

CORPORATE GOVERNANCE – DUTY AND ROLES AND RESPONSIBILITIES OF DIRECTORS

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INTRODUCTION

It is the responsibility of the entire board of directors to ensure that a good corporate governance is in place in the company and continually improve upon and bring the best global practices so that every stakeholder would like to be proud to be associated with the company. The corporate governance would be definitely a differentiating competitor when the stakeholders deal with the company and the well practiced corporate governance in a company would always have an edge over others. Bringing about a good corporate governance involves a set of varied relationships between the management of a company and its board members and various stakeholders including the shareholders. The board of directors could agree on the purpose/vision and mission (the company's purpose of its existence) and also agree with its values, i.e., the company stands for what and ultimately there should be a strategic plan which needs to be formulated for achieving the mission and raising for its values.

The company is governed by the broad policies formulated by the board of directors which requires ethical behavior coupled with honesty and the manner in which the business of the company is conducted with the delegated authority. The policies formulated by the board are of long term strategy and it will not only involve the regulatory and statutory requirements but also the organizational need coupled with safety, environmental issues, creating wealth to all its stakeholders such as, customers, creditors, employees, shareholders - anyone who is associated with the company. The company is looked upon by others as to what it stands for and what are its values and how they protect environmental issues, how they handle safety health related issues and above all, how the company is contributing to increase the wealth of all

its stakeholders and discharging its social responsibilities.

The directors, chairman and CEO of the company all have to play a vital role and they have tremendous amount of responsibilities and duties in bringing about the transformation in the company to have a good corporate governance and duties involved are enormous. This article is making an attempt to describe the roles and responsibilities of the directors.

DIRECTORS DUTY TOWARDS THEIR COMPANY

The directors are acting as agents of the company in which they are serving as directors and they have certain duties to the company itself, but neither to its shareholders nor its employees or any external person to the company such as the public at large i.e. the stakeholders. The company is not a human being, yet it is a legal entity created by law. Since the relationship between the company and its directors are impersonal by its very nature and one might be wondering just what the "duty" means.

The very same word duty - its concept is not very easily understood - however, it would be helpful to make a comparison with the duties owed by other groups or individuals - individuals owning a duty to something inanimate are not common. Let us take an example of an individual who is serving in the forces and we can say that he has a duty to his country. It is more usual to show loyalty to something inanimate rather than have to have a duty. Consider a case of an individual or a group of people who are expected to show loyalty to their country and the group or individual might voluntarily show loyalty to their team or group of fellow colleagues and friends. We can also argue that solicitors have a duty to their profession to act ethical, though the duty of the solicitors would be towards

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their clients. UK law specially states that solicitors owe a duty to care to their clients. Similar examples could be taken in respect of doctors who have a duty towards their patients. In conclusion, one can say that duty is normally owed to individuals or a group of people. In the same way, the directors should owe a duty to their shareholders and possibly to the company's employees but this is not the case. One has to also remember that responsibility coupled with accountability should not be confused with that of duty.

Directors are accountable to the owners of the company i.e. the shareholders and they are accountable as how they had exercised their powers and how the performance of the company etc.

Directors also have a responsibility to use their powers in the best interest of the shareholders of the company.

Above all, the directors have duties to the company.

If a person is guilty of a breach of duty, there is a process for calling him/her to account for the same such as well laid disciplinary action procedure, punishment for misbehavior etc. However in a company such mechanism of disciplinary measure may not be possible but only the shareholders would be in a position to initiate action seeking legal remedy under the Companies Act on behalf of the company. We can enumerate the following duties of directors.

Fiduciary duties

Fiduciary duty is nothing other than that of a trustee - the directors are given their powers in trust by the company and hence they have fiduciary duties towards the company. The breach of fiduciary duty might call for legal action which can be brought by majority of the shareholders, a single controlling shareholder or by majority of the board members. The legal action may focus an accusation of breach of fiduciary duty either on a particular action or series of actions and the judiciary may order for compensation to the company for any loss it has suffered/account to the company for any personal gains/profits made from his action or series of actions. The check on this would involve the bona fide action, not making secret profits etc., amongst other things.

