Ltd., Nagarjuna Fertilizers & Chemicals Ltd., etc.

It is also heartening to note that many financial/investment/ industrial development corporations have already prescribed annual Secretarial Audit of companies assisted by them. These institutions to name a few are Manipur Industrial Development Corpn. Ltd., Imphal, Assam Indl. Dev. Corpn. Ltd., Guwahati, Gujarat Industrial Investment Corporation Ltd., Ahmedabad, Arunachal Pradesh Industrial Development & Financial Corpn. Ltd., Naharlagun, Gujarat State Financial Corpn. These financial institutions find it imperative to know that the assisted company has complied with the core legislations. They also find it necessary to ascertain that the company is following the conditions/stipulations in the form of covenants in the loan agreement. The Secretarial Audit Report provides them with the desired information and the comfort level.

## **Advantages of Secretarial Audit :**

- Better compliance of laws leading to reduction in number of frauds and consequent prosecutions.
- Protecting the interest of stakeholders and strengthening their faith in the corporates.
- Protecting the company/directors from the consequences of unintended non-compliance of laws.

- Independent assurance and comfort to independent/ non-executive/nominee directors that the affairs of the company have been conducted as per law.
- Instilling professional discipline and self-regulation.
- Reducing workload of regulators due to better and timely compliances.
- Enhancing quality of services to investors.
- Any qualification in the Report will immediately alert the investor.

Secretarial Audit is salutary as it instills professional discipline and signifies law abiding nature of the promoters. It gives a necessary confidence to the investors that the affairs of the company are being conducted in accordance with the legal requirements and also relieves the independent directors from the consequences of non compliance of the provisions of the Companies Act and other important corporate laws. The inclusion of Secretarial Audit as a part of Director's Report will go a long way in re-assuring the investors about the quality of corporate governance in the company.

### **ICSI Recommendation 14**

Secretarial Audit should be made mandatory in respect of listed companies and certain other companies.

The Secretarial Audit be conducted by a Company Secretary in Practice.

The report on the audit of secretarial records shall be submitted by the secretarial auditor to the Corporate Compliance Committee of the Board of Directors of the company.

The Secretarial Audit Report should form part of the Board's Report.

## **15. WHISTLE BLOWER POLICY SHOULD BE MADE MANDATORY.**

Whistle blowing is a disclosure by an employee in the company/ organization regarding any wrongdoing, fraud or misfeasance in the enterprise. Such disclosures may be internal i.e. reporting a corrupt activity to the higher ups in the organization. When wrongdoing is reported to external authorities such as the

Government or media, the whistle blowing is said to be external. As a part of good corporate governance, a corporate should provide the necessary environment and procedures that can facilitate internal whistle blowing e.g. providing a website within the organization where employees can make important disclosures about any misdeeds in the organization.

### OECD Principles

Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.

Unethical and illegal practices by corporate officers may not only violate the rights of stakeholders but also be to the detriment of the company and its shareholders in terms of reputation effects and an increasing risk of future financial liabilities. It is therefore to the advantage of the company and its shareholders to establish procedures and safe-harbours for complaints by employees, either personally or through their representative bodies, and others outside the company, concerning illegal and unethical behaviour. In many countries the board is being encouraged by laws and or principles to protect these individuals and representative bodies and to give them confidential direct access to someone independent on the board, often a member of an audit or an ethics committee. Some companies have established an ombudsman to deal with complaints. Several regulators have also established confidential phone and e-mail facilities to receive allegations. While in certain countries representative employee bodies undertake the tasks of conveying concerns to the company, individual employees should not be precluded from, or be less protected, when acting alone. When there is an inadequate response to a complaint regarding contravention of the law, the OECD Guidelines for Multinational Enterprises encourage them to report their bona fide complaint to the competent public authorities. The company should refrain from discriminatory or disciplinary actions against such employees or bodies.

Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.

In fulfilling its control oversight responsibilities it is important for the board to encourage the reporting of unethical/unlawful behaviour without fear of retribution. The existence of a company code of ethics should aid this process which should be underpinned by legal protection for the individuals concerned. In a number of companies either the audit committee or an ethics committee is

specified as the contact point for employees who wish to report concerns about unethical or illegal behaviour that might also compromise the integrity of financial statements.