Statutory duties

As per the Companies Act, 1956, the company has a large number of obligations and duty which a the

company has to fulfill while the directors themselves do not have that sort of duties and obligations. The directors have to perform the duties imposed by statute and the directors are personally liable in specific circumstances such as take minutes of their meetings, deliver copy of company's report to the Registrar of companies etc. In these respect, the directors have some statutory duties and their main duty however is of fiduciary nature which is discussed above and also the directors have a duty of skill and care to the company in which they are serving. The Companies Act, 1956 list down under specific sections, the liability of the directors for noncompliance varying from fine, imprisonment, both coupled with compounding of offense.

Other duties

The regulatory requirement to the company in which the directors are serving would fall under this category - especially for the listed companies, the requirement under Listing Agreement monitored by Securities Exchange Board of India through stock exchanges.

ROLE OF DIRECTOR

The director has two distinct different roles governing the activities of the company in which he is a director and they are:-

Performance role ; and

Conformance role

Performance role

In this role, the director plays their role as a specialist in the filed with their expert knowledge and skill which are aiming to give the excellent performance of the organization. The director brings his expertise knowledge from his wide experience and brings external information, know-how and he really adds value to the business to take the company to the greater heights. This is the reason why, by and large the companies appoint directors from outside who is the source of information, knowledge. The outside director being directors in many other companies, they are well informed and advised about the international markets, technological development, market related information etc. Many directors are also being members of various forums like chamber of commerce, other public forums dealing with the industry, trade and commerce, they are in a position to bring their expertise knowledge, and they act as eye of the board to the external world.

Needless to mention that the Clause 49 of the Listing Agreement talks about independent directors in the board and audit committee, who can really add value to the business. Clause 49 talks an Independent Director is a person who apart from receiving director's remuneration does not have any relationships with the company or its promoters. An Independent Director is not related to promoters or persons in the management or at one level below and has not been an executive of the company in the last three financial years. Clause 49 further says, if the Chairman of the Board is a Non-Executive Director, then at least 1/3rd of the Board should comprise of Independent Directors, and if the Chairman of the Board is an Executive Director, then at least 1/2 of the Board should comprise of Independent Directors. This definitely shows the importance and the role the non executive independent outside directors can play towards creating of wealth to the stakeholders of the company with the better governance practices.

Conformance role

In this role, the concerned directors has to ensure that the company follows the laid down policies and procedures framed by the board and this is done generally by raising various concerns, seeking clarifications from the senior management team of the company. The conformance role is mainly done by the executive directors of the company, mostly since they are involved in the day to day management of the company. This role involves, regular monitoring on an ongoing basis along with evaluating their own performance, as they are answerable at the board meeting on the performance of the company as a whole.

What the board normally do :

- Create business plans, frame strategy, formulate policies, performance criteria and implement the same
- Ensure wealth creation to all stakeholders of the company efficiently and effectively
- Ensuring transparent disclosure and communication with shareholders and stakeholders effectively.
- Performance assessment of the Chief Executive of the company and other directors
- Appraising the performance, planning for succession for senior management

- Identifying the various risk of the business and plan out for its mitigation
- Ensure that the company continue to function as "going concern"
- Taking necessary care to ensure that the updated technology is used for running the business properly, profitably in creating wealth to the stakeholders
- Ensure internal control systems are in place
- Financial results are analyzed, accuracy of its reporting and the relevant regulations are complied with
- Most important to ensure that the company is in compliance with all the applicable laws such as Listing Agreement, Companies Act, Securitization Act etc., and the company also follows the applicable codes with the best global practice.
- Good corporate cultures with its value and living with the values of the company
- Always act in such a manner which would bring continuing prosperity to the company and always act in the best interest of all stakeholders and exercise the power and leadership and ensure integrity and best judgment with reference to the relevant circumstances.
- Finally ensure transparency coupled with responsibility and accountability with the best disclosures to the stakeholders of the company

(One can refer the website www.combinet.net/governance/finalver/partone.htm to read more on board related matters)

The clause 49 has thrown tremendous amount of responsibility on Audit Committee with reference to risk management, related party transactions, financial results, management discussions, accounting standards followed/deviation if any etc., coupled with highest amount of disclosure requirement. The clause 49 also specifies formulation of code of conduct for the board members and for the senior management of the company and its adherence and annual affirmation for adherence.