### **UK Combined Code**

The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

### **USA - NYSE Listing Rules**

The company should proactively promote ethical behaviour. The company should encourage employees to talk to supervisors, managers or other appropriate personnel when in doubt about the best course of action in a particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

### **Dr. J.J. Irani Committee Report**

Dr. JJ Irani Committee Report has recommended that Law should recognize the “Whistle Blower Concept” by enabling protection to individuals who expose offences by companies, particularly those involving fraud. Such protection should extend to normal terms and conditions of service and from harassment. Further, if such employees are themselves implicated, their cooperation should lead to mitigation of penalties to which they may otherwise be liable.

### **Clause 49**

#### **Non-mandatory requirement Whistle Blower Policy**

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

## Best Practices

Following are some of the companies which have voluntarily adopted the whistle blower policy as good Corporate Governance practice:

- Infosys Technologies Limited
- Tata Steel Limited
- Reliance Industries Limited
- Gujrat Alkalies and Chemicals Limited
- Nucleus Software Exports Limited
- Canara Bank
- Hindustan Petroleum Corporation Limited
- Larsen and Toubro Limited
- Munjal Showa Limited
- GMR Infrastructure Limited
- Chennai Petroleum Corporation Limited
- First Source Solutions Limited
- Union Bank of India

## ICSI Recommendation 15

Adoption of Whistle Blower Policy should be made mandatory, to begin with, for listed companies. A model policy in this regard may be specified covering important clauses that protect employees' interests.

## 16. DEFINITION OF RELATIVE

### The Companies Act, 1956

#### Meaning of “relative” as defined under Section 6.

A person shall be deemed to be a relative of another if, and only if,-

- (a) they are members of a Hindu undivided family; or
- (b) they are husband and wife; or
- (c) the one is related to the other in the manner indicated in Schedule IA.

- **List of Relatives under Schedule IA**

Schedule IA of the Companies Act, 1956 list out the relatives for the purpose of section 6 as under:

1. Father.
2. Mother (including step-mother).
3. Son (including step-son).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.
11. Son's son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Daughter's son.
16. Daughter's son's wife.
17. Daughter's daughter.



18. Daughter's daughter's husband.
19. Brother (including step-brother).
20. Brother's wife.
21. Sister (including step-sister).
22. Sister's husband.

### **Income-Tax Act, 1961**

#### **[As Amended By Finance Act, 2008]**

S. 2(41) defines it the term 'relative' as

“relative”, in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual;

### **The Companies Bill, 2009**

Clause 2(1)(zzz) “relative” with reference to any individual means the spouse, brother, sister and all lineal ascendants and descendants of such individual related to him either by marriage or adoption;

### **Companies Act, 2006, UK**

#### **Section 253 - Members of a director's family**

- (1) This section defines what is meant by references in this Part to members of a director's family.
- (2) For the purposes of this Part the members of a director's family are—
  - (a) the director's spouse or civil partner;
  - (b) any other person (whether of a different sex or the same sex) with whom the director lives as partner in an enduring family relationship;
  - (c) the director's children or step-children;
  - (d) any children or step-children of a person within paragraph (b) (and who are not children or step-children of the director) who live with the director and have not attained the age of 18;

- (e) the director's parents.
- (3) Subsection (2)(b) does not apply if the other person is the director's grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece.

156. - Disclosure of interests in transactions, property, offices, etc. (8) For the purposes of this section, an interest of a member of a director's family shall be treated as an interest of the director and the words “member of a director's family” shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

163 - Prohibition of loans to persons connected with directors of lending company

- (5) For the purposes of this section, an interest of a member of a director's family shall be treated as the interest of the director and the words “member of a director's family” shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

### **Australia - Corporation Act, 2001**

Relative, in relation to a person, means the spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person.

### **ICSI Recommendation 16**

- The term 'relative' defined under the Companies Bill, 2009 suggests that only the lineal ascendant and descendants of such individual related to him by marriage or adoption are considered relative.
- The term lineal ascendants and descendants should be clarified by giving an indicative list.
- The definition leaves out the immediate relatives of spouse i.e. mother/father of spouse, brother/sister of spouse.