RESPONSIBILITIES OF DIRECTORS

Since the shareholders appoint the directors of a company, largely they have the basic responsibilities towards the shareholders of the company. The directors act as trustees of the shareholders and

manages the funds of the shareholders increasing wealth by providing the strategic plans and policies for the company to achieve the preset goals and targets and guide the senior/top management of the company to achieve the goals. The directors are accountable to the shareholders and report them back the performance of the company, provide the audited financial results, make all the necessary disclosures periodically and take appropriate decision in the best interest of the shareholders on each and every issue.

Broadly, the following are the requirements for reporting of disclosure requirements as per the listing agreements (clause 49) between the stock exchanges and the company (ies) whose shares are listed on the stock exchanges

1. Quarterly results
2. Half yearly results
3. Audited financial statements
4. Annual report
5. Cash flow statements
6. Related party disclosures
7. Disclosures relating to Qualifications in Audit Report
8. Fund utilization variance statements on quarterly basis

Let us examine the specific requirements under each head :-

Quarterly results

Format of disclosure to be as Clause 41 of the Listing of Agreement

To be reviewed by the Audit Committee with the management before submission to the board and variance with audited results with reasons to be disclosed

Compliance with Accounting Standards on “ Accounting for Taxes on Income ”

Variance with accounting standards

In case of change of name suggesting new line of business disclosure of turnover and income from new activities separately.

Segment wise revenue,

Results,

assets and liabilities

(to be as per AS 17 Accounting Standards on Segment Reporting)

Capital employed

Disclosure of material non recurring transactions

Effects of all changes-

- accounting practices affecting profits

- changes in composition of the company

Audit qualifications

Impact on Auditors qualification (s) on the profit or loss

Disclosure on how qualifications of previous accounting year addressed

Half yearly results

- Disclosure to be on the lines as that of quarterly results with an exception of additional disclosure related to promoter’s share holding

Audited financial statements

Same format as that of quarterly results

Same issues to be addressed as that of quarterly /half yearly results

Disclosure required on cash flows as per AS-3 Cash Flow Statements

Related party transactions to be in compliance with Accounting standards AS-18 on “Related Party Disclosures” in the Annual Report

Publication of consolidated financial statements in addition to individual financial statement in the Annual Report

Disclosures of loan/advances and investments in its own shares by listed companies, their subsidiaries and associates etc.

Disclosure as required as per AS-23 on Consolidated Financial Statements

Investments in associate companies disclosure in accordance with AS 23

Related party disclosures

Disclosure of Accounting treatments to be in conformity with other accounting standards too.

If disclosure is not in conformity with Accounting Standards, management to provide the explanation as regards the alternative treatment

Annual report

Management Discussion and Analysis Report

Report on Corporate Governance - To also contain certificate from statutory auditors/practicing company secretary regarding compliance of corporate governance

CEO/CFO certification

Response to qualifications in the Audit Report

Code of conduct - compliance declaration signed by CEO

Issues relating to public issue proceeds

Different accounting treatment from an accounting standard along with management explanation

Disclosure of number of shares and convertible instruments held by non executive directors

Non executive directors share holdings (both own or held by) for other persons on beneficial basis prior to their appointment in the listed company

Disclosure of compensation to Executive and non executive directors

Criteria for making payment

All elements of remuneration package

Details of fixed and performance linked bonus

Service contracts & severance fees

Stock option details

Compliance with mandatory requirements of clause 49

All pecuniary relationship of transactions of non-executive directors vis-a-vis the company

Disclosure of any noncompliance, penalty, strictures imposed

In summary though the responsibilities of the directors may differ from country to country, the basic responsibility of the directors remain towards the shareholders coupled with the obligation to maintain integrity and honesty at all times and ensure that the wealth is created to its shareholders primarily and to all the stakeholders at large. All the shareholders are to be provided adequate, required, accurate and timely information relating to each issue which would affect the shareholders on whose behalf the company is being run by the directors as a trustee.

The very important disclosure requirements under clause 49 could be summarized as under in brief.

(a) Related party transactions:

Certain specified transactions with related parties shall be placed before the audit committee regularly for its review.

(b) Accounting Treatment:

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation

(c) Risk management:

The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures.

(d) Public issues, rights issues, preferential issues etc.:

Quarterly disclosures: When money is raised through an issue (public issues, rights issues, preferential issues etc. Including debentures - whatever way the fund is raised), Audit Committee shall be given disclosures as to the uses/applications of funds on a quarterly basis.

Annual disclosures: On an annual basis, the company shall prepare a statement of funds utilized i.e. Cash flow statement, for purposes other than those stated in the offer document/prospectus/notice and place it before the audit committee.

(e) Remuneration of Directors:

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

(f) Management Discussion and Analysis Report [MDAR]:

As part of the directors' report or as an addition thereto, Management Discussion and Analysis Report with certain specified disclosures should form part of the Annual Report to the shareholders.

(g) Miscellaneous requirements:

In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with some specified information about the directors.

Quarterly results, presentations made by the company

to analysts etc. shall be put on company's web-site or shall be sent to the Exchange in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.

To expedite the process of share transfers, the Board of the company shall delegate the power of share transfer to an officer or a committee or to the RTA. The delegated authority shall attend to share transfer formalities at least once in a fortnight.

Reporting of compliance of Corporate Governance - how it is done?

Quarterly Report needs to be submitted within 15 days from the close of quarter, which is required to be signed by the CEO/Compliance Officer of the company and sent to the stock exchanges where the equity shares of the company is listed

Annual Report must contain a separate section on Corporate Governance, which is duly certified by the statutory auditors or by a practicing company secretary. The report also should explain the noncompliance, if any of the mandatory requirement and adoption of the non-mandatory requirements which need to be specifically highlighted.

Legal aspects and liabilities of directors

Companies Act 1956 make the directors liable for the following amongst other things

Contravention of the law

Failure to refund the subscription money to investors

Misrepresentation in offer documents and annual accounts

Duties of directors

Attend all board meetings - devote sufficient time and pay attention for conducting the affairs of the company in the best interest of the stakeholders

Ensure and protect the interest of the creditors of the company

At all times maintain the confidentiality of matter discussed at the board meetings

Ensure that the company's assets are not wasted and spent for useful purpose

Exercise utmost care and diligence in discharging the functions in the capacity of directors

Never be negligent and not to commit or let others commit tort-liable acts

Never misuse the power vested upon the director

Not to use/exercise the powers given for a collateral purpose

Never ever make secret profits and make good loss - whether due to breach of duty or of negligence.

Act always in the best interest of the company and as well its shareholders, customers and other stakeholders of the company

THE ROLE OF THE CHAIRMAN

The chairman manages the activities of the board and ensures that the effective functioning of the board ensuring the adherence of the formulated policies and plans and its actual performance by putting them in practice by the executive management. The chairman works very closely with the company secretary to ensure the legal compliance and ensure the regulatory requirements to avoid any noncompliance and bring a good corporate governance practices in the company. The chairman needs to be a good business man understanding the language of the business, the market in which the company is, what the product and services are offered by the company, its future prospects in the national and international perspective keeping the long term view in mind for taking the company to the higher level of performance. The chairman needs to ensure that the internal needs of the board and its code is observed and he has to also deal with varied levels in the organization such as executive, non executive directors, senior management, outside experts, internal and statutory auditors, employees, stakeholders mainly shareholders. The chairman needs to have an excellent working relationship with the CEO of the company who puts the plan into reality. Very good inter personal relationship with all levels is required to be maintained by the chairman. An excellent chairman would be in a position to take the company to its phenomenal growth and make the company a very successful one.