Though ICSI does not recommend a list of relatives as defined under Section 6 of the Companies Act, 1956 definition under the Companies Bill, 2009 needs to be further strengthened.

## **17. AUDIT PARTNER / FIRM ROTATION TO BE MADE MANDATORY**

Long-term relationships may result in closeness between management and the auditor that leads to loss of independence of Auditor. When a contentious issue arises, this close relationship may create a conflict of interest for the auditor that can adversely affect the audit process. The auditor could identify closely with management's perspective and not exhibit sufficient professional skepticism. Further the volume and nature of non-audit services provided by a company's external auditor during the course of time may affect auditor independence and, therefore, the integrity of the financial statements.

### **Sarbanes Oxley Act**

Section 203 of the Sarbanes Oxley Act is also in tune with this view and makes audit services of an accounting firm unlawful, if the lead audit partner has performed audit services of same issuer for 5 previous fiscal years.

Further, Section 206 of the Act talks of conflict of interest. According to it, if a CEO, CFO, Controller, Chief Accounting Officer or any person in an equivalent position was employed by accounting firm and participated in any capacity in the audit of that issuer during one year period preceding the date of initiation of the audit, then it shall be unlawful for accounting firm to perform any audit for that issuer.

### **Naresh Chandra Committee**

The Naresh Chandra Committee had suggested in its report that the partners and at least 50 per cent of the engagement team (excluding article clerks and trainees) responsible for the audit of either a listed company or companies whose paid-up capital and free reserves exceed Rs. 10 crore or companies whose turnover exceeded Rs. 50 crore should be rotated every five years. It had also held that persons, who are compulsorily rotated could be allowed to return after a break of three years.

### **ICSI Recommendation 17**

The Audit partner/Firm should be rotated on the grounds such as :

1. to maintain independence of Auditors.

2. to look at an issue (which may be financial or non-financial) from different perspective.
3. to carry out an Audit exercise with different mind set i.e. when the same person does an Audit continuously, he is bound to have a fixed mind set towards the company.

### **Periodicity of Rotation :**

**Audit Partner - Once every three years**

**Audit Firm – Once every six years.**

## **18. PROMOTERS SHAREHOLDING IN DEMATERIALIZED FORM**

The shares of the promoters if held in electronic mode, would facilitate easy traceability of any transaction (including pledge) in their shares.

### **ICSI Recommendation 18**

In Listed companies, the shares held by promoters should be held in electronic form.

## **19. VERIFICATION OF PLEDGED SHARES**

SEBI has recently amended Clause 35 of the Listing Agreement whereby in addition to the disclosures required to be made earlier, the details of shares of promoters that are pledged is also required to be disclosed. Verification of the promoters' shares that are pledged would further strengthen the move of SEBI for enhanced transparency and accountability.

### **ICSI Recommendation 19**

The promoters' shares that are pledged should be independently verified by a Company Secretary in Practice and this should be stated in the quarterly certification given under Sec. 55 A of Depositories Act.

## **20. STANDARDIZATION OF PRESENTATION IN ANNUAL REPORT**

With the increase in the disclosure requirements, the volume/size of the Annual Reports has become very large and consequently unwieldy. Therefore, for easy reference, the presentation of information in the Annual Reports of Companies needs to be standardized.

### **ICSI Recommendation 20**

To increase the readability of the Annual report, it is recommended that there should be standard structure of the Annual Report.

## **21. PROHIBITION OF SOLICITATION IN ANNUAL REPORT**

In certain companies, their Annual Reports contain an express solicitation of investments. For e.g. Pages 12 and 13 of the Annual Report of Satyam for 2007-08 contains following statement by one of the investors –

“I am very pleased with my decision to invest in the Satyam and so is my family. My original investment was just Rs.2000. Today of course it is in hundreds of thousands of rupees. Just the dividend I have received from the company in the last sixteen years is many times more than my original investment. The consistency and predictability of my returns have helped to give me peace-of-mind.”

Such express solicitations will attract small shareholders to invest in the companies without actually understanding the underlying risks.