Relationship with the Chief Executive Officer of the company

Though the board lays down the broad policies, the implementation is done by the Chief Executive Officer. There has to be an excellent working relation between the chairman and the Chief Executive Officer needs to be there and if not, the CEO may withhold the information which could be prejudicial and

detrimental to the company. The chairman, needs to maintain an excellent relationship with the CEO of the company. This would enable the chairman to know what exactly is going on in the organization and he can understand the insight things so that he could form an opinion whether the things are in the right direction and the set targets are being achieved.

Relationship with executive directors of the company

To know the effective function and the efficiency in which the things are carried out, the chairman has to maintain a very good relationship with the executive directors so that he is in a position to appreciate the information presented and the non executive directors are in a position to ascertain and the effectiveness of the contribution made by the executive directors. The good relationship would bring the executive directors to act in very transparent and honest way, while presenting the report/information to the non executive directors

Relationship with non-executive directors of the company

The ability of an excellent chairman is to attract the talent from outside and the outside directors would like to work with such a chairman. Maintaining a cordial relation with the non executive directors would enable for better motivation and take a decision which is best for the company and its stakeholders. Outside talented directors are attracted by an excellent chairman, that would add value to the organization and organization would move from good to great.

Chairman of the board and his functions

Chairman's functions are innumerable and apart from shouldering greater responsibility and playing a pivotal role, some of the important function could be summarized as under :

- ensures a good decision making process
- laying down a high standards for the organization and ensuring that they are adhered to by formulating suitable best practices, procedures, polices which are put in place
- acts exemplary and decisively at the time of crisis
- always act as a representative and trustee of the company
- above all, assists, guides and ensures other

directors upgrade the required levels of the organization

Needs in order to meet the expectation of the investors not only the current needs but also for the future needs.

The role of Chief Executive Officer

The main role of the CEO is to run the company effectively and efficiently and attain the target and reach the desired results. He is running the day to day operation of the company and he is expected to maintain a very constructive relationship with the chairman and with the other directors in one hand and with senior management team on the other hand. CEO acutely bring the results in reality which are formulated by the board collectively.

Relation with the Chairman

The CEO should work together with the chairman as a complimenting role with a very high degree of openness, trust and with effective communication. If the chairman and CEO both understands each their, with respect to their strong points and also the weak points, they can work so closely and carve out better results in a very effective manner and the CEO has to maintain an excellent high degree of constructive working relationship. This would help to achieve greater results and produce excellent performance coupled with better governance practices.

Relation with directors

The CEO can take advantage of the expertise knowledge of the other directors in bringing about improvements in various areas and moving towards greater results and performance and the directors also would get motivated and contribute to their best interest and ability. Collectively, all of them have to work toward the interest of the whole company and maintain a very cordial relationship. Narrow interest such us, interest of only shareholders or only financial institutions, only employees should not be there and whole organizational interest, in the best interest of all the stakeholders to be pursued collectively by everyone.

Functions of the Chief Executive Officer

Over and above his role, the CEO is also expected to ensure the following functions

- providing leadership and direction to all his executive directors and senior management
- acts as a representative of all executive directors and interact with non executive directors

- implements the plan developed by the board and ensure that the strategy is followed in achieving the desired results - have a courage of conviction to report back to the non executive directors if a given strategy cannot work at any point of time
- represents the company to all investors, media, government and other agencies
- intervenes and resolve issues where problems are identified
- assists the board in formulating strategic proposals and get their endorsement in the best interest of the company

Functions of the Board

The primary function of the board to ensure the long term growth of the company by creating wealth to all the stakeholders of the company by taking the responsibility of the performance of the company and the board has to provide strategic guidelines to the executive management in achieving the goal set and the target planned having regard to the future trends and changing economic environment with reference to national and international prospective. Any company would like to take the journey from Good to Great and the board's responsibility is to ensure the safe journey of the company from becoming good to great, by practicing good corporate governance, abiding the laws of the land, ensuring compliance of the regulatory requirements with better transparent disclosures and above all making the shareholders happy, who appointed them as their trustees to run the affairs of the company. The board closely monitor the performance of the company towards the set goals in long term perspective.

Clause 49 requirement in respect of composition of Audit Committee based on the recommendations of Kumara Mangalam Committee followed by various committees appointed by SEBI including the last one of Narayanamurthy committee

Including the Chairman, 2/3rd of the members should be Independent Directors, with atleast 3 members forming a part of the Audit Committee. All members must be financially literate and one member must be financial expert. The Company Secretary should act as the Secretary to the committee. The Chairman of the Audit Committee to be present at the Annual General Meeting of the Company to answer the queries of the shareholders.

Strategic role of the board

The board formulates the following strategy to ensure the achievement of the targets and the desired performance.

Formulation of systematic level strategy

By providing the critical inputs to the executive management with reference to national and international perspective and taking into consideration of the global environment, the broad level strategy is formulated for effective decision making at this stage.

Structural and portfolio strategy

In this stage the board identifies the specific issues and what changes are needed in the structure of the company for achieving the desired growth, target as formulated and accordingly the policies, plans and the procedures are made.

Implementation strategy

At this stage, it is ensured that the formulated strategy is feasible and work towards the achieving the same.

Policy making role

In this role, the board formulates the policy guidelines in respect of areas covering all the activities of the company starting from manufacturing to marketing, suppliers to customers, relation with employees, finance, personnel, HR and IR functions, research and development, customer relation, logistic operations, pricing, sales, distribution, marketing etc. Infact all the key areas are identified with reference to the operations of the company and the policy is formulated. In many companies, the policies are printed, published and made available to all the employees of the company. Many organization, the employees always carry the printed card in their pocket stating the companies, vision, mission, value culture, Safety, Health & Environmental policy. Similarly the marketing and distribution personnel carry the organization policy with respect to their selling, pricing policy documents whenever, they meet the perspective customers for business.

Monitoring and supervising

In this role, the formulated strategies, laid down policies coupled with the action plan in order to achieve the targeted results are monitored by the board continuously and precisely, one can say that this is

the supervisory role performed by the directors on the company. The defined targeted goal achievement, variation if any, cause for the variation and its analysis, corrective action, revised target/plan, modification needed in the strategies in the light of changing economic condition, market environment especially with reference to competitive forces operating in the market. The objective is to achieve the continual overall growth on a consistent basis by effectively utilizing the resources. The board ensures that they follow the PDCA cycle i.e. plan, do, check and act and the cycle goes on. The board monitors all the activities of the company in the areas of products and services offered by them and its performance, market performance, financial performance, technological performance, the organization performance as a whole (the performance of the senior management) relationship with employees, diverged activities, acquisition & mergers and above all the company's safety health environment related matters coupled with its social responsibility.

In one line, it can be said, the entire organization's performance is continuously supervised and monitored by the board in respect to all aspects let it be financial or otherwise.

Committees of the board

The Board of the company places reliance on outside independent directors for monitoring the performance of the company and hence, the board sets up many committees, mainly consisting of independent directors, comprising of outside directors such as:-

1. Audit Committee
2. Compensation/Remuneration Committee
3. Nomination Committee
4. Shareholders & Investors Grievance Committee
5. Ethics and Compliance Committee

AUDIT COMMITTEE

Audit committee to consist of independent directors who in turn report to the board of directors. This committee works as a link between the external auditors, internal auditors and the audit committee goes into the details of all matters raised by the external auditors, internal control related matters coupled with risk management. The main function of this committee is to review the audited and unaudited financial

statements which are published by the company pursuant to the listing agreement entered by them with the respective stock exchanges as per the Listing Agreement. The committee would discuss the financial aspects with the external auditors independently relating to any problems the auditors have experienced, qualifications if any, deviations in the accounting standards applied and other financial related matters and finally they recommend the publication of results to the board for its approval