### **ICSI Recommendation 21**

Express and direct solicitation by companies in their Annual Report to invest in the shares of the company should be strictly prohibited.

## **22. DISCLOSURE BY INSTITUTIONAL INVESTORS OF THEIR CORPORATE GOVERNANCE AND VOTING POLICIES AND VOTING RECORDS**

Based on the experience of countries where shareholders activism is vibrant, such as for example Australia, France, the UK, or the United States, it is reasonable to expect that Indian institutional investor should use their ownership rights more actively.

Findings of the World Bank suggests that Indian institutional investors seldom review the agenda of shareholders meetings, do not attend shareholders meetings, and do not exercise their voting rights, unless something goes drastically wrong, or if a takeover situation occurs. Nor do they disclose their voting records. Foreign institutional investors tend to exercise their ownership rights more actively.

### **World Bank Recommendation**

Policy Recommendation # 1 : Based on discussions with policy makers, market regulators and market participants, and taking into account the current topology of India's institutional investment community, a least cost, voluntary approach to compliance with OECD Principle 1.G seems most appropriate for India, at least for the next few years. Such an approach would introduce “soft” incentives for institutional investors to differentiate themselves from each other and leave market forces to drive the process. It is therefore recommended that the Securities and Exchange Board of India for mutual funds and FIIs, and the Insurance Regulatory and Development Authority for insurance companies, and the Pension Fund Regulatory and Development Authority for pension funds (when these are set up) issue some guidelines, on a stand alone basis or as part of their code of conduct as appropriate, recommending that the institutions that fall under their oversight, should disclose to the market, on a comply or explain basis, via their company website, their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights. It should also be recommended that these institutions post annually on the same website, their voting records, on an ex-post basis.

### **OECD Principles**

Institutional investors acting in a fiduciary capacity should disclose their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights.

### **ICSI Recommendation 22**

**It should be mandatory**

- for equity based mutual funds to disclose on their company website their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights

- an annual disclosure of their voting records on their website.

## **23. DISCLOSURE OF MATERIAL CONFLICTS OF INTERESTS BY INSTITUTIONAL INVESTORS**

Over the last decade and a half, market forces have driven Indian financial services companies to seek critical mass. Large financial conglomerates have been created that include insurance companies, commercial banks, investment banks, non banks financial institutions, and mutual funds. Whilst this transformation has created vast synergies, and made the groups more competitive, it has also created potential conflicts of interests between a group's fiduciary institution and its other components.

### **World Bank Recommendation**

Policy Recommendation 2: In line with international best practice, the Securities and Exchange Board of India for Mutual Funds and the Insurance Regulatory and Development Authority for Insurance Companies should mandate the disclosure by institutions under their oversight of how they manage material conflicts of interests that may affect the exercise of key ownership rights regarding their investments. More generally such disclosure should extend to all institutional investors acting in a fiduciary capacity. The disclosure should be made in the prospectuses and in the periodic financial statements.

### **OECD Principles**

Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.

### **ICSI Recommendation 23**

It should be mandatory for institutional investors to disclose as to how they manage material conflicts of interests that may affect the exercise of key ownership rights regarding their investments. The disclosure should be made in the prospectuses and periodic financial statements of the mutual funds.

## **24. DISCLOSURE POLICY REGARDING NATURE OF DISCLOSURE TO INSTITUTIONAL INVESTORS**

### **World Bank Recommendation**

SEBI should issue a directive to clarify the nature of the information that can be exchanged at meetings between institutional investors and companies, in compliance with the Insider Trading Regulations of 1992 and its 2002 amendment. The directive should stress that it does not condone the selective disclosure of information by companies to institutions and clearly set the principle of equality of treatment of all shareholders by corporations.

### **ICSI Recommendation 24**

A directive be issued to clarify the nature of the information that can be exchanged at meetings between institutional investors and companies, in compliance with the Insider Trading Regulations of 1992 and its 2002 amendment. The directive should stress that it does not condone the selective disclosure of information by companies to institutions and clearly set the principle of equality of treatment of all shareholders by corporations.