The clause 49 of the Listing Agreement lists down the powers and roles of the audit committee which are given below

Powers of Audit Committee

The audit committee shall have powers which should include the following:

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

Role of Audit Committee

The role of the audit committee shall include the following :

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending the appointment and removal of external auditor, fixation of audit fee and also approval for payment for any other services.
3. Reviewing with management the annual financial statements before submission to the board, focusing primarily on;
 - (a) Any changes in accounting policies and practices.
 - (b) Major accounting entries based on exercise of judgment by management.
 - (c) Qualifications in draft audit report.
 - (d) Significant adjustments arising out of audit.
 - (e) The going concern assumption.

- (f) Compliance with accounting standards.
 - (g) Compliance with stock exchange and legal requirements concerning financial statements
 - (h) Any related party transactions
4. Reviewing with the management, external and internal auditors, the adequacy of internal control systems.
 5. Reviewing the adequacy of internal audit function, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
 6. Discussion with internal auditors any significant findings and follow up there on.
 7. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
 8. Discussion with external auditors before the audit commences about nature and scope of audit as well as postaudit discussion to ascertain any area of concern.
 9. Reviewing the company's financial and risk management policies.
 10. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.

Following explanations are also provided in the Clause 49 of the Listing Agreement in respect of related party transactions and also makes it clear that the additional functions/features under the Listing Agreement to be complied with even if the Company had set up an audit committee under the provisions of The Companies Act, 1956 pursuant to section 292A.

Explanation (i) : The term "related party transactions" shall have the same meaning as contained in the Accounting Standard 18, Related Party Transactions, issued by The Institute of Chartered Accountants of India.

Explanation (ii) : If the company has set up an audit committee pursuant to provision of the Companies Act, the company agrees that the said audit committee

shall have such additional functions/features as is contained in the Listing Agreement.

Review of information by Audit Committee

(i) The Audit Committee shall mandatorily review the following information:

1. Financial statements and draft audit report, including quarterly/half-yearly financial information;
2. Management discussion and analysis of financial condition and results of operations;
3. Reports relating to compliance with laws and to risk management;
4. Management letters/letters of internal control weaknesses issued by statutory/internal auditors;
5. Records of related party transactions ; and
6. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

Some thoughts on this to think over

Although, in some of the countries, the audit committee has been brought under regulation through listing agreements, Companies Act, other regulators, in many countries, the governments have not regulated them as one of the mandatory requirements. Audit committees are expensive in terms of management and director's time.

The board members who are not on the audit committee may have a belief that they are not at all responsible for the control related and governance issues - probably they think, these are delegated to the audit committee.

At times, the issues may become superfluous, as major issues are being handled by the full board - rather the major issues are passed on to the consideration of the full board.

Since the audit committee consists of entirely by non-executive directors there could be a friction between the non executive and executive directors by the formation of audit committee.

Finally there also could be a view that it may not be possible to have one solution for all the issues relating to corporate governance difficulties in varied operating environments - take a case of a small board which is appropriately qualified - the full board may consider

the issues relating to corporate governance rather than forming a committee and delegating the powers to them to deal with the issues. Perhaps, due to this reason, in some of the countries the audit committee is incorporated into code of conduct/best practice and not legislate it as mandatory requirement. For the information of the readers, in Australia and in Hong Kong, this is so - the relevant stock exchanges have followed the voluntary path in their listing agreements.

Compensation/Remuneration Committee

The shareholders are becoming more concern about the disclosure and transparency of the company in which they have invested their money and definitely would like to know the compensation/remuneration package of the directors and as well the senior management of the company.

This committee, having regard to the long term goal of the company design a package for the directors and as well for the senior management which is a transparent policy and review the remuneration/compensation, approve wherever within its power, recommend for approval to the board/shareholders and the disclosures are also made in the annual reports.

One of the requirement of clause 49 of Listing Agreement is that setting up of a Remuneration Committee with the following roles.

Requirement of Clause 49 on Remuneration Committee

- (i) The board should set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, the company's policy on specific remuneration packages for executive directors including pension rights and any compensation payment.
- (ii) To avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive directors should comprise of at least three directors, all of whom should be non-executive directors, the chairman of committee being an independent director.
- (iii) All the members of the remuneration committee should be present at the meeting.
- (iv) The Chairman of the remuneration committee should be present at the Annual General Meeting,

to answer the shareholder queries. However, it would be up to the Chairman to decide who should answer the queries.

Nomination Committee

Nomination committee is normally set up to decide and select the new non executive director and it is headed by the Chairman along with other independent directors as members. The committee screens, the prospective candidates for the position of non executive directors and makes it selection.

Shareholders & Investors Grievance Committee

This committee is formed for overseeing the investors grievances and resolving the same. Clause 49 of the Listing Agreement prescribes the following in respect of this committee.

- (i) A board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressal of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This Committee shall be designated as 'Shareholders/Investors Grievance Committee'.
- (ii) To expedite the process of share transfers the board of the company shall delegate the power of share transfer to an officer or a committee or to the registrar and share transfer agents. The delegated authority shall attend to share transfer formalities at least once in a fortnight.

Further, the clause 49 also states the following disclosure requirements in respect of shareholders

Shareholders

- (i) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:
 - (a) A brief resume of the director;
 - (b) Nature of his expertise in specific functional areas ; and
 - (c) Names of companies in which the person also holds the directorship and the membership of Committees of the board.
- (ii) Information like quarterly results, presentation made by companies to analysts shall be put on company's web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.

Ethics and Compliance Committee

This committee reviews the ethical policy of the company and also keep a close watch on the code of conduct formulated by the board and its adherence by the all the employees of the company. Advises the board on ethics related matter, modifications of code of conduct etc.

Criticisms of non executive directors

There are also views about the effectiveness of the non executive directors and the following alternative views are expressed on this

Lack of knowledge about the business operations of the company in which the non executive directors serve

Insufficient time the non executive directors spent with the company

The weight of option of the executive directors on the board of the company.

The Myners Report and criticisms of NEDs published in UK in February 2002 from Paul Myners, author of a government-backed report would be of interest to go through on this subject. The gist of the report reads:

“The biggest and most dangerous nonsense is the role was now expected non executive directors to perform. Even if they spend one day a week in the company, can the non-exes. even know the business as well as the exes ? No, they can't. So why bother with non-exes at all?”

Perhaps, the training concept is evolved to non executive directors and the clause 49 also talks about the training needs. One of the non mandatory requirement of clause 49 is in respect of training of board members which states as under:-

“Company shall 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.”

The fact remains that NEDs could bring range of skills and experience to a company and can influence its decision making process. They can act as counterbalance to the power and influence of a strong chairman and CEO.

Performance evaluation of the board members

The Higgs Suggestion for Good practice, attached to the Combined Code in UK include some guidance on performance evaluation though the guidance does not go into detail about how the evaluation process should be conducted, nor what target measures of perform might be in the evaluation. Only the following suggestions are made

- the board should state in the annual report how the evolution had been conducted
- Chairman is responsible for selecting an effective process of evolution and action on its outcome
- Using third party for carrying out evolution would bring objectivity to the process

With the global best practice in mind, the clause 49 of Listing Agreement also talks as one of the non mandatory requirement on this subject while discussing the same under the head Mechanism for evaluating non-executive board member. The following is the extract from clause 49 :

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

How far the evaluation process would work is to be seen in the future since it is a new concept which has been brought in.

SUMMARY

The growth of any company would much depend upon the sense of direction and the purpose of the board as a whole. If the entire board and its constituents like CEO, Chairman, executive and non executive directors discharge their main functions in the best interest of the company, with their roles and responsibilities, not only to the board but also to the various committees in which they are members such as Shareholders & Grievance Committee, Compensation/Remuneration Committee, Audit Committee, nomination Committee and any other sub committee of the board, with best global practices coupled with the statutory compliance in all matters.