## **25. CONSULTATION AND VOTING AGREEMENTS**

### **World Bank Recommendation**

SEBI might consider issuing a ruling clarifying the circumstances under which consultation and voting agreements between institutional investors may take place without triggering the provisions of the SEBI Act 1992 regarding substantial acquisitions of shares, or those concerning market manipulation.

### **OECD Principles**

Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.

### **ICSI Recommendation 25**

Clarification be issued about the circumstances under which consultation and voting agreements between institutional investors may take place without triggering the provisions of the SEBI Act 1992



regarding substantial acquisitions of shares, or those concerning market manipulation.

## **26. CONSTITUTION OF INVESTOR RELATIONS CELL**

### **ICSI Recommendation 26**

Constitution of Investor Relations Cell should be made mandatory for Listed Companies. The Investor Relations Meet after declaration of financial results should be compulsorily webcast in case of companies having a market capitalization of Rs.1000 Crore or more.

## **GIST OF RECOMMENDATIONS**

### **ICSI Recommendation 1**

A Maximum tenure of 6 years in aggregate should be specified for independent directors and be made mandatory

### **ICSI Recommendation 2**

Clause 49 needs to be suitably amended by specifying positive attributes for independent directors such as integrity, experience and expertise, foresight, managerial qualities and ability to read and understand financial statements etc.

### **ICSI Recommendation 3**

Clause 49 specifically states that a nominee director be considered independent.

The nominee directors have a clear mandate to safeguard the constituency they represent i.e. the financial institution they represent. Hence to term them independent is an anomaly.

This anomaly needs to be rectified in clause 49.

### **ICSI Recommendation 4**

There should be a clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/ CEO. The Roles of Chairman and CEO should be separated to promote balance of power.

A “comply or explain” approach should be adopted.

### **ICSI Recommendation 5**

Induction Training of directors should be made mandatory covering roles, responsibilities and liabilities of a director. There should be a statement to this effect by the Board in Annual Report.

Further, Boards should adopt suitable training programmes for enhancing their skills etc.

### **ICSI Recommendation 6**

The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties).

The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

### **Disclosure**

The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted.

### **ICSI Recommendation 7**

- For reckoning the limit of 15 directorships, the following category of companies be included: (i) public limited companies, (ii) Private companies that are either holding or subsidiary company.
- In case an individual is a managing or whole-time director in a listed company, the number of companies at which such an individual can serve as non-executive director, be restricted to 10, and the number of listed companies at which such an individual can serve as a non-executive director, be restricted to 2.
- The maximum number of listed companies in which an individual can serve as a director be restricted to 7.

### **ICSI Recommendation 8**

The limits reckoned on membership/chairmanship of committees should include all the committees of listed companies on which such director is a member. This should be on a 'comply' or 'explain' basis.

### **ICSI Recommendation 9**

The constitution of remuneration committee be made mandatory.

### **ICSI Recommendation 10**

The constitution of nomination committee be made mandatory.

### **ICSI Recommendation 11**

The constitution of Corporate Compliance Committee should be made mandatory in respect of all public limited companies having a paid-up capital of Rs.5 crores or more.

### **ICSI Recommendation 12**

- Remuneration policy for the members of the Board and Key Executives should be clearly laid down and disclosed.

- Executive remuneration packages should involve a balance between fixed and incentive pay, reflecting short and long term performance objectives appropriate to the company's circumstances and goal.
- Companies should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear.
- Performance measures should include appropriate financial targets, but non-financial targets should be taken into account for long term sustainable commercial success.
- Incentive schemes should be designed around appropriate performance benchmarks and provide rewards for materially improved company performance.

### **ICSI Recommendation 13**

Directors' Responsibility Statement should include a statement that proper systems are in place to ensure compliance of all laws applicable to the company.

### **ICSI Recommendation 14**

- Secretarial Audit should be made mandatory in respect of listed companies and certain other companies.
- The Secretarial Audit be conducted by a Company Secretary in Practice.
- The report on the audit of secretarial records shall be submitted by the secretarial auditor to the Corporate Compliance Committee of the Board of Directors of the company.
- The Secretarial Audit Report should form part of the Board's Report.

### **ICSI Recommendation 15**

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